CITY COUNCIL AGENDA

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

WORK SESSION
November 21, 2011
6:00 PM

CALL TO ORDER BY MAYOR ROGERS

1 ROLL CALL BY THE CITY CLERK

2 USE OF ELECTRONIC TABLETS FOR DELIVERY OF COUNCIL AGENDA PACKETS

City Council will receive information and give feedback to staff regarding the use of electronic tablets for delivery of council agenda packets. For information, discussion and direction.

3 UPDATE TO CHAPTER 16 OF THE PERSONNEL RULES AND PROCEDURES - INFORMATION AND COMMUNICATIONS TECHNOLOGY POLICY

City Council will receive information regarding proposed changes to Chapter 16 of the City's Personnel Rules and Procedures - Information and Communications Technology Policy, prepared by the City's new IT Steering Committee under the leadership of the IT Department. For information, discussion and direction.

4 CITY CODE CHAPTER 20 – ALARM CODE REVISIONS

City Council will receive information from the City Attorney regarding a proposed amendment of the City of Avondale Alarm System Ordinance (Chapter 20) to (i) repeal Part II, Sections 20-38 through 20-49 relating to permitting requirements and (ii) amend certain provisions related to enforcement and penalties. For information, discussion and direction.

5 ADJOURNMENT

Respectfully submitted,

Carmen Martinez

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:
Use of Electronic Tablets for delivery of Council Agenda Packets

MEETING DATE:
November 21, 2011

TO: Mayor and Council

FROM: Carmen Martinez, City Clerk (623) 333-1214 and Rob Lloyd, CIO (623) 333-5011

THROUGH: Charlie McClendon, City Manager

PURPOSE:

City Council will receive information and give feedback to staff regarding the use of electronic tablets for delivery of council agenda packets.

BACKGROUND:

In July 2001 The City of Avondale was one of the first cities in the valley to start producing electronic agenda packets. Prior to taking this step, the City Clerk's Department was printing and putting together close to 20 paper agenda packets. By switching to an electronic agenda packet we were able to post the agenda online, thus eliminating the need to produce agenda packets for staff and the media. Currently, the City Clerk's Department prints eight paper packets including five for Council Members who still prefer to receive a paper packet, one for the City Manager and two to have available for the public. All Department Heads and staff view the agenda packets online. As published on the City's website, the agenda packet is a PDF document which features bookmarks and links for easy navigation.

Over the last twelve months, paper packets have averaged 300 pages per packet with the largest being 1,004 pages; the November 7th packet was 872 pages. On average, staff spends three to four hours printing and putting together the paper packets at an estimated annual cost of $4,500.00.

Five of seven Council Members prefer the paper packet over the electronic packet due to their ability to make notes on paper that allows them to ask questions and have better points of discussion during the Council meeting. At some point, most Council Members have brought in their laptops to the meeting, but have found them cumbersome due to cables and the amount of space they occupy in their limited desk area at the dais, but have mostly been discouraged to continue this practice due to their inability to make notes on the agenda.

With the growth of mobile computing form factors and applications, better options now exist for working with Council Packets. Use of iPad and Galaxy Tab devices specifically have promise. The Information Technology Department has added supports for mobile computing device access to email, calendars, and contacts information and is proposing updates to Chapter 16, in part, to further support the growth of mobile computing.

DISCUSSION:

Electronic tablets are now a mainstream tool for an increasingly technologically savvy society. They are lightweight and have an extended battery life making them exceptionally portable and usable. More importantly, strong annotation and note-taking applications have been developed and are available for download for most tablets at a very low cost. Electronic tablets have many more advantages, but these three make them a viable replacement for a paper packet. Vice Mayor

McDonald has been using an electronic tablet for close to a year now and reports being very satisfied with it.

ELECTRONIC TABLETS PILOT

Several cities throughout the valley are in the process of implementing the use of electronic tablets as a way of making agenda packets available for City Council and staff members. Staff believes now is the time for Avondale to make the same transition. The City Clerk, Carmen Martinez, and CIO, Rob Lloyd, have worked together to develop a pilot program to allow for easy transition into an electronic tablet by putting together all the necessary tools and guidelines needed. The form factors selected for the pilot must include the following features and capabilities:

- Include iPads and Android devices
- Support download, active reading, page tagging, and mark-up of Council Agendas
- Provide solution for cloud-based storage of work files for public records requirements and possible dissemination of the Council meeting packet
- Provide appropriate security features, including ability for City staff to disconnect accounts from lost devices, password logon required, maximum passwords setting before wipe, and remote wipe of devices
- Give wireless access options for accessing Council packets while at City Hall
- Review usefulness of peripheral items e.g., stylus, protective cases, screen covers, etc

The pilot also defines process and policy items to address with City Council and City Management.

City-purchased devices versus personal devices with reimbursement

- Determine if tablets used by Council Members should be City-owned and purchased, or if the City should provide a reimbursement or stipend. Determine percentage or amount.
- Staff seeks direction from Council from among the two options for Council members. For key City personnel approved by the City Manager and their designees, staff recommends a policy to provide partial reimbursement or stipend of $300 to $400 every three years toward the purchase of personally owned devices.
- A use agreement would be required, setting the terms for use, replacement, and security.
- Staff also recommends that with the broad availability of Wi-Fi, 3G is an unnecessary option for staff to support.

Compliance with any and all ethics laws

- Ethics rules apply whether tablet is personal or City-purchased. Caution should be used at all times and always consider if activity would pass “the headline test” if disclosure of activity/use is requested
- Personal tablets - if used for City-related business, information and activity conducted on tablet MAY be subject to public disclosure.
- Use of City's Wi-Fi connection is subject to uses allowed in Chapter 16 of the Personnel Rules and Procedures
- For City-purchased units, Chapter 16 of the Personnel Rules and Procedures will apply: Only “incidental personal use” is allowed on a city-owned device. Specifically prohibited activities are also defined.

Supported applications and methods

- Email, Calendars, and Contacts access
- Council packets are downloadable from the City's website as one PDF document. The document is internally bookmarked and the agenda cover is linked to council reports for easy navigation.

- PDF annotation and markup applications (iAnnotate; PDF Expert; Adobe X) are available and will be installed on the device for City-purchased devices
- Cloud-based storage service for remote file saving will be available. The device will be set up so as to allow council packets and corresponding notes to be saved and retained in compliance with applicable retention schedules.
- If City-owned, iTunes accounts for Councilmembers will be set up to allow for the purchase of necessary/approved applications. Reimbursements will function best for required applications for personal-use devices.

BUDGETARY IMPACT:

As proposed, implementation of this program will not impact the City's budget. Due to its relatively low cost, devices will be purchased within departments' operating budget and Council Members' discretionary accounts. It is expected devices will need to be replaced every three years, but they will not be added to the central replacement fund as they will not replace use of computers currently used by Council Members and staff for their work duties.

RECOMMENDATION:

This item is for discussion and direction only. Based on Council's direction, staff will proceed with the purchase of selected devices.

ATTACHMENTS:

Click to download

No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Update to Chapter 16 of the Personnel Rules and Procedures - Information and Communications Technology Policy

MEETING DATE:
November 21, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff will present information regarding a proposed update to Chapter 16 of the City's Policies and Procedures to bring the City current with industry practices and address organizational technology needs.

BACKGROUND:

Chapter 16 of the City's Policies and Procedures is its “IT Policy”. Chapter 16 was written in 2003 and partially updated in 2006. The technical references have grown out of date and the policy has highly prescriptive sections that are no longer valid with industry practices and the City's technology operating environment.

The Information Technology (IT) Department completed a rewrite of Chapter 16, bringing the City's policies and practices current while addressing the needs of City departments through the City IT Steering Group. 38 edits to the drafts resulted from departmental feedback.

DISCUSSION:

The policy proposed addresses the City's technology and communications needs in the following structure:

1. Appropriate Use by employees, including social media and informal communications;
2. Information and Systems Security requirements, including auditing, incident handling, and IT asset acquisition;
3. Technology Asset Allocation to set replacement lifecycles, capital budgeting for technology equipment, and allowances to accommodate emerging mobile computing demands;
4. Records Administration intent and guidance; and
5. IT Protocols and Guidelines, consisting of Administrative Policies that will execute Chapter 16 administratively.

Chapter 16 is designed to remain applicable into the future. The revised policy addresses high-level aims. Specific operational guidelines will be managed through Administrative Procedures - e.g., specific password length and complexity requirements, incident response process and contacts, reimbursement and stipend amounts - which can be reviewed and updated easily.

Staff welcomes input and guidance from Council. Once completed and approved, IT staff will visit with City departments to share details, answer questions, and implement access security forms for personnel files.

BUDGETARY IMPACT:

The new Chapter 16 Policy changes the computer allocation definitions and processes. Some reduction in total computer inventory and cost is expected. Replacement lifecycles for servers, networking equipment, and reprographic equipment will also be updated and made uniform, which will affect replacement schedules in the City's Annual Budget and Financial Plan.

RECOMMENDATION:

Staff requests questions, comments, and suggestions from City Council to improve the new Chapter 16. IT will make final changes in advance of a request to approve the new Chapter 16 at City Council's December 5th meeting.

ATTACHMENTS:

Click to download

- Draft Chapter 16 Policy and Procedure

DRAFT—CHAPTER 16
Information and Communications Technology Policy

A. Policy Statement

The City shall maintain its information and communications technology environment to enable efficient, secure, legally compliant, and effective work by staffs. The function of the Information Technology Department (IT) is to fulfill these technology, communications, and collaboration needs in a well-planned manner.

B. Key Definitions

1. ***Access Control***— Limits placed on the ability to interact with networks, hardware, and/or software. Limits can be physical or logical in nature, affecting access to computing hardware, resources on data networks, entry into and use of business software, and ability to work with data.
2. ***De Minimus Use***— Personal employee use of City IT resources that is nominal, irregular, and within ethics laws.
3. ***Information Systems***— Computer hardware, software, storage, networking, procedures and processes used in the collection, processing, storage, sharing, or distribution of information.
4. ***Information Security Officer (ISO)***— City employee designated by the Chief Information Officer to serve as the point-of-control for technology-related security issues. The individual and their backup are designated in IT Department employee listings.
5. ***Malware***— Any code, script, or other software that disrupts proper operation of systems, provides unauthorized access to network and/or systems, gathers/shares information without knowing consent, or otherwise causes undesired and compromising activity.
6. ***Mobile Devices***— Mobile communications and computing devices, such as cellular-based smartphones, tablet computers, and portable personal network cards/peripherals.
7. ***Password***— A sequenced combination of characters and numbers used to confirm that a user requesting access to a network or system is permitted to do so. Typically, a unique name (*user ID*) is paired with a password to manage access. The password, known only to the user who generated it, is entered to verify identity. A password is deemed "strong" if requirements for length, character use, and pattern are met.
8. ***Private and Sensitive Data***— Information defined by statute, policy, or regulation as warranting controls over access, storage, release, modification, destruction, loss, and/or misuse.
9. ***Technology Assets and Resources***— The City's computers, servers, mobile devices, printers, computing peripherals, software and licenses, technology vendor contracts, and services agreements.

C. Information and Communications Technology Usage

1. Privacy—No person using City technology and communications resources has any right or claim to privacy. Conduct on City resources, at City facilities, and/or during work time is subject to monitoring and recording as approved by the City Manager and/or their designee(s). Misuse of technology assets and resources may result in discipline up to and including termination.

2. Appropriate Use—City employees shall use City technology assets and resources in a professional, legal, and ethical manner. The following are expressly prohibited:
   a. Originating or relaying materials that discriminate or causes discrimination as defined under local, state and Federal laws;
   b. Originating or relaying intimidating, hostile, and/or threatening communications;
   c. Altering messages to attribute and relay incorrect information;
   d. Violating copyrights;
   e. Knowingly introducing malware and security risks in the City technology and communications environment;
   f. Accessing the files and communications of others without prior approval by the City Manager or their designee;
   g. Using City technology and communications resources to benefit personally, apart from employment terms; and
   h. Any political activity defined as inappropriate under local, state and Federal laws, and not approved as part of the City's approved legislative efforts.
3. Personal Use—The technology and communications resources of the City are for business use. De minimus personal use is permitted if extenuating circumstances exist and provided the employee does not violate Federal or State laws. It is the responsibility of the employee to ensure the limits on personal usage of public assets are understood prior to making such use.
4. Informal Communications—Instant messaging, voice mail, and text messages are informal tools for coordination purposes. These tools and services shall not be used to relay work that is required to be retained under Arizona Public Records laws and corresponding retention schedules. Instant messages, voice mail, and text messages are not recorded and not retained for these reasons.
5. Preventative Monitoring—IT shall maintain solutions to prevent malware and to filter materials of a discriminatory and/or illegal nature. As activities of these types are detected, IT will treat employee conduct as supervisory issues for managers and the Human Resources Department to address.
6. Social Media—Government presence on social networking sites represents commitment to engaged and transparent communications. The City recognizes social media improve interaction between governments and their constituencies. Therefore, the City shall maintain a presence on selected social media sites through its Community Relations and IT Departments for the purpose of outreach. These efforts shall also support access options for disabled community members.
   a. Purpose. The City of Avondale's blogging and social media accounts will display the City logo, as designated by the Community Relations Department.
      Social media accounts will serve four primary purposes:
      i. Certifying valid information from the City;
      ii. Referring visitors to the City website;
      iii. Promoting City-sponsored events; and
      iv. Providing information during emergencies
   b. Leveraging Across Media. The City's social networking accounts will be designed to drive traffic to the City's website as the primary source of information.

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i. The City will maintain a community page presence on selected social media sites to engage the maximum number of constituents. The sites selected will change as determined by the Community Relations Department
ii. Department directors desiring blog and/or social network accounts separate from the City account must submit a request to the Community Relations Department detailing the following:
   a. Target audience;
   b. Purpose of separate account;
   c. Reasoning why the main account does not meet needs; and
   d. Employees who would be designated to manage the account

c. Access. Content masters may be granted access to the City's content management and social media account(s) by the Community Relations Department. Employees granted access may publish items and are responsible for their use. Employees should link to items to the City website for more information.
d. Responsiveness. City employees authorized to manage the City's blog(s) and social media accounts shall be responsive to constituents who communicate with the City. Responses to the public will be timely, professional, and consistent with existing protocols. Every effort must be made to ensure that information is correct upon publication due to instant dissemination to a wide audience.
e. Retention. The use of online interactive tools does not supersede compliance with State records retention law. As a standard, the City's policy is to not retain social media site information beyond the site's allowances or the termination of the City's account. To facilitate retention, posts via social media should not be original and, whenever possible, should link to materials maintained according to appropriate retention schedules.
f. Notice. Like email, communications via social media sites are public record. Because visitors may not be aware of public records laws, the City should include the following statement on its blog(s) and social network site(s): *"Communication via this site may be subject to monitoring and disclosure to third parties, under public records laws."*
g. Administering Comments. All comments and materials posted under the City's social media accounts must comply with the Terms of Use of the site. Where possible, social media accounts shall be set to email comments to a City email account(s) to facilitate retention of the record according to the corresponding retention schedule.
   The City encourages thoughtful discussion of City issues and will remove or edit comments only in the following cases:
   i. Use of obscenities;
   ii. Use of language that targets or discriminates against race, ethnicity, religion, color, gender, age, sexual orientation or national origin;
   iii. Defames or libels a person or group;
   iv. Includes material protected by copyright in violation of copyright laws;
   v. Promotes or advertises services or products; and/or
   vi. Solicits contributions or donations

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h. Website Policies—The City of Avondale shall make all efforts to protect citizen and business information received from online channels from misuse in order to maintain the public trust. The City Attorney, Human Resources Department, Community Relations Department, and IT are charged with jointly creating and maintaining policies for these outcomes. Policies and ensuing practices should address information collected, terms under which that data is shared, and options to opt out.

i. Personal Use. Employees may choose to maintain personal blog(s) and/or social networking site(s). These must remain personal in nature and be used to share only personal opinions and/or City information available to the public at time of publication. Employees shall publically distinguish between the sharing of personal views and what is perceived as official City government positions.
   i. Employees must never use their City email account or password in conjunction with their personal blog(s) and/or social networking site(s).
   ii. Violation of policies by employees may be deemed to be termination offenses by the City.

j. Telecommuting. Support for employees to work from home can benefit City services and operations by improving staffing flexibility in desired situations. As granted by the City to sustain operations, IT shall maintain the ability for required employees to remotely and securely access the City network to perform essential job functions. Specialized costs in addition to core network services are to be addressed by the requesting department and IT.

D. Information and Systems Security

1. Intent—The IT Department shall ensure the City's technology and communications environment is secure, reliable, and usable.
   a. Information Security Officer. The City shall name an Information Security Officer (ISO) and a backup to coordinate information security efforts, address security incidences as they occur, and complete investigations approved by the City Manager, Chief Information Officer, or their designees.
   b. Access. Permissions shall be based on an assessment of the City's potential exposure to unauthorized access, theft, destruction, alteration, or misuse of information resources.
      i. The IT Department shall be responsible for coordinating third-party security requirements placed on the City, including by State and Federal agencies.
      ii. Security and controls shall be applied in a least-permissive manner. Employees, interns, volunteers, and contractors shall be granted only those rights needed to perform their assigned duties and to perform required administrative tasks.
      iii. Critical technology assets and resources—e.g., servers, security gateways, network equipment, system consoles— shall be physically secured in secure areas with access logging. Security designs must be approved through IT.
      iv. Only personnel authorized by IT shall have access to the City Data Center, network closets, server rooms, control centers, or network operation centers.
      v. The Human Resources Department, Facilities Division, and IT shall coordinate a program for badges and physical access controls for the City.

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a. Access Forms. All employees, volunteers, interns, contractors, and others users of the City IT resources shall be required to sign an acknowledgement of the City's Information and Communications Technology Policies.
   i. Signed employee, volunteer, and intern forms are to be maintained by the Human Resources Department.
   ii. Signed contractor forms are to be maintained by the Information Technology Department.
b. Notification. Hiring managers and supervisors must submit signed forms to IT at least three work days prior to the arrival, reassignment, and separation of all employees, interns, and volunteers.
c. Secure Computing. All computing devices connecting to City technology networks and assets must have appropriate countermeasures installed and active as deemed appropriate by IT under applicable agreements or standards. Countermeasures must include the following:
   i. Anti-malware, anti-virus, email scanning, and firewall software/hardware.
   ii. Secure password usage.
   iii. Set to purge or lock device if an incorrect password is used excessively.
   iv. Active permissions allowing IT to remotely wipe City information.
   v. Pre-boot encrypted hard-drives for City-owned computers.

2. Incident Response—IT shall be the central authority for computer and data security.
   a. Definition. An incident is defined as any event wherein the security of City data, hardware, software, and/or network is potentially compromised. This includes suspected malware infection, loss/theft of a computer(s), loss/theft of data media, discovery of inappropriate sharing of private and confidential data, etc.
   b. Employee Responsibility. City employees and departments are responsible for notifying the IT Help Desk and/or Information Security Officer of any malware infections, hardware loss, or data loss upon discovery.
   c. Coordination. The IT Department shall notify the City Attorney of any security incident that rises to the level of security breach, as defined under Arizona law. The City Attorney and IT Department will coordinate to fulfill legal requirements as needed. In such an event, the responsible department shall be first to cover expenses to address the breach.
3. Technology Acquisitions— The IT Department shall serve as the central authority for acquisition, asset management, and licensing compliance of City technology assets. City departments shall work with the IT Department to minimize redundant technology purchases in favor of enterprise-wide, secure, and economical approaches. The IT Department, Finance Department, and City Attorney shall jointly ensure the City's interests are protected in technology-related contracts.
   a. Approval. All technology hardware, software, and services for use by the City must be approved through the IT Department prior to procurement and purchase.
   b. Procurement. The IT Department shall have a voting member on all procurement selection committees for software, technology hardware, and/or technology services. The role of IT in procurements is to ensure successful integration and execution of technology-related projects, systems, and services. All technology related purchases

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must comply with the requirements of the Avondale Procurement Code (Municipal Code, Chapter 25) and Procurement Administrative Policy.

c. IT Asset Management. IT shall be responsible for the following IT Asset Management functions:
   i. Accepting delivery of technology assets.
   ii. Maintaining accurate asset inventories and tracking.
   iii. Complying with all appropriate licensing requirements.
   iv. Disposing of hardware in an environmentally-responsible manner.
   v. Restricting software, hardware, and services that unnecessarily compromise the security and/or reliability of the City's information technology environment.
   vi. With the Finance Department, maintaining cost allocation and capital plans for the City's software licensing, hardware replacements, and central services funds.

4. Audits. IT will ensure the City's compliance for secure computing and licensing.
   a. IT shall conduct periodic audits of physical, network, system, data, application, and operational information systems security. Results will be shared with the City Manager and department directors for corrective action.
   b. IT should periodically review and verify licensing for systems to verify the City meets required obligations and limits under its service agreements and contracts.

E. IT Asset Allocation

1. Computers—
   a. Primary Use Computers. Centrally allocated computers shall be those consigned to employees for the primary performance of their duties. Computers are to be budgeted and assigned on a one computer per FTE basis.
   b. Special Use Computers. Special Use hardware are those devices deemed necessary by departments for specific, non-convenience uses—e.g., grant-funded programs, Council Chambers, library patron use, unique public safety and public works field applications, et al. Special Use computers must be approved by IT prior to purchase and paid for from respective department operating funds, unless otherwise arranged through the Finance Department.
   c. Standard Specifications. The Information Technology Department is charged with responsibility for setting standard specifications for computers, and including assignment of desktop/laptop/virtual units.
   d. Lifecycle. Computers are to be managed, inventoried, and maintained through IT Computers shall be replaced on an equipment lifecycle defined by the IT Department in administrative procedures. The lifecycle shall balance costs and the usable life of equipment.
   e. Inventory Recovery. Computers replaced shall be reclaimed by the IT Department for secure disposal, ensuring equipment has not been lost/stolen, and for removing assignments of licensed software. Departments may temporarily retain replaced computers in special circumstances, as approved by the IT Department.
   f. Technology Replacement Fund. Replacement costs for Primary Use computers shall be budgeted for and charged to departments as part of the City's annual capital plan.

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Cost allocations shall be set in the City's budget by the Finance and Information Technology Departments, with Council and City Manager approval.

2. Servers, Communications Hardware, and Reprographic Equipment—
   a. Efficient Deployment. Servers, telecommunication equipment, and multi-function printers/copiers/scanners shall be managed, inventoried, and maintained through IT. All departments are responsible for minimizing costs while meeting functional needs in specific areas of the City organization.
   b. Special Uses. Departments may request and pay for specialized equipment and service in specific areas through IT. Special Use equipment must be approved by IT prior to purchase and paid for from respective department operating funds, unless otherwise arranged through the Finance Department.
   c. Lifecycle. Servers, telecommunication equipment, and multi-function printers/ copiers/scanners shall be replaced on an equipment lifecycle defined by the IT Department in administrative procedures. The lifecycle shall balance costs and the usable life of equipment.
   d. Technology Replacement Fund. Replacement costs for servers, communications hardware, and reprographic equipment shall be budgeted for and charged to departments as part of the City's annual capital plan. Cost allocations shall be set in the City's budget by the Finance and Information Technology Departments, with City Council and City Manager approval.
3. Mobile Communications and Computing—
   a. Provision. Mobile devices should not be purchased by the City except for special needs. Technology Stipends should be used as the standard solution to address needs for key department personnel to be reachable and/or have extra mobility for work purposes. Departments are responsible for minimizing costs while meeting these functional needs.
   b. Approval Process. Requests for stipends and reimbursements should be submitted by department directors to IT, the Human Resources Department, and the City Manager for approval. Hourly employees may not access City resources outside of working hours unless otherwise approved by their respective department. Mobile communications and computing devices should be and paid for from respective department operating funds, unless otherwise arranged through the Finance Department.

F. Records Administration

1. Intent. IT shall maintain City information and data to support operating needs, including disaster recovery and business resumption. Standards shall be set between the City Clerk and IT to meet requirements and standards set by ARS § 39-101, as well as departmental needs.
2. Archiving and Recovery. IT shall configure systems to save data and information to recover from corruption and loss. Recovery will include full, incremental, and differential backups to allow the City to restore to past days, weeks, months, and years as required by records retention schedules published by the Arizona Library and Archives and administered by the City Clerk, as feasible. IT is charged with conducting backups, testing backups for the ability to successfully restore systems and information, ensuring

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the ability to resume business in the event of a disaster, and maintaining the ability to retrieve information from required legacy files and formats.

a. Email. Electronic messages will be saved for six months, or per then current records retention schedules published by the Arizona Library and Archives. Folders will be provided for longer-term storage as determined necessary by the City Clerk and departments.
b. Files. Electronic files will be saved for five years, or per then current records retention schedules published by the Arizona Library and Archives, whichever is shorter. Archived files will consist of most recent backup copies and year-end copies.
c. Databases. Databases will be saved for seven years, or per then current records retention schedules published by the Arizona Library and Archives, whichever is shorter. Archived databases will consist of most recent backup copies and year-end copies.

3. Records Hold. The City Attorney and IT shall provide processes and tools for saving files related to known legal actions as feasible. The City Clerk and City departments will train City staffs to appropriately manage departmental files and information to comply with legal requirements.

G. IT Protocols and Guidelines

1. Administrative Policies and rules shall be reviewed and updated at least annually to ensure they continue to meet the requirements of the City and its departments.
2. The IT Department shall maintain and publish operating guidelines to employees via the City Intranet. Standard guidelines include those of the following:
   i. Standard specifications for computers used by employees by utilization type—e.g., administrative computers, GIS/developer/engineer workstations, and semi-rugged and fully-rugged computers
   b. Support for Mobile Communications Devices
      i. Advanced support for smartphones and tablet computers
      ii. Supported service for access to City email, schedules, and contacts
      iii. Supported online storage services for saving work for backup and public records searched
      iv. Supported note-taking and mark-up applications
      v. Supported wireless access methods
   c. Security Standards
      i. Security Signature Forms
      ii. Password Complexity and Expiration
         - ≤90 day password life
         - ≤8 characters/numbers length
         - Mix of numbers, letters, and case
         - Automatic computer locking after ten minutes or less of non-use
         - Automatic account locking after five unsuccessful login attempts
      iii. Incident Response and Monitoring Processes
      iv. Access Audits
   d. Technology Reimbursements and Stipends

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i. The City Manager shall set technology and telecommunications stipend/reimbursement standards for the City to address eligibility, stipend and reimbursement rates, approval process, and authorization forms to be used.

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CITY COUNCIL REPORT

SUBJECT:
City Code Chapter 20 – Alarm Code Revisions

MEETING DATE:
November 21, 2011

TO: Mayor and Council

FROM: Andrew McGuire, City Attorney (602) 257-7664

THROUGH: Charlie McClendon, City Manager

PURPOSE:

City staff is proposing an amendment of the City of Avondale Alarm System Ordinance (Chapter 20) to (i) repeal Part II, Sections 20-38 through 20-49 relating to permitting requirements and (ii) amend certain provisions related to enforcement and penalties.

BACKGROUND:

On January 3, 2011, the City Council adopted Ordinance 1436-111, implementing the restated City of Avondale Alarm System Ordinance, which is codified in the Avondale City Code, Chapter 20, Article III (the "Amended Alarm Code"). This ordinance also set forth the authority to implement a system for alarm registration and alarm renewal fees.

DISCUSSION:

Following adoption of the Amended Alarm Code, the City received comments and threats of litigation from the Arizona Alarm Association (the "Association") based upon the provisions therein. Specifically, the Association took exception to the provisions requiring that the Alarm Company be responsible for the penalties related to false alarms. The Association requested that the City consider alternative language shifting the burden back to the alarm customer.

Based upon the threats from the Association, the City spent considerable time analyzing the possible alternatives available. From the analysis, two options emerged: (i) verified response, in a form similar to the code adopted in Fontana, California and (ii) a hybrid version of the Amended Alarm Code by which the burden for penalties would be shared between the alarm business and the alarm user. My office prepared code amendments to implement either the version based upon the Fontana code (the "Fontana Version") or the blended hybrid modifications to the Amended Alarm Code (the "Hybrid Version").

Both the Fontana Version and the Hybrid Version were shared with the representatives from the Association. After various discussions, the Association confirmed that the Hybrid Version is an acceptable revision to address its concerns with the Amended Alarm Code. City Staff believes that it is prudent to implement the Hybrid Version for the time being to see if its implementation will achieve the desired reduction in the amount of police resources used to respond to false alarms. In the event that the desired reductions are not achieved, the City Council may later reconsider whether to implement the Fontana Version instead.

Following adoption of the Amended Alarm Code, staff began the implementation of the new Alarm System Ordinance and related contracted services, and it became apparent that implementation of Part II (Sections 20-38 through 20-49, also known as "Permitting"), requires significant staff resources in the Police and Finance & Budget Departments. These sections of the Amended Alarm Code currently require a permitting process for alarm businesses and alarm agents which includes

applications, submission of fingerprints, record checks and the issuance of an identification card to each agent. The permits must be monitored for compliance by the Finance & Budget Department and suspended or revoked, with right of appeal, for any violation of the Article.

Staff believes implementation and administration of the permitting section of the Amended Alarm Code at this time is impractical for both of the affected departments and the alarm businesses. Accordingly, both the Hybrid Version and the Fontana Version include revisions to delete the permitting requirements set forth in Part II of the Amended Alarm Code (Sections 20-38 through 20-49). Additionally, the Hybrid Version attached includes a number of other changes, mostly to the form of the document that resulted from further editing and discussions with the Association. A redlined copy of the changes between the Amended Alarm Code and the Hybrid Version is attached for your convenience.

BUDGETARY IMPACT:

Adoption of the Hybrid Version will not result in any budgetary impact. However, repeal of the permitting requirements of the Amended Alarm Code will eliminate the need to find additional financial resources to fully implement an alarm business and alarm agent permitting process.

RECOMMENDATION:

For information, discussion and direction.

ATTACHMENTS:

Click to download

- Chapter 20 - Redline
- Code - Chapter 20

CITY OF AVONDALE
ALARM SYSTEM ORDINANCE,
AMENDED AND RESTATED ~~JANUARY 3,~~DECEMBER 5, 2011

~~**Part I. - General**~~

Division 1 - General

20-30 - Applicability.
20-31 - Definitions.
20-32 - Alarm business duties.
20-33 - Subscriber's and proprietor alarm owner's duties.
20-34 - Registration requirements.
20-35 - Alarm and alarm systems activation.
20-36 - Inspections.
20-37 - Prohibition of automatic or prerecorded messages to the city; exception.
20-38 – Violations; penalties
20-39 through 20-49 – (Reserved)

20-30 - Applicability.

This article is intended to regulate the activities and responsibilities of those persons who purchase, rent or lease alarm systems and those persons who own or operate the business of selling, renting, leasing, installing, maintaining, monitoring or servicing alarms or alarm systems. It is further intended to encourage the improvement in reliability of such alarms and alarm systems and to ensure that police department personnel will not be unduly diverted from responding to actual criminal activity as a result of responding to false alarms. This article specifically encompasses audible, monitored, ~~and~~ robbery, burglary or panic alarm and alarm systems. The provisions of this article shall not apply to (~~i~~a) alarms or alarm systems owned and/or operated by the city, county, state, or federal government and installed on premises which such entity occupies or uses for governmental purposes, (~~ii~~b) audible alarms affixed to automobiles~~,~~ or (~~iii~~c) smoke detectors or fire alarms in single-family residences that are not connected to an alarm monitoring company.

20-31 - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Act of God~~:~~" ~~An~~means an unusual, extraordinary, sudden and unexpected manifestation of the forces of nature, which cannot be prevented by reasonable human care, skill or foresight.

"Alarm or alarm system~~:~~" ~~Any~~means any instrument, device or system which is used for the purpose of protecting buildings, places or premises from criminal acts or unauthorized entries by warning persons of a crime or an unauthorized entry through the emission or transmission of an alarm signal including audible, monitored, and robbery, burglary or panic alarm systems.

"Alarm administrator~~:~~" ~~A~~means a person, persons or independent contractor hired by the City to administer, control and review false alarm reduction efforts and administer the provisions of this ordinance.

"Alarm agent~~:~~" ~~Any~~means any person who is employed by an alarm business either directly or indirectly, and whose duties include selling, renting, leasing, installing, maintaining, monitoring or servicing alarms or alarm systems in or on any building, place or premises. Any person whose duties consist solely of resetting an alarm or alarm system following activation shall not be deemed to be an alarm agent.

"Alarm business~~:~~" ~~Any~~means any owner or operator of a business that sells, rents, leases, installs, maintains, monitors or services alarms or alarm systems.

"Alarm signal~~:~~" ~~A~~means a detectable signal; audible or visual, including an inaudible (silent) signal to a central monitoring station, generated by an alarm system, to which law enforcement is requested to respond.

"Alarm system user~~:~~" ~~Any~~means any person who (which) leases, rents, purchases, or uses any alarm, alarm system, device, or service.

"Audible alarm~~:~~" ~~An~~means an alarm or alarm system designed for the detection of a criminal act or an unauthorized entry on building, places or premises and which, when activated, generates an audible sound on the premises.

"Cancellation~~:~~" ~~The~~means the process where response is terminated when the alarm business (designated by the alarm system user) notifies the police department that there is not an existing situation at the alarm site requiring police response after an alarm dispatch request. If cancellation occurs prior to police arriving at the scene, this is not a false alarm for the purpose of civil/criminal penalty, and no penalty will be assessed.

"Common cause~~:~~" ~~A~~means a common technical difficulty or malfunction that causes an alarm or alarm system to generate a series of false alarms within a twenty-four-hour period, for which the responsible subscriber, alarm business or proprietor alarm owner has taken action to rectify the cause of the false alarms and the alarm or alarm system generates no additional false alarms from the same common technical difficulty or malfunction for a period of thirty (30) days thereafter.

"False alarm~~:~~" ~~Any~~means any activation of an alarm or alarm system through mechanical or electronic failure, malfunction, improper installation, or the negligence of the alarm system user, his/her employees or agents, and signals activated to summon law enforcement personnel unless law enforcement response was cancelled by the alarm system user or the alarm system user's agent before law enforcement personnel arrive at the alarm location. An alarm is false within the meaning of this article when, upon inspection by the police department, evidence indicates that no unauthorized entry, robbery, or other such crime was committed or attempted in or on the premises which

would have activated a properly functioning alarm or alarm system. Notwithstanding the foregoing, a false alarm shall not include (i) an activation caused by the police department (ii) an activation for testing purposes when the police department has been given advance notice of such testing (iii) an activation which can reasonably be determined to have been caused by an act of God or (iv) other extraordinary circumstances not reasonably subject to control by the alarm system user.

"Monitored alarm~~:~~" ~~An~~means an alarm or alarm system designed for the detection of a criminal act or unauthorized entry in a building, place or premises, and which, when activated, generates an alarm signal.

"Robbery, burglary or panic alarm~~:~~" ~~An~~means an alarm or alarm system designed for the detection of a robbery, burglary or the commission of an unlawful act, and which, when intentionally activated by a person, generates an inaudible (silent) signal to a central monitoring station. A robbery, burglary or panic alarm may also generate an audible sound on the premises.

"Person~~:~~" ~~An~~means an individual, corporation, partnership, incorporated association and any other legal entity.

"Proprietor alarm~~:~~" ~~Any~~means any alarm or alarm system that is not rented, leased, installed, maintained, monitored or serviced by an alarm business.

"Subscriber~~:~~" ~~Any~~means any person who rents or leases an alarm or alarm system, or purchases, rents or leases any monitored alarm or robbery, burglary or panic alarm from an alarm business.

"Verify~~:~~" ~~An~~means an attempt by an alarm business, or its representative, to contact the alarm site and/or alarm system user by telephone and/or other electronic means, whether or not actual contact with a person is made, to attempt to determine whether an alarm signal is valid before requesting law enforcement dispatch, in an attempt to avoid an unnecessary alarm dispatch request.

20-32 - Alarm business duties.

(a) The duties of an alarm business shall be as follows:

(1) To comply with the registration requirements set forth in section 22-34 below with respect to each alarm or alarm system that it rents, leases, installs, maintains, monitors or services within the city.

(2) Instruct each of its alarm or alarm system purchasers and subscribers in the proper use and operation of the alarm or alarm system. Such instruction shall include all necessary instructions in turning the alarm or alarm system on and off and in avoiding false alarms.

(3) To provide each purchaser and subscriber with a copy of this article.

(4) Upon installing, maintaining or servicing an alarm or alarm system:

a. Ensure that the alarm or alarm system is installed, maintained or serviced in good working order, as applicable.

b. Take reasonable measures to prevent the occurrence of false alarms.

c. If the alarm business has agreed to provide maintenance or repair service to the alarm system, to service the alarm system within seventy-two (72) hours of a request for service.

(5) Upon renting or leasing an audible alarm:

a. Conspicuously place on the premises a tag identifying the pertinent alarm business including the telephone number to call when the alarm has been activated.

b. Maintain records of the location of all such alarms and the name and telephone number of the person and alternate to be notified whenever the alarm is activated and readily report such information to the police department upon request.

c. Inactivate or cause to be inactivated the audible alarm within fifteen (15) minutes of the notification of its activation in the event the primary and alternate contact persons cannot be contacted or do not respond within fifteen (15) minutes.

(6) Upon selling, renting or leasing a monitored alarm or robbery, burglary or panic alarm:

a. Establish a central monitoring station in order to monitor the alarm.

b. Organize its central monitoring station in order to be able to readily and positively identify the type of alarm, i.e., unlawful entry, robbery, hold-up or panic, and the exact location of each such alarm.

c. Maintain records as to each of these alarms, which shall include the name of the owner or occupant of the premises, the name and telephone number of the subscriber, a primary person and at least one alternate person responsible for responding to the premises when the alarm is activated, and information concerning whether the alarm system includes an audible alarm.

d. Attempt to verify, by calling the alarm site and/or alarm system user by telephone, to determine whether an alarm signal is valid before

requesting dispatch. Telephone verification shall require, at a minimum that a second call be made to a different number, if the first attempt fails to reach an alarm system user who can properly identify ~~themselves~~her/himself to attempt to determine whether an alarm signal is valid, except in the case of a panic or robbery-in-progress alarm, or in cases where a crime-in-progress has been verified by video and/or audible means.

e. Make notification of activated alarms in the manner prescribed by the city manager, or authorized designee, and provide all information concerning the alarm as the police department may request.

f. Arrange for~~ either~~ the owner, subscriber~~, alarm agent, alarm business~~ or other responsible representative to go to the premises of an activated alarm, if requested by the police department, within thirty (30) minutes of the activation of the alarm, in order to be available to assist the police in determining the reason for activation and securing the premises. ~~The alarm business shall not unreasonably delay in arriving at the location of the alarm.~~ If the owner, subscriber or other responsible representative is not available to arrive within thirty (30) minutes of the activation, the alarm business shall notify the police and make its representatives available to assist the police in determining the reason for the activation.

(7) To ensure that, prior to doing business with citizens of the City, it has obtained: (a) a business license from the City pursuant to Chapter 13, Article III of this Code for the alarm business; and (b) a peddlers license from the City pursuant to Chapter 13, Article VIII of this Code for each alarm agent who will be soliciting business door-to-door.

(b) Alarm businesses which sell but do not rent, lease, install, maintain, monitor or service alarms or alarm systems shall not be subject to subsections (a)(1), (4), (5) or (6) of this section.

(c) Alarm businesses which monitor but do not sell, rent, lease, install, maintain or service alarms or alarm systems shall not be subject to subsections (a)(1) through (5) of this section.

20-33 – Subscriber's and proprietor alarm owner's duties.

(a) Each proprietor alarm owner shall comply with the registration requirements set forth in section 22-34 below with respect to each alarm or alarm system that the proprietor alarm owner purchases for use within the city that is not otherwise registered by an alarm business.

(b) The duties of each subscriber and proprietor alarm owner shall be as follows:

(1) Instruct all authorized personnel who place the alarm or alarm system into operation in the appropriate method of operation for locking and securing all points of entry.

(2) Maintain the alarm or alarm system in good working order and take reasonable measures to prevent false alarms.

(3) Respond to the scene of an activated alarm or alarm system within thirty (30) minutes of the alarm's or alarm system's activation, after notification by the police department or the subscriber's alarm business.

20-34 - Registration Requirements.

(a) Except as provided in subsections (b) or (c) of this section 20-34, each proprietor alarm owner shall register each alarm or alarm system that it purchases for use within the city with the police department, or authorized designee, on the form prescribed by the city manager, or authorized designee. Registration shall be made within 30 days of the installation date of the alarm or alarm system.

(b) Each alarm business shall ~~register~~ensure that each alarm or alarm system that it rents, leases, installs, maintains, monitors or services within the city is registered with the police department, or authorized designee, on the form prescribed by the city manager, or authorized designee. ~~Registration~~ For an initial installation, registration shall be made within thirty (30) days of the installation date of the alarm or alarm system. ~~The~~For rented, leased or monitored alarms or alarm systems, the alarm business shall update the registration and remit a new annual registration fee if the possession of the premises at which an alarm or alarm system is maintained is transferred.

(c~~) Alarm systems operated by the city, county, state, or federal government and installed on premises such entity occupies or uses for governmental purposes shall not be required to register an alarm or alarm system pursuant to this section. (d~~)

Each registration application shall be accompanied by an annual registration fee in an amount established by the city council as part of the annual budget process or as otherwise adopted by city council resolution. All registrations issued pursuant to this section shall be for a period of one (1) year from the date of issue and shall be renewable annually, one (1) year from the original date of issue or renewal, as applicable, and subject to the annual registration fee. ~~An alarm business' and a proprietor alarm owner's~~ A copy of the registration shall be available within the premises protected by the alarm or alarm system and shall be available for inspection by the police department.

(~~e~~d) If an alarm system user has one or more alarm systems protecting two or more separate structures having different addresses and/or tenants, a separate permit shall be required for each structure and/or tenant.

(~~f~~e) Registration is not transferable from one user of the alarm or alarm system to another user or from one address to another address.

20-35 - Alarm and alarm systems activation.

It shall be unlawful for any person to intentionally activate any alarm or alarm system, except to warn of a criminal act or unauthorized entry on or into ~~an alarm protected~~a premises, or to test an alarm or alarm system~~ when the police department has been given advance notice of such testing~~. If the alarm or alarm system is a monitored alarm, such testing shall not occur without notifying the alarm business. If the alarm or alarm system is a proprietor alarm, such testing shall not be conducted without giving prior notice to the police department.

20-36 - Inspections.

Every alarm and alarm system shall be inspected and serviced by the subscriber or alarm business, or the proprietor alarm owner, at least once in each eighteen-month period. The inspecting party shall maintain records for each alarm and alarm system showing dates of inspection and the name of the person making each inspection. Such records shall be kept for a minimum of two (2) years and be open upon request to the police department, or authorized designee, upon ~~twenty-four (24) hours~~three (3) business days' notice.

20-37 - Prohibition of automatic or prerecorded messages to the city; exception.

No person shall use or cause to be used any telephone device or attachment that automatically selects or dials a published emergency telephone number or any city telephone number and then reproduces a prerecorded message or signal. This section shall not apply to a life safety alert system utilizing residential transmitting equipment designated for direct telephone access to dedicated control receiving equipment located in the city fire department.

~~**Part II. - Permitting**~~

~~20-38 - Alarm businesses and agents; permit requirement.~~
~~20-39 - Alarm businesses and agents; permit application.~~
~~20-40 - Alarm businesses and agents; application fee; fingerprints.~~
~~20-41 - Permit issuance standards.~~
~~20-42 - Permit issuance; expiration; renewal.~~
~~20-43 - Identification cards.~~
~~20-44 - Display of permits and identification cards.~~
~~20-45 - Duty to ensure compliance by alarm agents.~~
~~20-46 - Nontransferability; temporary permits.~~

~~20-47 - Permit revocation or suspension.~~
~~20-48 - Appeal from denial, revocation or suspension of permit.~~
~~20-49 - Violations; penalties.~~

~~20-38. - Alarm businesses and agents; permit requirement.~~

~~(a) It shall be unlawful for any person to engage in, conduct or carry on an alarm business within the corporate limits of the city without first having obtained an alarm permit pursuant to this article. Each and every alarm involved in the alarm business shall constitute a separate offense under this subsection.~~

~~(b) It shall be unlawful for any person to engage in, represent him or herself to be, or operate as, an alarm agent within the corporate limits of the city without first having obtained an alarm permit pursuant to this article. Each day that a person engages in or operates as an alarm agent and each time that a person represents himself or herself to be an alarm agent without such alarm permit shall constitute a separate offense.~~

~~20-39 - Alarm businesses and agents; permit application.~~

~~(a) The application for the permit required by the provisions of this article shall be submitted to the budget and finance department utilizing such format as may be prescribed by the budget and finance department and approved by the chief of police, or authorized designee.~~

~~(b) The application for an alarm business permit shall include:~~

~~(1) The name, address and telephone number of the alarm business.~~

~~(2) The names and addresses of the alarm agents employed by the alarm business.~~

~~(3) The business telephone number at which each alarm agent may be reached.~~

~~(4) The required application fee.~~

~~(c) The application for alarm agent permit shall include:~~

~~(1) The name, address, and business telephone number of the individual applying for the permit.~~

~~(2) The alarm business for which the applicant is employed.~~

~~(3) Whether or not the applicant has been convicted of any felonies.~~

~~(4) The required application fee.~~

~~20-40 - Alarm businesses and agents; application fee; fingerprints.~~

~~(a) The amount of the application fee for a permit issued under this article shall be established by the city council as part of the annual budget process or as otherwise adopted by city council resolution.~~

~~(b) Each applicant for a permit shall submit a full set of fingerprints to the police department for the purpose of obtaining a state and federal criminal records check by the department of public safety pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544, as amended. The department of public safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. In addition to any other fees imposed under this article, an applicant for a permit issued under this article shall pay an amount necessary to cover the costs of federal fingerprint processing or federal criminal history record information checks. The specific amount of such additional fee shall be set by administrative order based upon information received from the Department of Public Safety as to the costs of fingerprint processing and record information checks. The additional fees collected pursuant to this subsection shall be transmitted to the department of public safety as required by A.R.S. § 41-1750, as amended.~~

~~(c) No application or fingerprinting fee paid pursuant to this article shall be returned to an applicant if his or her application is withdrawn or denied.~~

~~20-41 - Permit issuance standards.~~

~~(a) No individual shall be issued a permit under this article if such individual:~~

~~(1) Knowingly makes any false or misleading statement in the course of applying for or renewing a permit.~~

~~(2) Has been convicted of any felony involving dishonesty, deceit, theft, assaultive conduct or sexual misconduct within five (5) years from the date that the application is submitted.~~

~~(3) Is under the age of eighteen (18) years.~~

~~(4) Has been denied a permit required by this article or had such a permit revoked, for a period of six (6) months following the final denial or revocation decision.~~

~~(b) No person which is not an individual shall be issued a permit under this article if any of the following individuals would be disqualified from being issued a permit under subsection (a):~~

~~(1) Any officer or director of an applicant that is a corporation.~~

~~(2) Each general partner of an applicant that is a partnership.~~

~~(3) The managing officer or agent for the in-state operations of the applicant.~~

~~(4) Each managing member of a limited liability company, or if there are no designated managing members, all members.~~

~~(c) No permit shall be issued under this article to any person if the city manager, or authorized designee, determines that, due to the nature and location of the person's proposed business, the operation of such business is likely to create unreasonably unsafe conditions or to unreasonably increase existing unsafe conditions in the surrounding neighborhood.~~

~~20-42 - Permit issuance; expiration; renewal.~~

~~(a) Any permit issued under this article shall be valid only for the calendar year in which it is issued. Each permit expires on December 31 of each year and must be renewed on or before January 31 of the following year by filing an application for renewal and paying the applicable renewal fee. The application and payment for renewal must be received by the city finance and budget department by January 31 to be deemed timely filed.~~

~~(b) No permit shall be issued or renewed under this article unless the permitee is in full compliance with all provisions of this Code at the time of renewal.~~

~~20-43 - Identification cards.~~

~~The city finance and budget department shall issue to each alarm agent an identification card. Each identification card shall expire on December 31 of the year in which it is issued, and the alarm agent shall obtain a new identification card on or before January 31 of the following year.~~

~~20-44 - Display of permits and identification cards.~~

~~(a) A copy of the alarm business permit shall at all times be conspicuously displayed at the central station or main office of the alarm business.~~

~~(b) At all times that a person is acting as an alarm agent within the city, such person shall carry on his or her person a valid alarm agent permit and identification card. An alarm agent shall display his or her permit and identification card upon request to any police officer, law enforcement official or city official whose duties are related to licensing.~~

~~20-45 - Duty to ensure compliance by alarm agents.~~

~~(a) An alarm business shall not allow any employee to work as an alarm agent until such person has displayed to the alarm business a valid alarm agent permit and~~

~~identification card. An alarm business shall require that all persons employed as alarm agents maintain current alarm agent permits and identification cards at all times that such persons work for the alarm business. On or before January 31 of each year, the alarm business shall verify with each alarm agent that such alarm agent has renewed his or her alarm agent permit and identification card.~~

~~(b) An alarm business shall not allow any person who contracts with the alarm business to perform, on behalf of the alarm business, any services for which an alarm agent permit is required until such person has displayed to the alarm business a valid alarm agent permit and identification card. An alarm business shall require that all persons so contracting with the alarm business maintain current alarm agent permits and identification cards at all times that such persons perform services on behalf of the alarm business for which an alarm agent permit is required.~~

~~20-46 - Nontransferability; temporary permits.~~

~~(a) No permit issued under this article shall be transferable between persons or locations.~~

~~(b) Except as provided in subsection (c) below, upon the termination of an alarm agent's employment with an alarm business, the alarm agent shall surrender his or her alarm agent permit and identification card to such business. The alarm business shall mail or deliver the alarm agent permit and identification card to the city finance and budget department within five (5) days of such surrender. If the alarm agent fails to surrender his or her alarm agent permit and identification card to the alarm business, the alarm business shall give notice to the city finance and budget department within fifteen (15) days of such termination that the alarm agent's employment has been terminated and that the alarm agent has failed to surrender his or her permit and identification card.~~

~~(c) If an alarm agent terminates his or her employment with an alarm business for the purpose of transferring employment to another alarm business, such person shall surrender his or her permit as provided in subsection (b) above and shall advise the city finance and budget department of his or her intentions. The city finance and budget department shall issue the alarm agent a temporary permit until such time as a new permit is issued to the alarm agent. Both the temporary and new permit will be issued to the alarm agent without charge.~~

~~20-47 - Permit revocation or suspension.~~

~~(a) The city finance and budget department may suspend any permit issued under this article for a specified period not to exceed sixty (60) days, or revoke such permit, for any of the following reasons:~~

~~(1) Conviction of the permitee of a felony involving dishonesty, deceit, theft, assaultive conduct or sexual misconduct.~~

~~(2) When the permitee has knowingly made any false or misleading statement in any report or record required to be made or kept under this article.~~

~~(3) Any other violation of this article.~~

~~(b) The city shall give written notice of the revocation or suspension to the permitee, which statement shall contain the reasons for the revocation or suspension and, if applicable, the length of the suspension. Such notice shall be personally served on the permitee or mailed to the permitee's last known address. Service of the notice shall be deemed complete upon mailing.~~

~~(c) The permitee may request an informal hearing on such revocation or suspension by submitting a written request to the city finance and budget department within fifteen (15) days after the notice of revocation or suspension is given. An informal hearing before the city finance and budget department shall be held within fifteen (15) days after the request for the same is received by the city. If the permitee does not request a hearing within said fifteen day period, the revocation or suspension shall take effect on the sixteenth day after service of the notice of revocation or suspension. If a hearing is requested, the revocation or suspension shall not take effect until after the informal hearing and service on the permitee of a new notice from the city finance and budget department setting forth the city finance and budget department's final decision. Such notice shall be personally served on the permitee or mailed to the permitee's last known address. Service of the notice shall be deemed complete upon mailing.~~

~~20-48 - Appeal from denial, revocation or suspension of permit.~~

~~(a) A person who has been denied a permit or whose permit has been revoked or suspended after an informal hearing with the city finance and budget department may appeal such decision to the city manager, or authorized designee. The appeal shall be requested within ten (10) days from the date on which such person is given notice of the determination from which the appeal is taken. The request shall be in writing, shall be filed with the city manager, or authorized designee, and shall set forth specifically the grounds for such appeal.~~

~~(b) The city manager, or authorized designee, shall conduct a hearing in accordance with this section. The city manager, or authorized designee, may, in his or her discretion, stay any revocation or suspension pending final determination of the appeal.~~

~~(c) The burden of proof at the hearing shall be on the applicant or permitee to establish, by a preponderance of the evidence, that he or she meets all requirements for holding a permit under this article. The city manager, or authorized designee, shall hear such testimony and consider such evidence as is relevant to the determination~~

~~of such issues. The city manager, or authorized designee, shall not be bound by technical rules of evidence or procedure in conducting the hearing.~~

~~(d) The city manager, or authorized designee, shall render a written decision within thirty (30) days after the hearing is concluded based on the evidence presented by the city and the applicant or permitee. The decision of the city manager, or authorized designee, shall be final.~~

20-38 - Violations; penalties.

~~20-49 - Violations; penalties.~~The city manager or authorized designee shall have the authority to issue a citation with respect to the civil violations set forth in this section.

(a) General.

(1) When two (2) or more persons have liability to the ~~city~~City or are responsible for a violation of any provision of sections 20-~~33~~32 through 20-~~46~~37 of this article, their responsibility shall be joint and several.

(2) Each day any violation exists of any provision of sections 20-~~33~~32 through 20-~~46~~37 of this article or the terms and/or conditions of any permit issued under the provisions of this article exists shall constitute a separate offense.

(b) Civil violations. It shall be a civil violation, punishable as set forth below, for a person to~~:(1) Fail~~ fail to perform any act or duty required by any provision of sections 20-~~33~~32 through 20-~~46 of this article.(2) Violate the terms and/or conditions of any permit issued under the provisions~~37 of this article.

(c) Civil penalties. Any person ~~that~~who commits a civil violation as set forth in subsection 20-38(b~~)(1) or (2~~) above, shall be subject to a civil action in any court of competent jurisdiction to collect a civil penalty for a sum not to exceed two thousand five hundred dollars ($2,500.00) base fine for each violation. In seeking the assessment of a civil penalty, the following criteria shall be considered:

(1) The seriousness of the violation.

(2) The economic benefit, if any, resulting from the violation.

(3) Any good-faith efforts to comply with the applicable requirements.

(4) The economic impact of the penalty on the violator.

(5) Such other factors as justice may require.

(d) Violations not exclusive. Violations of this article are in addition to any other violation enumerated within this Code and in no way limit the penalties, actions or procedures ~~which~~that may be taken by the city for any violation of this article ~~which~~that is also a violation of any other provision of this Code or any other

applicable law. The remedies specified herein are cumulative and the city may proceed under these or any other remedies authorized by law.

(e) Restitution. In addition to any civil penalty provided for in this article, no permit or renewal thereof pursuant to this article shall be issued to any applicant who has engaged in activity under this article without a permit in violation of the provisions of this article unless the applicant first pays the amount of permit fees for which the applicant would have been liable under the provisions of this article had the applicant been permitted. The court shall impose restitution in addition to any civil penalties.

(f) Enforcement of judgments. Any judgment for restitution or civil penalties taken pursuant to this article may be enforced as any other civil judgment.

~~**Part III. - False Alarms**~~

Division 2 - False Alarms

20-50 - False alarms; warning notice.
20-51 - Police department review of false alarms.
20-52 - False alarm assessments.
20-53 - Appeal procedures for assessments.
20-54 - Grace period.

20-50 - False alarms; warning notice.

When any alarm or alarm system generates two (2) false alarms within any consecutive three hundred and sixty-five-calendar-day-period, the police department, or authorized designee, shall provide written notification by mail to (a) the subscriber and the alarm business or (b) the proprietor alarm owner, as applicable, operating the alarm or alarm system generating the false alarm(s), at the address registered with the police department, or authorized designee, that one (1) subsequent false alarm within the same period will subject such subscriber and/or alarm business or such proprietor alarm owner to assessments as provided in this article. The subscriber, alarm business or proprietor alarm owner, as applicable, may request that the City provide documentation of the two false alarms. In the event the subscriber, alarm business or proprietor alarm owner believes the information of false alarms to be incorrect, an appeal may be filed with the police chief subject to subsection 20-51(b) below.

20-51 - Police department review of false alarms.

(a) Upon the police department's, or authorized designee's, recording of a third and any subsequent false alarm(s) within any consecutive three hundred and sixty-five-calendar-day-period, the police department, or authorized designee, shall provide written notification by mail to (a) the subscriber and alarm business or (b)

the proprietor alarm owner, as applicable, operating the alarm or alarm system generating the false alarm(s), at the address registered with the police department, or authorized designee, of such false alarm(s). The written notification to be provided by the police department, or authorized designee, shall (~~i~~1) state the details regarding the false alarm, (~~ii~~2) state the amount of the penalty to be assessed pursuant to section 20-52 below, ~~and~~ (~~iii~~3) set forth the process by which the subscriber, alarm business or proprietor alarm owner may appeal the assessment and (4) assess liability for the false alarm upon the subscriber first, unless the subscriber can provide evidence to the police department that the false alarm was due to defective equipment, at which time the alarm business shall become solely responsible.

(b) ~~An~~A subscriber, alarm business or proprietor alarm owner, as applicable, may appeal the determination of false alarms or the penalty to be assessed under section 20-52 below, as applicable, by submitting a report to the chief of police, or authorized designee, within twenty (20) days of the date of mailing of the police department's, or authorized designee's, written notification. The report shall contain:

1. A description of the action taken to discover and eliminate the cause of the false alarm(s).

2. The specific reason(s), if any, why the false alarm(s) should not be subject to an assessment. Evidence that an alarm was caused by an act of God, common cause or action of the telephone company shall constitute valid reasons why an assessment should not imposed. With respect to subscribers only, evidence that the false alarm was due to defective equipment or other fault of the alarm business shall relieve the subscriber from liability and shall shift the responsibility to the alarm business monitoring the alarm or alarm system.

(c) If the report required in subsection (b) is not submitted within the specified time period, the subscriber, alarm business or ~~the~~a proprietor alarm owner shall have waived ~~their right~~any rights to any further review or hearing and the subscriber, alarm business or the proprietor alarm owner operating the alarm system generating the false alarms shall be liable for the assessment imposed under section 20-52 below.

(d) After submission of the report required in subsection (b) above, the chief of police, or authorized designee, shall review the corrective action taken to discover and eliminate the cause of the false alarm(s) and the specific reason(s), if any, for the false alarm(s). If the chief of police, or authorized designee, determines that the corrective action taken or to be taken will substantially reduce the likelihood of false alarms or that a valid reason for the false alarm(s) has been shown, a written notice will be sent by mail to the subscriber, alarm business or the proprietor alarm owner, as applicable, at the address registered with the police department, or

authorized designee, indicating that no assessment will be imposed for that particular false alarm(s). The notice shall set forth the findings and conclusions of the chief of police, or authorized designee, with respect to the review of the report submitted.

(e) If the chief of police, or authorized designee, determines that the corrective action taken or to be taken will not substantially reduce the likelihood of false alarms or that a valid reason for the false alarm(s) has not been shown, a written notice shall be sent by mail to the subscriber, alarm business or the proprietor alarm owner, as applicable, at the address registered with the police department, or authorized designee, that the subscriber, alarm business or the proprietor alarm owner, as applicable, is liable for the assessment imposed under section 20-52 below. The notice shall set forth the findings and conclusions of the chief of police, or authorized designee, with respect to the review of the report submitted. (e) The alarm business shall be responsible for the payment of assessment(s) imposed upon an alarm system serviced by the alarm business. The proprietor alarm owner shall be responsible for the payment of assessment(s) imposed upon a proprietor alarm system.

20-52 - False alarm assessments.

(a) Every alarm business monitoring an alarm or alarm system,Unless waived pursuant to subsection 20-51(d) above and subject to the burden shifting provisions set forth in subsection 20-51(b)(2) above, every subscriber and every proprietor alarm owner having an alarm or alarm system, that elicits a police department response shall receive a written warning for the second false alarm that occurs within any consecutive three hundred and sixty-five calendar-day period and, unless waived pursuant to section 20-51 above,, as applicable, shall pay to the city an assessment for each and every false alarm that occurs after the first two (2) false alarms within any consecutive three hundred and sixty-five-calendar-day-period, as follows:

Second false alarm warning letter sent

Third false alarm $150.00

Fourth false alarm $200.00

Fifth or more false alarms $250.00

(b) Failure to pay such false alarm assessments within thirty (30) days from the date of the notice mailed pursuant to subsection 20-51(d) above, may result in legal action by the city, or authorized designee, to collect all unpaid fees and assessments. Such 30-day period may be tolled during the pendency of (1) an appeal to the police chief as set forth in section 20-52 above and (2) an appeal to the city manager as set forth in section 20-53 below.

(c) Failure to pay such false alarm assessments within sixty (60) days from the date of the notice mailed pursuant to subsection 20-51(~~d~~e) above, shall constitute a class 1 misdemeanor. Such 60-day period may be tolled during the pendency of (1) an appeal to the police chief as set forth in section 20-52 above and (2) an appeal to the city manager as set forth in section 20-53 below.

(d) The subscriber (or the alarm business if, pursuant to subsection 20-51 (b)(2), the burden has shifted) shall be responsible for the payment of assessment(s) imposed for false alarms related to an alarm system serviced by the alarm business. The proprietor alarm owner shall be responsible for the payment of assessment(s) imposed for false alarms related to the owner's proprietor alarm system.

20-53 - Appeal procedures for assessments.

(a) Any party aggrieved by a decision of the police department, or authorized designee, made pursuant to subsection 20-51(~~d~~e) above may appeal such decision to the city manager, or authorized designee. The appeal shall be requested within ~~ten~~twenty (~~10~~20) days from the date of the notice mailed pursuant to ~~such~~ subsection 20-51(e). The appeal shall be in writing, shall be filed with the city manager, or authorized designee, and shall set forth specifically the grounds for such appeal.

(b) The city manager, or authorized designee, shall conduct a hearing in accordance with this section. The city manager, or authorized designee, may, in his or her discretion, stay any enforcement of the assessment pending final determination of the appeal. The city manager, or authorized designee, shall set a time and place for the appeal hearing as soon as practicable.

(c) The burden of proof at the hearing shall be on the appellant to establish, by a preponderance of the evidence, that the corrective action taken or to be taken will substantially reduce the likelihood of false alarms or that a valid reason for the false alarm(s) had been shown. The city manager, or authorized designee, shall hear such testimony and consider such evidence as is relevant to the determination of such issues. The city manager, or authorized designee, shall not be bound by technical rules of evidence or procedure in conducting the hearing.

(d) The city manager, or authorized designee, shall render a written decision within thirty (30) days after the hearing is concluded based on the evidence presented by the city and the appellant. The decision of the city manager, or authorized designee, shall be final.

20-54 - Grace period.

All newly installed ~~and~~or reinstalled ~~alarm~~alarms and alarm systems shall not be subject to the provisions of this article relating to the counting and assessment of false alarms for a period of thirty (30) days from the date the alarm or alarm system becomes operational. For

the purposes of this section, "reinstalled alarm and alarm system" means the installation of a new control panel.

20-55 – Police Department delegation of Duties.

Except as otherwise provided in this section, the chief of police department is authorized to delegate to the alarm administrator, or to any other authorized designee, all duties of the police department as set forth in this article. TheExcept as specifically set forth herein, the chief of police department may not delegate (i) its duty to respond to an alarm activation, (ii) its duty to process fingerprints or (iii) any otherany duty specifically reserved to law enforcement.

Document comparison by Workshare Compare on Wednesday, November 16, 2011 9:03:00 AM

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Rendering set	Standard

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~~Deletion~~	
~~Moved from~~	
Moved to	
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Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	123
Deletions	176
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	307

CITY OF AVONDALE
ALARM SYSTEM ORDINANCE,
AMENDED AND RESTATED DECEMBER 5, 2011

Division 1 - General

20-30 - Applicability.
20-31 - Definitions.
20-32 - Alarm business duties.
20-33 - Subscriber's and proprietor alarm owner's duties.
20-34 - Registration requirements.
20-35 - Alarm and alarm systems activation.
20-36 - Inspections.
20-37 - Prohibition of automatic or prerecorded messages to the city; exception.
20-38 – Violations; penalties
20-39 through 20-49 – (Reserved)

20-30 - Applicability.

This article is intended to regulate the activities and responsibilities of those persons who purchase, rent or lease alarm systems and those persons who own or operate the business of selling, renting, leasing, installing, maintaining, monitoring or servicing alarms or alarm systems. It is further intended to encourage the improvement in reliability of such alarms and alarm systems and to ensure that police department personnel will not be unduly diverted from responding to actual criminal activity as a result of responding to false alarms. This article specifically encompasses audible, monitored, robbery, burglary or panic alarm and alarm systems. The provisions of this article shall not apply to (a) alarms or alarm systems owned and/or operated by the city, county, state, or federal government and installed on premises which such entity occupies or uses for governmental purposes, (b) audible alarms affixed to automobiles or (c) smoke detectors or fire alarms in single-family residences that are not connected to an alarm monitoring company.

20-31 - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Act of God" means an unusual, extraordinary, sudden and unexpected manifestation of the forces of nature, which cannot be prevented by reasonable human care, skill or foresight.

"Alarm or alarm system" means any instrument, device or system which is used for the purpose of protecting buildings, places or premises from criminal acts or unauthorized entries by warning persons of a crime or an unauthorized entry through the emission or transmission of an alarm signal including audible, monitored, and robbery, burglary or panic alarm systems.

"Alarm administrator" means a person, persons or independent contractor hired by the City to administer, control and review false alarm reduction efforts and administer the provisions of this ordinance.

"Alarm agent" means any person who is employed by an alarm business either directly or indirectly, and whose duties include selling, renting, leasing, installing, maintaining, monitoring or servicing alarms or alarm systems in or on any building, place or premises. Any person whose duties consist solely of resetting an alarm or alarm system following activation shall not be deemed to be an alarm agent.

"Alarm business" means any owner or operator of a business that sells, rents, leases, installs, maintains, monitors or services alarms or alarm systems.

"Alarm signal" means a detectable signal; audible or visual, including an inaudible (silent) signal to a central monitoring station, generated by an alarm system, to which law enforcement is requested to respond.

"Alarm system user" means any person who (which) leases, rents, purchases, or uses any alarm, alarm system, device, or service.

"Audible alarm" means an alarm or alarm system designed for the detection of a criminal act or an unauthorized entry on building, places or premises and which, when activated, generates an audible sound on the premises.

"Cancellation" means the process where response is terminated when the alarm business (designated by the alarm system user) notifies the police department that there is not an existing situation at the alarm site requiring police response after an alarm dispatch request. If cancellation occurs prior to police arriving at the scene, this is not a false alarm for the purpose of civil/criminal penalty, and no penalty will be assessed.

"Common cause" means a common technical difficulty or malfunction that causes an alarm or alarm system to generate a series of false alarms within a twenty-four-hour period, for which the responsible subscriber, alarm business or proprietor alarm owner has taken action to rectify the cause of the false alarms and the alarm or alarm system generates no additional false alarms from the same common technical difficulty or malfunction for a period of thirty (30) days thereafter.

"False alarm" means any activation of an alarm or alarm system through mechanical or electronic failure, malfunction, improper installation, or the negligence of the alarm system user, his/her employees or agents, and signals activated to summon law enforcement personnel unless law enforcement response was cancelled by the alarm system user or the alarm system user's agent before law enforcement personnel arrive at the alarm location. An alarm is false within the meaning of this article when, upon inspection by the police department, evidence indicates that no unauthorized entry, robbery, or other such crime was committed or attempted in or on the premises which would have activated a properly functioning alarm or alarm system. Notwithstanding the

foregoing, a false alarm shall not include (i) an activation caused by the police department (ii) an activation for testing purposes when the police department has been given advance notice of such testing (iii) an activation which can reasonably be determined to have been caused by an act of God or (iv) other extraordinary circumstances not reasonably subject to control by the alarm system user.

"Monitored alarm" means an alarm or alarm system designed for the detection of a criminal act or unauthorized entry in a building, place or premises, and which, when activated, generates an alarm signal.

"Robbery, burglary or panic alarm" means an alarm or alarm system designed for the detection of a robbery, burglary or the commission of an unlawful act, and which, when intentionally activated by a person, generates an inaudible (silent) signal to a central monitoring station. A robbery, burglary or panic alarm may also generate an audible sound on the premises.

"Person" means an individual, corporation, partnership, incorporated association and any other legal entity.

"Proprietor alarm" means any alarm or alarm system that is not rented, leased, installed, maintained, monitored or serviced by an alarm business.

"Subscriber" means any person who rents or leases an alarm or alarm system, or purchases, rents or leases any monitored alarm or robbery, burglary or panic alarm from an alarm business.

"Verify" means an attempt by an alarm business, or its representative, to contact the alarm site and/or alarm system user by telephone and/or other electronic means, whether or not actual contact with a person is made, to attempt to determine whether an alarm signal is valid before requesting law enforcement dispatch, in an attempt to avoid an unnecessary alarm dispatch request.

20-32 - Alarm business duties.

(a) The duties of an alarm business shall be as follows:

(1) To comply with the registration requirements set forth in section 22-34 below with respect to each alarm or alarm system that it rents, leases, installs, maintains, monitors or services within the city.

(2) Instruct each of its alarm or alarm system purchasers and subscribers in the proper use and operation of the alarm or alarm system. Such instruction shall include all necessary instructions in turning the alarm or alarm system on and off and in avoiding false alarms.

(3) To provide each purchaser and subscriber with a copy of this article.

(4) Upon installing, maintaining or servicing an alarm or alarm system:

a. Ensure that the alarm or alarm system is installed, maintained or serviced in good working order, as applicable.

b. Take reasonable measures to prevent the occurrence of false alarms.

c. If the alarm business has agreed to provide maintenance or repair service to the alarm system, to service the alarm system within seventy-two (72) hours of a request for service.

(5) Upon renting or leasing an audible alarm:

a. Conspicuously place on the premises a tag identifying the pertinent alarm business including the telephone number to call when the alarm has been activated.

b. Maintain records of the location of all such alarms and the name and telephone number of the person and alternate to be notified whenever the alarm is activated and readily report such information to the police department upon request.

c. Inactivate or cause to be inactivated the audible alarm within fifteen (15) minutes of the notification of its activation in the event the primary and alternate contact persons cannot be contacted or do not respond within fifteen (15) minutes.

(6) Upon selling, renting or leasing a monitored alarm or robbery, burglary or panic alarm:

a. Establish a central monitoring station in order to monitor the alarm.

b. Organize its central monitoring station in order to be able to readily and positively identify the type of alarm, i.e., unlawful entry, robbery, hold-up or panic, and the exact location of each such alarm.

c. Maintain records as to each of these alarms, which shall include the name of the owner or occupant of the premises, the name and telephone number of the subscriber, a primary person and at least one alternate person responsible for responding to the premises when the alarm is activated, and information concerning whether the alarm system includes an audible alarm.

d. Attempt to verify, by calling the alarm site and/or alarm system user by telephone, to determine whether an alarm signal is valid before requesting dispatch. Telephone verification shall require, at a minimum that a second call be made to a different number, if the first attempt fails to reach an alarm system user who can properly identify her/himself to attempt to determine whether an alarm signal is valid, except in the case of a panic or robbery-in-progress alarm, or in cases where a crime-in-progress has been verified by video and/or audible means.

e. Make notification of activated alarms in the manner prescribed by the city manager, or authorized designee, and provide all information concerning the alarm as the police department may request.

f. Arrange for the owner, subscriber or other responsible representative to go to the premises of an activated alarm, if requested by the police department, within thirty (30) minutes of the activation of the alarm, in order to be available to assist the police in determining the reason for activation and securing the premises. If the owner, subscriber or other responsible representative is not available to arrive within thirty (30) minutes of the activation, the alarm business shall notify the police and make its representatives available to assist the police in determining the reason for the activation.

(7) To ensure that, prior to doing business with citizens of the City, it has obtained: (a) a business license from the City pursuant to Chapter 13, Article III of this Code for the alarm business; and (b) a peddlers license from the City pursuant to Chapter 13, Article VIII of this Code for each alarm agent who will be soliciting business door-to-door.

(b) Alarm businesses which sell but do not rent, lease, install, maintain, monitor or service alarms or alarm systems shall not be subject to subsections (a)(1), (4), (5) or (6) of this section.

(c) Alarm businesses which monitor but do not sell, rent, lease, install, maintain or service alarms or alarm systems shall not be subject to subsections (a)(1) through (5) of this section.

20-33 – Subscriber's and proprietor alarm owner's duties.

(a) Each proprietor alarm owner shall comply with the registration requirements set forth in section 22-34 below with respect to each alarm or alarm system that the proprietor alarm owner purchases for use within the city that is not otherwise registered by an alarm business.

(b) The duties of each subscriber and proprietor alarm owner shall be as follows:

(1) Instruct all authorized personnel who place the alarm or alarm system into operation in the appropriate method of operation for locking and securing all points of entry.

(2) Maintain the alarm or alarm system in good working order and take reasonable measures to prevent false alarms.

(3) Respond to the scene of an activated alarm or alarm system within thirty (30) minutes of the alarm's or alarm system's activation, after notification by the police department or the subscriber's alarm business.

20-34 - Registration Requirements.

(a) Except as provided in subsections (b) or (c) of this section 20-34, each proprietor alarm owner shall register each alarm or alarm system that it purchases for use within the city with the police department, or authorized designee, on the form prescribed by the city manager, or authorized designee. Registration shall be made within 30 days of the installation date of the alarm or alarm system.

(b) Each alarm business shall ensure that each alarm or alarm system that it rents, leases, installs, maintains, monitors or services within the city is registered with the police department, or authorized designee, on the form prescribed by the city manager, or authorized designee. For an initial installation, registration shall be made within thirty (30) days of the installation date of the alarm or alarm system. For rented, leased or monitored alarms or alarm systems, the alarm business shall update the registration and remit a new annual registration fee if the possession of the premises at which an alarm or alarm system is maintained is transferred.

(c) Each registration application shall be accompanied by an annual registration fee in an amount established by the city council as part of the annual budget process or as otherwise adopted by city council resolution. All registrations issued pursuant to this section shall be for a period of one (1) year from the date of issue and shall be renewable annually, one (1) year from the original date of issue or renewal, as applicable, and subject to the annual registration fee. A copy of the registration shall be available within the premises protected by the alarm or alarm system and shall be available for inspection by the police department.

(d) If an alarm system user has one or more alarm systems protecting two or more separate structures having different addresses and/or tenants, a separate permit shall be required for each structure and/or tenant.

(e) Registration is not transferable from one user of the alarm or alarm system to another user or from one address to another address.

20-35 - Alarm and alarm systems activation.

It shall be unlawful for any person to intentionally activate any alarm or alarm system, except to warn of a criminal act or unauthorized entry on or into a premises, or to test an alarm or alarm system. If the alarm or alarm system is a monitored alarm, such testing shall not occur without notifying the alarm business. If the alarm or alarm system is a proprietor alarm, such testing shall not be conducted without giving prior notice to the police department.

20-36 - Inspections.

Every alarm and alarm system shall be inspected and serviced by the subscriber or alarm business, or the proprietor alarm owner, at least once in each eighteen-month period. The inspecting party shall maintain records for each alarm and alarm system showing dates of inspection and the name of the person making each inspection. Such records shall be kept for a minimum of two (2) years and be open upon request to the police department, or authorized designee, upon three (3) business days' notice.

20-37 - Prohibition of automatic or prerecorded messages to the city; exception.

No person shall use or cause to be used any telephone device or attachment that automatically selects or dials a published emergency telephone number or any city telephone number and then reproduces a prerecorded message or signal. This section shall not apply to a life safety alert system utilizing residential transmitting equipment designated for direct telephone access to dedicated control receiving equipment located in the city fire department.

20-38 - Violations; penalties.

The city manager or authorized designee shall have the authority to issue a citation with respect to the civil violations set forth in this section.

(a) General.

(1) When two (2) or more persons have liability to the City or are responsible for a violation of any provision of sections 20-32 through 20-37 of this article, their responsibility shall be joint and several.

(2) Each day any violation exists of any provision of sections 20-32 through 20-37 of this article or the terms and/or conditions of any permit issued under the provisions of this article exists shall constitute a separate offense.

(b) Civil violations. It shall be a civil violation, punishable as set forth below, for a person to fail to perform any act or duty required by any provision of sections 20-32 through 20-37 of this article.

(c) Civil penalties. Any person who commits a civil violation as set forth in subsection 20-38(b) above, shall be subject to a civil action in any court of competent jurisdiction to collect a civil penalty for a sum not to exceed two thousand five hundred dollars ($2,500.00) base fine for each violation. In seeking the assessment of a civil penalty, the following criteria shall be considered:

(1) The seriousness of the violation.

(2) The economic benefit, if any, resulting from the violation.

(3) Any good-faith efforts to comply with the applicable requirements.

(4) The economic impact of the penalty on the violator.

(5) Such other factors as justice may require.

(d) Violations not exclusive. Violations of this article are in addition to any other violation enumerated within this Code and in no way limit the penalties, actions or procedures that may be taken by the city for any violation of this article that is also a violation of any other provision of this Code or any other applicable law. The remedies specified herein are cumulative and the city may proceed under these or any other remedies authorized by law.

(e) Restitution. In addition to any civil penalty provided for in this article, no permit or renewal thereof pursuant to this article shall be issued to any applicant who has engaged in activity under this article without a permit in violation of the provisions of this article unless the applicant first pays the amount of permit fees for which the applicant would have been liable under the provisions of this article had the applicant been permitted. The court shall impose restitution in addition to any civil penalties.

(f) Enforcement of judgments. Any judgment for restitution or civil penalties taken pursuant to this article may be enforced as any other civil judgment.

Division 2 - False Alarms

20-50 - False alarms; warning notice.
20-51 - Police department review of false alarms.
20-52 - False alarm assessments.
20-53 - Appeal procedures for assessments.
20-54 - Grace period.

20-50 - False alarms; warning notice.

When any alarm or alarm system generates two (2) false alarms within any consecutive three hundred and sixty-five-calendar-day-period, the police department, or authorized designee, shall provide written notification by mail to (a) the subscriber and the alarm business or (b) the proprietor alarm owner, as applicable, operating the alarm or alarm system generating the false alarm(s), at the address registered with the police department, or authorized designee, that one (1) subsequent false alarm within the same period will subject such subscriber and/or alarm business or such proprietor alarm owner to assessments as provided in this article. The subscriber, alarm business or proprietor alarm owner, as applicable, may request that the City provide documentation of the two false alarms. In the event the subscriber, alarm business or proprietor alarm owner believes the information of false alarms to be incorrect, an appeal may be filed with the police chief subject to subsection 20-51(b) below.

20-51 - Police department review of false alarms.

(a) Upon the police department's, or authorized designee's, recording of a third and any subsequent false alarm(s) within any consecutive three hundred and sixty-five-calendar-day-period, the police department, or authorized designee, shall provide written notification by mail to (a) the subscriber and alarm business or (b) the proprietor alarm owner, as applicable, operating the alarm or alarm system generating the false alarm(s), at the address registered with the police department, or authorized designee, of such false alarm(s). The written notification to be provided by the police department, or authorized designee, shall (1) state the details regarding the false alarm, (2) state the amount of the penalty to be assessed pursuant to section 20-52 below, (3) set forth the process by which the subscriber, alarm business or proprietor alarm owner may appeal the assessment and (4) assess liability for the false alarm upon the subscriber first, unless the subscriber can provide evidence to the police department that the false alarm was due to defective equipment, at which time the alarm business shall become solely responsible.

(b) A subscriber, alarm business or proprietor alarm owner, as applicable, may appeal the determination of false alarms or the penalty to be assessed under section 20-52 below, as applicable, by submitting a report to the chief of police, or authorized designee, within twenty (20) days of the date of mailing of the police department's, or authorized designee's, written notification. The report shall contain:

1. A description of the action taken to discover and eliminate the cause of the false alarm(s).

2. The specific reason(s), if any, why the false alarm(s) should not be subject to an assessment. Evidence that an alarm was caused by an act of God, common cause or action of the telephone company shall constitute valid reasons why an assessment should not imposed. With respect to subscribers only, evidence that the false alarm was due to defective

equipment or other fault of the alarm business shall relieve the subscriber from liability and shall shift the responsibility to the alarm business monitoring the alarm or alarm system.

(c) If the report required in subsection (b) is not submitted within the specified time period, the subscriber, alarm business or a proprietor alarm owner shall have waived any rights to any further review or hearing and the subscriber, alarm business or the proprietor alarm owner operating the alarm system generating the false alarms shall be liable for the assessment imposed under section 20-52 below.

(d) After submission of the report required in subsection (b) above, the chief of police, or authorized designee, shall review the corrective action taken to discover and eliminate the cause of the false alarm(s) and the specific reason(s), if any, for the false alarm(s). If the chief of police, or authorized designee, determines that the corrective action taken or to be taken will substantially reduce the likelihood of false alarms or that a valid reason for the false alarm(s) has been shown, a written notice will be sent by mail to the subscriber, alarm business or the proprietor alarm owner, as applicable, at the address registered with the police department, or authorized designee, indicating that no assessment will be imposed for that particular false alarm(s). The notice shall set forth the findings and conclusions of the chief of police, or authorized designee, with respect to the review of the report submitted.

(e) If the chief of police, or authorized designee, determines that the corrective action taken or to be taken will not substantially reduce the likelihood of false alarms or that a valid reason for the false alarm(s) has not been shown, a written notice shall be sent by mail to the subscriber, alarm business or proprietor alarm owner, as applicable, at the address registered with the police department, or authorized designee, that the subscriber, alarm business or proprietor alarm owner, as applicable, is liable for the assessment imposed under section 20-52 below. The notice shall set forth the findings and conclusions of the chief of police, or authorized designee, with respect to the review of the report submitted.

20-52 - False alarm assessments.

(a) Unless waived pursuant to subsection 20-51(d) above and subject to the burden shifting provisions set forth in subsection 20-51(b)(2) above, every subscriber and every proprietor alarm owner, as applicable, shall pay to the city an assessment for each and every false alarm that occurs after the first two (2) false alarms within any consecutive three hundred and sixty-five-calendar-day-period, as follows:

Third false alarm $150.00

Fourth false alarm $200.00

Fifth or more false alarms $250.00

(b) Failure to pay such false alarm assessments within thirty (30) days from the date of the notice mailed pursuant to subsection 20-51(d) above, may result in legal action by the city, or authorized designee, to collect all unpaid fees and assessments. Such 30-day period may be tolled during the pendency of (1) an appeal to the police chief as set forth in section 20-52 above and (2) an appeal to the city manager as set forth in section 20-53 below.

(c) Failure to pay such false alarm assessments within sixty (60) days from the date of the notice mailed pursuant to subsection 20-51(e) above, shall constitute a class 1 misdemeanor. Such 60-day period may be tolled during the pendency of (1) an appeal to the police chief as set forth in section 20-52 above and (2) an appeal to the city manager as set forth in section 20-53 below.

(d) The subscriber (or the alarm business if, pursuant to subsection 20-51 (b)(2), the burden has shifted) shall be responsible for the payment of assessment(s) imposed for false alarms related to an alarm system serviced by the alarm business. The proprietor alarm owner shall be responsible for the payment of assessment(s) imposed for false alarms related to the owner's proprietor alarm system.

20-53 - Appeal procedures for assessments.

(a) Any party aggrieved by a decision of the police department, or authorized designee, made pursuant to subsection 20-51(e) above may appeal such decision to the city manager, or authorized designee. The appeal shall be requested within twenty (20) days from the date of the notice mailed pursuant to subsection 20-51(e). The appeal shall be in writing, shall be filed with the city manager, or authorized designee, and shall set forth specifically the grounds for such appeal.

(b) The city manager, or authorized designee, shall conduct a hearing in accordance with this section. The city manager, or authorized designee, may, in his or her discretion, stay any enforcement of the assessment pending final determination of the appeal. The city manager, or authorized designee, shall set a time and place for the appeal hearing as soon as practicable.

(c) The burden of proof at the hearing shall be on the appellant to establish, by a preponderance of the evidence, that the corrective action taken or to be taken will substantially reduce the likelihood of false alarms or that a valid reason for the false alarm(s) had been shown. The city manager, or authorized designee, shall hear such testimony and consider such evidence as is relevant to the determination of such issues. The city manager, or authorized designee, shall not be bound by technical rules of evidence or procedure in conducting the hearing.

(d) The city manager, or authorized designee, shall render a written decision within thirty (30) days after the hearing is concluded based on the evidence presented by

the city and the appellant. The decision of the city manager, or authorized designee, shall be final.

20-54 - Grace period.

All newly installed or reinstalled alarms and alarm systems shall not be subject to the provisions of this article relating to the counting and assessment of false alarms for a period of thirty (30) days from the date the alarm or alarm system becomes operational. For the purposes of this section, "reinstalled" means the installation of a new control panel.

20-55 – Police Department delegation of Duties.

Except as otherwise provided in this section, the chief of police is authorized to delegate to the alarm administrator, or to any other authorized designee, all duties of the police department as set forth in this article. Except as specifically set forth herein, the chief of police may not delegate any duty specifically reserved to law enforcement.

CITY COUNCIL AGENDA

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

REGULAR MEETING
November 21, 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 RECOGNITION ITEMS (MAYOR PRESENTATIONS)

a. Resolution 3013-1111- In Recognition of Ken Sowers on occasion of his retirement

3 UNSCHEDULED PUBLIC APPEARANCES

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

4 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 November 7, 2011
2. Regular Meeting of November 7, 2011

b. CONTRACTOR AGREEMENT - NEXT LEVEL BASKETBALL CLUB
City Council will consider a request to approve a Contractor Agreement with Next Level Basketball Club to establish jointly-sponsored athletic programs through the Parks, Recreation, and Libraries Department and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents. The Council will take appropriate action.

c. PURCHASE AGREEMENT - SAN DIEGO POLICE EQUIPMENT FOR AMMUNITION
City Council will consider a request to approve a sole source purchase agreement to San Diego Police Supply for the purchase of police ammunition in an amount not to exceed $15,000 annually and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

d. COOPERATIVE PURCHASING AGREEMENT - FELIX CONSTRUCTION COMPANY
City Council will consider a request to approve a Cooperative Purchasing Agreement with Felix Construction Company for repair of the pipes on the Avondale Blvd. Bridge in the amount of $128,132.92 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT - KIMLEY-HORN AND ASSOCIATES, INC. - SOUTH AVONDALE CADD SERVICES

City Council will consider a request to approve a First Amendment to the Professional Services Agreement with Kimley-Horn and Associates for South Avondale CADD Services by increasing the agreement amount by $35,526 for a total of $94,323, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. PROFESSIONAL SERVICES AGREEMENT - BROWN AND CALDWELL, INC. FOR VFD EVALUATION AND DESIGN

City Council will consider a request to approve a Professional Services Agreement with Brown and Caldwell, Inc., to Perform Variable Frequency Drive Evaluation and Design in an amount not to exceed $82,126 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. RESOLUTION 3014-1111 – FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA AND MARICOPA COUNTY

City Council will consider a resolution authorizing the First Amendment to an Intergovernmental Agreement with Arizona Department of Transportation and Maricopa County regarding the Avondale Boulevard Bridge over the Gila River at Phoenix International Raceway, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

h. ORDINANCE 1475-1111- AMENDMENT CHAPTER 23, TRAFFIC OF THE AVONDALE MUNICIPAL CODE

City Council will consider an ordinance amending Chapter 23, Traffic, of the Avondale City Code relating to penalties for violating the dust control and abatement sections. The Council will take appropriate action.

5 AVONDALE 2011 DIGITAL CITIES OF AMERICA AWARD

The Center for Digital Government named its Digital Cities of America honorees. Avondale was named one of the top-ten in its population category. The award was received by Councilmember Vierhout on behalf of the Mayor and Council at the 2011 National League of Cities conference. Avondale is the only local government from Arizona to be honored this year.

6 ATHLETIC FIELD OPERATIONS

Staff is seeking direction from the City Council on a proposal for future growth and development of City Parks as an economic driver for the City of Avondale. For Council discussion and direction only.

7 EXECUTIVE SESSION

a. The Council may hold an executive session pursuant to ARIZ. REV. STAT. § 38-431.03 (A)(4) for discussion or consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding (i) negotiations for a potential Economic Development Agreement and (ii) a potential Intergovernmental Agreement with the City of Litchfield Park regarding a potential annexation.

8 ADJOURNMENT

Respectfully submitted,

Carmen Martinez

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:
Resolution 3013-1111 - In Recognition of Ken Sowers on occasion of his retirement

MEETING DATE:
November 21, 2011

TO: Mayor and Council

FROM: Carmen Martinez

THROUGH: Charlie McClendon, City Manager

ATTACHMENTS:

Click to download

- Resolution 3013-1111

RESOLUTION NO. 3013-1111

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, HONORING KEN SOWERS FOR THIRTY YEARS OF DEDICATED SERVICE TO THE CITY OF AVONDALE AND THE BUILDING COMMUNITY AT LARGE.

WHEREAS, on December 18, 1981, Ken Sowers began his career with the City of Avondale (the "City") when he was hired as the Building Inspector; and

WHEREAS, Ken essentially served as the entire Building Department for the City until 1995, when his title changed to Chief Building Inspector; and

WHEREAS, Ken became the Chief Building Official in 1999 and continued to build the department on an as-needed basis over the ensuing years to the highly qualified, professionally-minded, customer-focused staff it is today; and

WHEREAS, during his tenure Ken has served as the interim director for what is today the Development Services Department on three separate occasions; no challenge has been too large for him; and

WHEREAS, Ken has represented the City for over a decade on multiple code-focused committees to promote and foster uniformity across the Phoenix Metropolitan area and the State of Arizona; and

WHEREAS, Ken's leadership and guidance has developed and fostered an atmosphere of excellence and dedication to the customer, our citizens, staff, and developers; and

WHEREAS, Ken has faithfully served the City in all phases of growth, and has watched Avondale transition from a small community of a few thousand to the fast-paced, progressive City it is today; and

WHEREAS, the Mayor and Council of the City of Avondale wish to honor Ken Sowers on the occasion of his retirement after 30 years of exemplary service to the citizens of Avondale in appreciation for his hard work and dedication to the City and the Development Services/Engineering Department.

NOW, **THEREFORE**, **BE IT RESOLVED** BY THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, that the City of Avondale hereby thanks Ken Sowers for 30 years of loyal, dedicated service to the City of Avondale and its citizens.

PASSED AND ADOPTED by the Council of the City of Avondale, November 21, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

CITY COUNCIL REPORT

SUBJECT:
APPROVAL OF MINUTES

MEETING DATE:
November 21, 2011

TO: Mayor and Council

FROM: Carmen Martinez

THROUGH: Charlie McClendon, City Manager

ATTACHMENTS:

Click to download

No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Contractor Agreement - Next Level Basketball Club

MEETING DATE:
November 21, 2011

TO: Mayor and Council

FROM: Christopher Reams, Director of Parks, Recreation & Libraries (623) 333-2412

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution authorizing a Letter Agreement with Next Level Basketball Academy Club to establish jointly-sponsored athletic programs with the City of Avondale (the City) through the Parks, Recreation, and Libraries Department (PRLD) and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

BACKGROUND:

The City of Avondale (the City) through the Parks, Recreation, and Libraries Department (PRLD) and the Club desire to enter into a joint programing agreement. The joint programming will include sports, leisure, and academic programs and activities.

Under the terms of the agreement the City will provide the facilities, marketing, and registration for the programming and the Club will develop, implement, and manage all of the programs. Non-City owned and operated facilities may be used for the programs with the agreement of both parties. All programming will be jointly agreed upon prior to the program start date.

Programs implemented under this agreement may include, but is not limited to, the following types of programs:

- Basketball leagues
- Basketball tournaments
- Out of School Programs
- Skills Camps
- Sports Development Courses

DISCUSSION:

Staff, in conjunction with our City Attorney developed the Letter Agreement which stipulates the terms and conditions regarding the program (Attachment 1). The term of the agreement is for one (1) year with a maximum of three (3) additional one-year terms. The additional terms must be agreed upon by both parties through an annual review and letter agreement by a designated representative of both parties. Either party can dissolve the agreement with cause after a 60 day notification. The City will continue to develop agreements with other sports organizations to enhance services and programs for City of Avondale resident and park users.

BUDGETARY IMPACT:

The Letter Agreement with the Club will establish cost recoverable programs only. All program expenses will be recovered. There will be no cost to the City of Avondale for programming associated with this agreement.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution authorizing a Letter Agreement with Next Level Basketball Academy Club to establish jointly-sponsored athletic programs with the City of Avondale (the City) through the Parks, Recreation, and Libraries Department (PRLD) and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

ATTACHMENTS:

Click to download

- Contractor Agreement

CONTRACTOR AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE NEXT LEVEL BASKETBALL CLUB

THIS CONTRACTOR AGREEMENT (this "Agreement") is made as of November 21, 2011, between the City of Avondale, an Arizona municipal corporation (the "City"), and The Next Level Basketball Club, an Arizona non-profit corporation (the "Contractor").

RECITALS

A. The City issued a "Request for Proposals for Cooperative Sports and Recreational Activity Programing (PR 10-029.2)" (the "RFP"), attached hereto as Exhibit A and incorporated herein by reference, seeking proposals from vendors for a wide variety of cooperative sports and recreational programming services at City facilities.

B. The Contractor submitted a proposal in response to the RFQ (the "Proposal"), attached hereto as Exhibit B and incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor to provide cooperative basketball training, development and recreational programs, including but not limited to, seasonal basketball camps, basketball skills clinics and basketball youth leagues (the "Services" or the "Programs") at one or more City facilities or at approved third-party facilities (collectively, the "Facilities") as determined by the City.

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 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 November 21, 2012 (the "Initial Term"), unless terminated as otherwise provided herein. 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) 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 (iii) the City approves the additional one-year term in writing, 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 provide the Services as more particularly set forth in the Scope of Work attached hereto as Exhibit C.

3. Compensation. The Programs shall be supported by fees charged and collected by the City from persons participating in the Program.

3.1 Program Fees. The City with input from the Contractor shall determine and set fees to be charged to and collected from the Program participants.

3.2 Payment. Upon completion of each Program and after receipt of Program invoice, the City shall pay the Contractor an amount equal to the total fees collected for each Program less 35%, which shall be retained by the City, from each Program.

3.3 Invoices. The Contractor shall submit invoices to the City for payment within 30 days after Services have been rendered and provide a copy of the Program rosters with each invoice. Invoices shall include, at a minimum, purchase order number, activity number, section number, description, total enrolled, price for the Program, and total due to Contractor minus the percentage due to City pursuant to Subsection 3.2 of this Agreement.

4. Coordination of Programs.

4.1 Planning the Programs. Prior to the commencement of the Program, the City and Contractor shall communicate to plan the Program. The City and Contractor shall communicate as often as necessary to coordinate the ongoing Program activities. The City may assist Contractor in planning and developing the Programs. Factors such as recommended age of participants, days and times of operation, number and length of sessions, locations, course content and pricing are subject to the City's approval.

A. Budget. The City and Contractor shall develop a budget for the Program, including but not limited to, the cost of any third-party facility, equipment, materials and staff, that ensures cost recovery of all funds expended in preparation of the Program.

B. Program Manager. The Contractor shall provide a Program Manager who shall be responsible for the performance of the Agreement and shall remain the Contractor's contact person. If the Program Manager leaves Contractor's employment during the term of this Agreement, then the Contractor will notify the City's Contract Administrator (as defined below) immediately. The Program Manager shall:

(1) Establish a routine for communications with the Contract Administrator or authorized designee to provide a prompt and timely response to any concerns or problems that may arise.

(2) Contact the Contract Administrator or authorized designee to review overall performance, receive special instructions regarding special events, coordinate registration or discuss other pertinent items regarding the Agreement and the Contractor's performance.

(3) Prepare and submit an Emergency Contact Procedure to the Contract Administrator prior to the first Program activity.

C. Contract Administrator. The City shall identify a Contract Administrator. The Contract Administrator shall determine and schedule the time and frequency of direct meetings between the Contract Administrator or designee and the Contractor's Program Manager. The Contract Administrator shall schedule and conduct Program inspections with the Contractor's Program Manager.

4.2 Registration; Fees. The Contract Administrator shall coordinate and perform the registration of all Program participants, the collection of fees and the processing of refunds. All fees shall be payable to the City. Within a reasonable time following close of registration for each Program's participants, the City shall provide the Contractor with an accounting of fees collected.

4.3 Promoting the Programs. The Contractor shall coordinate with the City's recruitment of participants for Program activities and shall network with the community to promote the Programs. Any flyers advertising Programs must be approved by the Contract Administrator or authorized designee prior to distribution. Any costs for such additional promotion and advertising shall be the sole responsibility of the Contractor and shall not be eligible for reimbursement by the City.

A. Program Descriptions. The Contractor shall submit to the City's Contract Administrator, or authorized designee, written descriptions of proposed Programs for the appropriate quarter by the dates specified by the Contract Administrator, as necessary for advertisement in the City's publications. The descriptions shall contain the proposed dates and times of the Program(s), a general description of the curriculum, cost of the Program(s), any special information that the participant must know, and the proposed location of the Program. The City may modify a Program's description as necessary to accommodate other contractors or Programs with the same Program title.

B. City Advertising. At its discretion, the City shall advertise the Programs through the normal City advertising mediums, including but not limited to, City website, flyers and other promotional materials.

4.4 Scheduling. The Contractor shall coordinate scheduling of Program activities with the City and shall maintain a flexible schedule that accommodates the Facilities' daily hours and special events.

4.5 Cancellation and Rescheduling of Programs. The Contractor shall notify the City at least 24 hours in advance of a scheduled activity if it becomes necessary for the Contractor to cancel or reschedule a Program activity. The Contractor shall contact Program participants by telephone in the event of Program activity cancellations or schedule changes as necessary and in consultation with the City. The City may cancel Programs or Services within its sole discretion and shall notify the Contractor prior to commencement of the Program or Service.

4.6 Forfeiture. The Contractor shall forfeit the Programs if the Contractor does not provide Services for two consecutive scheduled days. Consistent "no shows" or cancellations of the Contractor's Programs, as documented by the City, may be considered a default of this Agreement and, at the City's sole discretion, may be deemed sufficient cause for the City to award an agreement to another qualified contractor.

4.7 Facilities. The Programs shall be conducted at City sports Facilities or at third-party facilities agreed upon in writing by the City and Contractor. Prior to the commencement of the Program, the City and Contractor shall communicate to coordinate use of the Facilities. If the City and Contractor agree to use a third-party facility, the cost of such Facility must be incorporated into the Program budget as set forth in Subsection 4.1(A) above.

A. City Facilities.

(1) If the Contractor uses City sports Facilities, the City shall provide keys to areas of the Facilities to be used by the Contractor. All costs incurred by the City because of lost keys will be billed to the Contractor.

(2) The Contractor shall ensure that only its properly identified employees listed with the Contract Administrator or designee are permitted on the premises of the City sports Facilities during the performance of the Contractor's duties. The Contractor will be held strictly liable for any damage or breach of security caused by its employees.

(3) The City shall cover the utility costs associated with the Program when City sports Facilities are used. Third-party facility agreements that include utility fees must be agreed to by both parties.

B. Prohibited Noises. The following distractions and annoyances are unacceptable at the Facilities and any occurrences may result in termination of the Agreement:

(1) Unreasonably loud, disturbing and unnecessary noises created by Contractor's Programs or Services.

(2) Noises of such character, intensity or duration as to be detrimental to life and health of any individual or in disturbance of his/her public peace and welfare.

(3) The sounding or blowing of any horn or other unreasonably loud signaling device.

4.8 Maintenance. The Contractor shall be responsible, at its own expense, for maintaining, cleaning and keeping in good repair the City sports Facilities and all Contractor property. The City shall be responsible, at its own expense, for maintaining, cleaning and keeping in good repair all City property used in the operation of the Program. Notwithstanding the foregoing, the Contractor and the City shall be jointly responsible for cleaning up the portion(s) of City sports Facilities used in the Program.

4.9 Damage to City Property. The Contractor shall conduct the operation of the Programs in a manner that prevents damage to City property. In the event damage occurs to City property or any adjacent property by reason of any Contractor Service performed under this Agreement, the Contractor shall replace or repair the same at no cost to the City. If the City repairs or replaces the Contractor's damage, the cost of such repair or replacement shall be charged to the Contractor. The City shall be responsible for the repair of any damages to the City property that result directly from the City's use of the property.

4.10 Compliance with Applicable Policies. The Contractor shall develop Program policies, which must be approved by the City prior to the commencement of any Program activity. The Contractor shall distribute a copy of the approved Program policies to each Program participant upon registration with the Program. The Contractor, its staff members and Program participants shall at all times comply with all policies relating to participation in the Program and use of the Facilities.

4.11 Notification. The Contractor shall notify the City, by written report, within 24 hours of becoming aware of any accident or incident involving a Program participant that required assistance by emergency medical personnel.

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

6. Contractor Personnel. The Contractor shall provide and supervise adequate, experienced, adult instructional staff trained in the proper methods and techniques in order to properly and satisfactorily perform the Services. All members of the Contractor's instructional staff who will be instructing, facilitating or operating one or more of the programs must be 18 years of age or older. If a staff member under the age of 18 is instructing, facilitating or operating one or more Program sessions, then he/she must be accompanied by an adult member for the duration of the session.

6.1 Other Qualifications. The Contractor shall provide trustworthy, reliable employees and make a good faith effort to retain the same employees on the same schedule in the same area for as long as possible. The Contractor shall notify the Contract Administrator or designee prior to the change in staffing if possible or as quickly as possible thereafter. In addition, Contractor's staff members are required to: (A) read, write, speak and understand the English language, (B) have the necessary public relations skills to deal with employees and customers in a professional, courteous, businesslike manner and (C) be legally authorized to work in the State of Arizona.

6.2 Background. The Contractor or its employees shall not have been convicted of a felony or a crime involving moral turpitude in the last ten years. The Contractor and its employees shall submit to comprehensive background checks as deemed necessary by the City.

6.3 Appearance. The Contractor's employees shall be neat and clean in appearance and shall wear a uniform or other identification that clearly identifies them as employees of the Contractor.

6.4 Certifications. The Contractor shall ensure that at least one staff member trained and certified in CPR and First Aid shall be present during any Program activity.

7. Inspection; Acceptance. Performance of the Services 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. Quality service and strict adherence to this Agreement will be expected from the Contractor.

8. Licenses; Materials. Contractor shall maintain in current status all licenses, permits and certifications from the appropriate federal, state and local departments and the appropriate sports or recreational activity licensing, certification or sanctioning authority 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 Agreement. The City has no obligation to provide tools, equipment or material to Contractor.

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

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 Contractor, 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 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 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 Contractor. 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 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 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. Contractor'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 Contractor. Contractor 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. Contractor 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, Contractor 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 Contractor. Contractor 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, 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 Agreement, 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 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 Contractor'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 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 Agreement shall be identified by referencing this Agreement. A $25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate reference to this Agreement, 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) Contractor'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 Contractor 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. 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 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. Contractor shall maintain Business Automobile Liability insurance with a limit of $1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor'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. [INTENTIONALLY OMITTED]

D. Workers' Compensation Insurance; Relationship. 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 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. Termination; Cancellation.

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

12.2 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 Contractor for the undisputed portion of its fee due as of the termination date.

12.3 Due to Work Stoppage. This Agreement 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.

12.4 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.

12.5 Gratuities. The City may, by written notice to the Contractor, 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 Contractor or any agent or representative of the Contractor to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled 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.

12.6 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 Contractor 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 Contractor shall be relieved of any subsequent obligation under this Agreement.

13. Logos, Service Marks and Trademarks.

13.1 Ownership of Marks. The City owns the logos, service marks and trademarks depicted on Exhibit B, attached hereto and incorporated herein by reference (the "City's Logos"). The Contractor owns or has the owner's permission to reproduce, distribute, license or otherwise use each and every logo, service mark and trademark depicted in the Contractor's Proposal, attached hereto as Exhibit C (the "Contractor's Logos"). Collectively, the City's Logos and the Contractor's Logos may be referred to hereinafter as the "Logos."

13.2 Approval of Use. Neither party shall use any service marks, trademarks, logos or other marks of the other party or any other third-party without the express written approval of the other party or any other third-party. The use of any marks must comply with the owner's requirements, including using the "circle R" indication of a registered trademark, if applicable.

13.3 Grant of License. Upon the terms and conditions herein set forth, the City hereby grants to the Contractor a license to use the City's Logos and the Contractor hereby accepts the right, license and privilege of using the City's Logos in connection with the Services. Likewise, the Contractor hereby grants to the City a license to use the Contractor's Logos and the City hereby accepts the right, license and privilege of using the Contractor's Logos in connection with the Services.

13.4 Additional Marks. The City and the Contractor may add logos, trademarks, service marks and trade names to this Agreement at any time by an amendment to Exhibit B or Exhibit C, respectively, attached with the added logos or marks identified and the date of license of each of the new logos or marks specified. From and after the date specified as the date of license for a new logo or mark, such logo or mark shall be included in the City's or Contractor's Logos, respectively, and shall be subject to the terms and conditions of this Agreement.

13.5 Non-exclusive, Limited License. The license granted by each party to the other party for use of the licensing party's Logos is not exclusive and each party may use its own Logos itself and may license its own Logos to other parties during the term of this Agreement. Each party may use any of the Logos in performance of this Agreement for the duration of this Agreement only within the United States.

13.6 Duration. The term of the license hereby granted shall be effective for the duration of this Agreement, including any Renewal Terms.

13.7 Recognition of Goodwill. The Contractor recognizes the great value of the goodwill associated with the City's Logos and acknowledges that the City's Logos and all rights therein and goodwill pertaining thereto belongs exclusively to the City, and that any trade names, trademarks and service marks included in the City's Logos have secondary meaning in the mind of the public.

13.8 Validity of License. The Contractor agrees that it will not during the term of this Agreement, or thereafter, attack the title or any rights of the City in and to any of the City's Logos or attack the validity of the license granted by the City to the Contractor under this Section 13.

13.9 Infringement Protection. Contractor agrees to assist the City to the extent necessary in the procurement of any protection or to protect any of the City's right to any of the Logos. Contractor agrees that it will, during the term of this Agreement and any Renewal Terms, defend any attack by third parties on the validity or right to use any of the Logos and that it will take action on account of any infringements or imitations by others of any of the Logos. Each party shall immediately notify the other party of any claim by any third party arising from the use by the Contractor or the City of any of the Logos or of any infringement or imitations of the Logos of which the notifying party becomes aware.

13.10 Quality of Use; Use Subject to Approval. Each party agrees that the products to be sold or distributed and the services to be rendered using the other party's Logos shall be of high standard and shall be of such style and quality as to be adequate and suited to the protection and enhancement of the other party's Logos and any goodwill pertaining thereto. To this end, each party shall permit the licensing party at any time, and from time to time, to review and monitor the products manufactured, sold or distributed by the other party to determine the character and quality of such products. The licensing party shall in its sole discretion determine whether the products meet the standards set forth in this subsection, but shall act reasonably in so doing. If the licensing party objects to a particular usage of the Logos as not meeting its standards, then the other party shall revise, correct or remove that particular usage as soon as commercially reasonable upon written notice from the licensing party.

13.11 No Waiver of Remedies. Each party acknowledges that its failure to cease the use of the other party's Logos or to remove the trademarks from its corporate name at the termination or expiration of this Agreement will result in immediate and irremediable damage to the other party and to the rights of any subsequent licensee. Each party acknowledges and admits that there is no adequate remedy at law for such failure to cease the use of the other party's Logos and each party agrees that in the event of such failure, the licensing party shall be entitled to equitable relief by way of temporary and permanent injunctions and such other relief as any court with jurisdiction may deem just and proper. Resort to any remedies referred to herein shall not be construed as a waiver of any other rights and remedies to which a licensing party is entitled under this Agreement or otherwise.

14. Miscellaneous.

14.1 Independent Contractor. The Contractor 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. 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 Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 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 Agreement.

14.2 Applicable Law; Venue. 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 Maricopa County, Arizona.

14.3 Laws and Regulations. Contractor 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 Contractor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including but not limited to, the following: (A) existing and future City and County ordinances and regulations, (B) existing and future State and Federal laws, (C) existing and future Occupational Safety and Health Administration standards and (D) existing and future regulations specifically related to the Services.

14.4 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 Contractor.

14.5 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.

14.6 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.

14.7 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 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 Agreement.

14.8 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.

14.9 Assignment. No right or interest in this Agreement 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 Agreement by Contractor.

14.10 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 Agreement whether or not subcontractors are used.

14.11 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 Contractor 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.

14.12 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.

14.13 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.

14.14 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 Contractor any amounts Contractor 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 Contractor any amounts Contractor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

14.15 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, (C) given to a recognized and reputable overnight delivery service, to the address set forth below or (D) 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: The Next Level Basketball Club
17374 W. Adams
Goodyear, Arizona 85338
Facsimile: 623-594-0261
Attn: Mr. Richard McGee

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, (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, or (D) 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.

14.16 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 Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. 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 Agreement.

14.17 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 subsection 14.18 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 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 subsection 14.18 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.

14.18 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.

14.19 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 Agreement pursuant to subsection 12.2 above.

14.20 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of the Agreement, the Scope of Work, the Sample Invoice, the RFP, the Contractor's Proposal, the City's Logos and the Contractor's Logos, the documents shall govern in the order listed herein.

14.21 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.

IN WITNESS WHEREOF, the parties hereto have executed this instrument 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)

"**Contractor**"

THE NEXT LEVEL BASKETBALL CLUB, an
Arizona non-profit corporation

_____

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011, by THE NEXT LEVEL BASKETBALL CLUB, an Arizona non-profit corporation, on behalf of the corporation.

_____
Notary Public in and for the State of Arizona

(affix notary seal here)

EXHIBIT A
TO
CONTRACTOR AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE NEXT LEVEL BASKETBALL CLUB

[RFQ]

See following pages.

REQUEST FOR PROPOSALS
FOR
COOPERATIVE SPORTS AND RECREATIONAL ACTIVITY PROGRAMMING

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

SOLICITATION INFORMATION AND SELECTION SCHEDULE

Solicitation Number:	**PR 10-029.2**
Solicitation Title:	**Cooperative Sports and Recreational Activity Programming**
Release Date:	**February 11, 2010**
Advertisement Dates:	**February 12 & 19, 2010 – West Valley View** **February 11, 2010 – Arizona Business Gazette**
NON-MANDATORY Pre-Submittal Conference:	**February 16, 2010** **11:00 a.m.** (local time, Phoenix, Arizona) Avondale Civic Center Sonoran Conference Room 11465 West Civic Center Drive Avondale, Arizona 85323
Final Date for Inquiries	**February 19, 2010**
Proposal Due Date and Time:	**March 2, 2010** **3:00 p.m.** (local time, Phoenix, Arizona)
Shortlist Announced for Oral Interviews:	**March 11, 2010**
Oral Interviews (if necessary):	**March 22, 2010**
Target City Council Award Date:	**April 19, 2010**
Anticipated Agreement Start Date:	**April 19, 2010**
City Representatives:	**Chris Reams** **creams@avondale.org** **623-333-2412** **Loretta Browning** **lbrowning@avondale.org** **623-333-2029**

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

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I. RFP PROCESS; AWARD OF AGREEMENT

1. Purpose; Scope of Work. The City of Avondale (the "City") is issuing this Request for Proposals (this "RFP") seeking proposals from qualified providers(s) to develop and operate sports and recreational activity programs (the "Programs" or the "Services") in cooperation with the City. The City's Parks, Recreation and Libraries Department is interested in attracting offerors willing to provide high quality instruction, personnel and equipment (utilizing City facilities) to afford the City's residents a wide variety of sports and recreational programs targeting both adult and youth activities, including, but not limited to, the following:

a.	Soccer Leagues	f.	Kickball
b.	Football (Flag and Tackle)	g.	Baseball
c.	Basketball	h.	Softball
d.	Volleyball	i.	Rugby
e.	Golf	j.	Adaptive Sports

The City intends that the Programs shall be conducted at the following facilities:

Facility	Address	Amenities
Friendship Park	12325 West McDowell Road	Multi-Use Fields, Youth Baseball Fields, Football Fields
Festival Fields	101 East Lower Buckeye Road	Multi-Use Fields, Softball Fields
Donnie Hale Park	10857 West Pima Street	Softball Fields
Las Ligas Park	12421 West Lower Buckeye Road	Softball Fields

The Program(s) shall be supported by fees charged and collected by the City from persons participating in the Program. The City shall retain a set percentage of all fees collected for the Services provided, such percentage shall not be less than the following:

Recreation Centers/Parks: 20%
Senior Programs: 15%

In accordance with the City's Procurement Code, the City will accept competitive sealed proposals ("Proposals") for the Services specified in the Scope of Work in the Contractor Agreement, and incorporated herein by reference. Proposals may be for the operation of one or more Programs in cooperation with the City and the City reserves the right to select one or more providers for each Program. The City will accept and consider Proposals for sports or activity programs not specifically listed above.

2. Preparation/Submission of Proposal. Vendors are invited to participate in the competitive selection process for the Services outlined in this RFP. Responding parties shall review their Proposal submissions to ensure the following requirements are met.

2.1 Irregular or Non-responsive Proposals. The City shall consider as "irregular" or "non-responsive" and reject any Proposal not prepared and submitted in accordance with this RFP, or any Proposal lacking sufficient information to enable the City to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions shall be cause for rejection. Proposals may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the City:

a. Vendor does not meet the minimum required skill, experience or requirements to perform or provide the Service.

b. Vendor has a past record of failing to fully perform or fulfill contractual obligations.

c. Vendor cannot demonstrate financial stability.

d. Vendor's Proposal 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 Proposal.

2.2 Submittal Quantities. Interested Vendors must submit **one (1) original** and **four (4) copies (five (5) total submittals)** of the Proposal. In addition, interested parties must submit **one (1) original copy** of the Proposal on a CD-ROM (or electronic media approved by the City) in printable Adobe or Microsoft Word format (or other format approved by the City). Failure to adhere to the submittal quantity criteria shall result in the Proposal being considered non-responsive.

2.3 Required Submittal. The Proposal shall be submitted with a cover letter with an **original ink** signature by a person authorized to bind the Vendor. Proposals submitted without a cover letter with an **original ink signature** by a person authorized to bind the Vendor shall be considered non-responsive. The Proposal shall be a maximum of **twenty (20)** pages to address the Proposal criteria (excluding resumes, the Vendor Information Form, but including the materials necessary to address project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2" x 11") with criteria information shall be counted. However, one page may be substituted with an 11" x 17" sheet of paper, folded to 8 1/2" x 11", showing a proposed project schedule or organizational chart and only having information on one side. Cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include additional project-specific information or Proposal criteria responses. The minimum allowable font for the Proposal is **11 pt**. Failure to adhere to the page limit and size criteria and font size shall result in the Proposal being considered non-responsive. Telegraphic (facsimile), electronic (e-mail) or mailgram Proposals will not be considered.

2.4. Vendor Responsibilities. Responding Vendors shall (a) examine the entire RFP, (b) seek clarification of any item or requirement that may not be clear, (c) check all responses for accuracy before submitting a Proposal and (d) submit the entire Proposal by the Proposal Due Date and Time. Late Proposals will not be considered. A Vendor submitting a late Proposal shall be so notified. Negligence in preparing a Proposal confers no right of withdrawal after the Proposal Due Date and Time.

2.5. Sealed Submittals. All Proposals shall be sealed and clearly marked with the RFP number and title**, Cooperative Sports and Recreational Activity Programming (PR 10-029.2)**, on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed Proposal. The City is not responsible for the pre-opening of, post-opening of, or the failure to open, any Proposals not properly addressed or identified.

2.6. Pricing. The Vendor shall submit the same number of copies of the Fee Proposal as described in Section I, 2.2 in a separate, sealed envelope enclosed with the Vendor's Proposal. Pricing shall be inclusive of all of the Services in the Scope of Work as described in the Professional Service Agreement in Exhibit C. A sample Fee Proposal is attached to the Professional Service Agreement as Exhibit D.

2.7. Address. All Proposals 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 by the Proposal Due Date and Time indicated on the cover page of this RFP.

2.8. Pricing Errors. If price is a consideration and in case of error in the extension of prices in the Proposal, the unit price shall govern. Periods of time, stated as number of days, shall be calendar days.

2.9. Proposal Irrevocable. In order to allow for an adequate evaluation, the City requires the Proposal to be valid and irrevocable for **180** days after the Proposal Due Date and Time indicated on the cover of this RFP.

2.10 Amendment/Withdrawal of Proposal. At any time prior to the specified Proposal Due Date and Time, a Vendor (or designated representative) may amend or withdraw its Proposal. Any erasures, interlineations, or other modifications in the Proposal shall be initialed in **original ink** by the authorized person signing the Proposal. Facsimile, electronic (e-mail) or mailgram Proposal amendments or withdrawals will not be considered. No Proposal shall be altered, amended or withdrawn after the specified Proposal Due Date and Time.

3. Cost of Proposal Preparation. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Vendor is responsible for all costs incurred in

responding to this RFP. All materials and documents submitted in response to this RFP become the property of the City and will not be returned.

4. Inquiries.

4.1 Written/Verbal Inquiries. Any question related to the RFP shall be directed to one of the City Representatives whose names appear on the cover page of this RFP. Questions shall be submitted in writing or via e-mail by the close of business on the Final Date for Inquiries indicated on the cover page of this RFP or submitted verbally (A) at the Pre-Submittal Conference on the date indicated on the cover page of this RFP (if such Pre-Submittal Conference is held) or (B) after the Pre- Submittal Conference but before the Final Date for Inquiries indicated on the cover page of this RFP. In the event the City is closed on the Final Date for Inquiries, the Vendor shall submit the question(s) to one of the City Representatives via e-mail or voicemail. Any inquiries related to this RFP shall refer to the number and title, page and paragraph. However, the Vendor shall not place the RFP number and title on the outside of any envelope containing questions, because such an envelope may be identified as a sealed Proposal and may not be opened until after the Proposal Due Date and Time.

4.2 Inquiries Answered. Written questions will be read and answered at the Pre-Submittal Conference on the date indicated on the cover page of this RFP. Verbal or telephone inquiries directed to City staff **will not be answered**. Within two (2) business days following the Pre-Submittal Conference, answers to all questions received in writing or via e-mail or verbally at the Pre-Submittal Conference will be mailed, sent via facsimile and/or e-mailed to all parties who obtained an RFP package from the City and who legibly provided their mailing address, facsimile and/or e-mail address to the City. No questions, submitted in any form, will be answered after the final date for inquiries listed on the cover of this RFP.

5. Pre-Submittal Conference. A Pre-Submittal Conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this RFP. This conference may be designated as mandatory or non-mandatory on the cover page of this RFP. Additionally, if the Pre-Submittal Conference is designated as mandatory, failure to attend shall render that Vendor's Proposal non-responsive. Vendors are strongly encouraged to attend those Pre-Submittal Conferences designated as non-mandatory. The purpose of this conference will be to clarify the contents of this RFP in order to prevent any misunderstanding of the City's requirements. Any doubt as to the requirements of this RFP 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 RFP. Oral statements or instructions will not constitute an amendment or addendum to this RFP. Any addendum issued as a result of any change in this RFP shall become part of the RFP and must be acknowledged in the Proposal submittal. Failure to indicate receipt of the addendum shall result in the Proposal being rejected as non-responsive.

6. Payment Requirements; Payment Discounts. Any Proposal that requires payment in less than 30 calendar days shall not be considered. Payment discounts of 30 calendar days or more will be deducted from the Proposal price in determining the low Proposal. However, the

City shall be entitled to take advantage of any payment discount offered by the Vendor provided payment is made within the discount period.

7. Federal Excise Tax. The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.

8. Public Record. All Proposals 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.

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

10. Vendor Licensing and Registration. Prior to the award of the Agreement, the successful Vendor 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 Vendor shall provide licensure information with the Proposal. Corporations and partnerships shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

11. Certification. By submitting a Proposal, the Vendor certifies:

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

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

11.3 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 or agent in connection with the submitted Proposal. It (including the Vendor's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the City Manager, Assistant City Managers, Department Heads, and other City staff. All contact must be addressed to the City's Procurement Agent, except for questions submitted as set forth in Section 4, Inquiries, above. Any attempt to influence the selection process by any means shall void the submitted Proposal and any resulting Agreement.

11.4 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 Agreement.

11.5 No Signature/False or Misleading Statement. Failure to sign the Proposal, or signing it with a false or misleading statement, shall void the submitted Proposal and any resulting Agreement.

11.6 Contractor Agreement. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached sample Professional Service Agreement including the Scope of Work and other Exhibits.

12. Award of Agreement.

12.1 Selection. A Selection Committee composed of representatives from the City will conduct the selection process according to the schedule listed on the cover page of this RFP. Proposals shall be opened at the time and place designated on the cover page of this RFP. The name of each Vendor and the identity of the RFP for which the Proposal was submitted shall be publicly read and recorded in the presence of witnesses. PRICES SHALL NOT BE READ. The Selection Committee shall award the agreement to the responsible and responsive Vendor whose Proposal is determined, in writing, to be the most advantageous to the City and best meets the overall needs of the City taking into consideration the scoring criteria set forth in this RFP. The amount of applicable transaction privilege or use tax of the city shall not be a factor in determining the most advantageous Proposal. After the City has entered into an Agreement with the successful Vendor, the successful Proposal and the scoring documentation shall be open for public inspection.

12.2 Line Item Option. Unless the Proposal states otherwise, or unless otherwise provided within this RFP, 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.

12.3 Multiple Award. The selected Vendor(s) will be required to execute the City's standard Contractor Agreement in a form acceptable to the City Attorney. A sample of the standard agreement is included with this RFP. The City intends to contract with multiple Vendors who are qualified to provide the Services. The final terms and conditions of the proposed Agreement will be negotiated by the City with the successful offerors. If the City is unsuccessful in negotiating an Agreement with a highest-scoring Vendor for a particular Program or Service, the City may then negotiate with the second, then third, highest-scoring Vendor until an Agreement is executed. City Council approval may be required. The City reserves the right to terminate the selection process at any time.

12.3 Form of Agreement. The selected Vendor will be required to execute the City's standard Contractor Agreement in a form acceptable to the City Attorney. A sample of the standard agreement is included with this RFP. If the City is unsuccessful in negotiating an

Agreement with the highest-scoring Vendor, the City may then negotiate with the second, then third, highest-scoring Vendor until an Agreement is executed. City Council approval may be required. The City reserves the right to terminate the selection process at any time.

12.4 Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFP, the City expressly reserves the right to: (i) waive any immaterial defect or informality, (ii) reject any or all Proposals or portions thereof and (iii) reissue an RFP.

12.5 Protests. Any Vendor may protest this RFP issued by the City, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the City Procurement Code.

13. Offer. A Proposal is an offer to contract with the City based upon the terms, conditions and specifications contained in this RFP and the Vendor's responsive Proposal, unless any of the terms, conditions, or specifications is modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the Vendor has signed, and the City has approved, a Contractor Agreement between the City and the Vendor in the form acceptable to the City Attorney. A sample Contractor Agreement is included herein.

II. PROPOSAL FORMAT; SCORING

Upon receipt of a Proposal, each submittal will be reviewed for compliance with the Proposal requirements by the Selection Committee. Proposals shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements shall result in a determination that the Proposal is non-responsive. Additionally, the Selection Committee will evaluate and award points to each Proposal based upon the scoring criteria as outlined in this document. Points listed below are the maximum number of points possible for each criteria and not the minimum number that the Selection Committee may award. If necessary, the Selection Committee may conduct oral interviews with the highest ranked Vendors based upon the Proposal submittal scoring.

Section 1: General Information **10 pts**

A. One page cover letter as described in Section I, 2.3.

B. Explain the legal organization of the Vendor. Provide identification information of the Vendor. Include the legal name, address, identification number and legal form of the Vendor (e.g., partnership, corporation, joint venture, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If the Vendor is a wholly owned subsidiary of another company, identify the parent company. Provide the name, address and telephone number of the person to contact concerning the Proposal.

C. Identify the location of the Vendor's principal office and the local work office, if different.

D. Provide a general description of the Vendor that is proposing to provide the Services, including years in business.

E. Identify any contract or subcontract held by the Vendor or officers of the Vendor that have been terminated within the last five (5) years. Briefly describe the circumstances and the outcome.

F. Identify any claims arising from a contract which resulted in litigation or arbitration within the last five (5) years. Briefly describe the circumstances and the outcome.

G. Vendor Information Form (may be attached as separate appendix).

Section 2: Experience and Qualifications of the Vendor 25 pts

A. Provide a detailed description of the Vendor's experience in providing similar services to municipalities or other entities of a similar size to the City, specifically relating experience with respect to conducting sports or recreational programs.

B. Provide a list of <u>at least three (3)</u> organizations of a similar size or similar operation to the City in which work has been performed. This list shall include, at a minimum, the following:

(i) Name of company or organization.
(ii) Contact name.
(iii) Contract address, telephone number and e-mail address.
(iv) Type of services provided.

Note: The above information must be current, as this will be used to verify references. Inability of the City to verify references shall result in the Proposal being considered non-responsive.

Section 3: Key Positions 25 pts

A. Identify each key personnel member that will render services to the City including title and relevant experience required, including the proposed Program Manager.

B. Indicate the roles and responsibilities of each key position. Include senior members of the Vendor only from the perspective of what their role will be in providing services to the City.

C. If a subcontractor will be used for all work of a certain type, include information on this subcontractor. A detailed plan for providing supervision must be included.

D. Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this project. Résumés should be attached together as a single appendix at the end of the Proposal and will not count toward the Proposal page limit.

Section 4: Program Description / Project Approach 30 pts

A. Describe the Vendor's approach to performing the required Services in the Scope of Work described in the Contractor Agreement in Exhibit C, and its approach to contract management, including its perspective and experience on partnering, customer service, quality control, scheduling and staff.

B. Describe any alternate approaches if it is believed that such an approach would best suit the needs of the City. Include rationale for alternate approaches, and indicate how the Vendor will ensure that all efforts are coordinated with the City's general representation.

Section 5: Pricing 10 pts

Vendor shall submit the same number of copies of the Fee Proposal as described in Section I, 2.6 in a separate, sealed envelope enclosed with the Vendor's Proposal with the signature of the representative of the Vendor who is authorized to make such an offer. The Fee Proposal must be provided in the format attached as Exhibit D of the Contractor Agreement.

Total Possible Points for Proposal: 100

III. ORAL INTERVIEWS; SCORING

In the event that a Vendor cannot be selected based solely on the Proposals submitted, up to three Vendors may be selected for oral interviews. The selected Vendors will be invited to participate in discussions with the Selection Committee on the date indicated on the cover page of this RFP and awarded points based upon the criteria as outlined below. Vendors may be given additional information for these oral interviews. These discussions will relate less to the past experience and qualifications already detailed in the Proposals and relate more to identification of the Vendor's program approach and to an appraisal of the people who would be directly involved in this Services for this RFP.

Oral Interview

10	General Information
25	Experience and Qualifications of the Vendor
20	Key Positions
45	Proposed Services Provided
100	**Total Possible Points for Oral Interview**

IV. VENDOR INFORMATION FORM

By submitting a Proposal, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Contractor Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

VENDOR SUBMITTING PROPOSAL	FEDERAL TAX ID NUMBER
PRINTED NAME AND TITLE	AUTHORIZED SIGNATURE
ADDRESS	TELEPHONE FAX #
CITY STATE ZIP	DATE
WEB SITE: _____	EMAIL ADDRESS: _____

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

_____ Small Business Enterprise (SBE)
_____ Minority Business Enterprise (MBE)
_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise?

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

SAMPLE CONTRACTOR AGREEMENT BETWEEN THE CITY OF AVONDALE AND

_____

THIS CONTRACTOR AGREEMENT (this "Agreement") is made as of _____ _____, 2010, between the City of Avondale, an Arizona municipal corporation (the "City") and _____, a(n) _____ (the "Contractor").

RECITALS

A. The City issued a Request for Proposals "Request for Proposals for Cooperative Sports and Recreational Activity Programming (PR 10-029.2)" (the "RFP"), attached hereto as Exhibit A and incorporated herein by reference, seeking proposals from vendors for cooperative sports and recreational programming services at one or more City park facilities (collectively, the "Parks").

B. The Contractor submitted a proposal in response to the RFP (the "Proposal"), attached hereto as Exhibit B and incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for cooperative sports and recreational programming services at the City's Parks (the "Services" or the "Programs").

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 City and the Contractor 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 April 19, 2011 (the "Initial Term"), unless terminated as otherwise provided herein. This Agreement may be renewed for up to two additional one year terms (each a "Renewal Term") if deemed in the best interests of the City and subject to availability and appropriation of funds for renewal in each subsequent year. Such renewal shall occur upon the City's written notice to the Contractor given not later than 30 days prior to the end of the then - current term. The Initial Term and any Renewal Terms are collectively referred to 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 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 Contractor an amount not to exceed $_____.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 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.

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

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 Agreement. 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 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, 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.

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.

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 Agreement. The City has no obligation to provide tools, equipment or material to Contractor.

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

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 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 Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona 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 Contractor. 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 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 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. Contractor'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 Contractor. Contractor 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. Contractor 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, Contractor 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 Contractor. Contractor 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, 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 Agreement, 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 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 Contractor'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 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 Agreement shall be identified by referencing the RFP number and title or this Agreement. A $25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP 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 RFP number and title or 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) Contractor'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 Contractor 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. 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 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. Contractor shall maintain Business Automobile Liability insurance with a limit of $1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor'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 Contractor engages in any professional services or work adjunct or residual to performing the work under this Agreement, 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.

d. 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 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 change without 30 days' prior written notice to the City.

12. 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 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 Contractor of written notice by the City. Upon termination for convenience, Contractor 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 Contractor 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 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.

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 Contractor, 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 Contractor or any agent or representative of the Contractor 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 Contractor an amount equal to 150% of the gratuity.

13.6 Agreement Subject to Appropriation. 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 Contractor 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 Contractor shall relieved of any subsequent obligation under this Agreement.

14. Miscellaneous.

14.1 Independent Contractor. The Contractor 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. 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 Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 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 Agreement.

14.2 Laws and Regulations. The Contractor 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 Contractor 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 Contractor.

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 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 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 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 Agreement by Contractor.

14.9 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 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 Contractor 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 Contractor any amounts Contractor 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 Contractor any amounts Contractor 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, (c) given to a recognized and reputable overnight delivery service, to the address set forth below or (d) 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.
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: (602) 340-1538
Attn: Andrew J. McGuire, Esq.

If to Contractor: _____
_____
_____
Facsimile:_____
Attn:_____

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, (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, or (d) 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.

14.15 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 Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. 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 Agreement.

14.16 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 subsection 14.17 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 subsection 14.17 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.

14.17 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.

14.18 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 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 RFP and the Contractor's Proposal, 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.

IN WITNESS WHEREOF, the parties hereto have executed this instrument 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

"**Contractor**"

_____,
a(n) _____

By:_____

Name:_____

Its:_____

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 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:

_____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2010, by _____ as _____ of _____ _____, a(n) _____, on behalf of the corporation.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

EXHIBIT A
TO
CONTRACTOR AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND

_____

[RFP]

See following pages.

EXHIBIT B
TO
CONTRACTOR AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND

_____

[Contractor's Proposal]

See following pages.

EXHIBIT C
TO
CONTRACTOR AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND

_____

[Scope of Work]

See following pages.

SCOPE OF WORK

Note: The City reserves the right to modify the final scope of work for the resulting Contractor Agreement to specifically address the Contractor's Program.

1. Introduction. The Contractor, in cooperation with the City, will develop and operate sports and recreational activity programs (the "Programs" or "Services"), as more particularly described herein. The Contractor shall provide high quality instruction, personnel and equipment (utilizing City facilities) to afford the City's residents a wide variety of sports and recreational programs targeting both adult and youth activities, including, but not limited to, the following:

a.	Soccer Leagues	f.	Kickball
b.	Football (Flag and Tackle)	g.	Baseball
c.	Basketball	h.	Softball
d.	Volleyball	i.	Rugby
e.	Golf	j.	Adaptive Sports

The City intends that the Program(s) shall be conducted at one or more of the following facilities:

Facility	Address	Amenities
Friendship Park	12325 West McDowell Road	Multi-Use Fields, Youth Baseball Fields, Football Fields
Festival Fields	101 East Lower Buckeye Road	Multi-Use Fields, Softball Fields
Donnie Hale Park	10857 West Pima Street	Softball Fields
Las Ligas Park	12421 West Lower Buckeye Road	Softball Fields

2. Contractor Responsibilities.

2.1 Administrative Duties. The Contractor shall:

a. Obtain all necessary licenses, permits and certifications, where applicable, from the appropriate City, State or County departments and/or the appropriate sports or recreational activity licensing, certification or sanctioning authority.

b. Fully comply with all laws, ordinances, rules and regulations of the United States, State of Arizona, County of Maricopa and the City, including regulations specifically related to the Services.

c. Recruit, hire, supervise, evaluate and financially compensate qualified adult staff to conduct the Program(s).

d. Ensure that at least one (1) staff member is trained and certified in CPR and First Aid and shall be on site during any Program activity.

e. Prepare and submit an Emergency Contact Procedure to the Contract Administrator prior to the first Program activity.

f. Maintain and submit auditable records concerning Program attendance, participant evaluations of Programs and accounting records sufficient for the City of its duly authorized agents to determine the nature and amount of income from the Services.

g. Submit invoices to the City for payment within thirty (30) days after Services have been rendered and provide a copy of the Program rosters with each invoice. Invoices shall include, at a minimum, purchase order number, activity number, section number, description, total enrolled, price for the Program, and total due to Contractor minus the percentage due to City pursuant to the Fee Proposal.

h. Submit to the City's Contract Administrator, or authorized designee, written descriptions of proposed Programs for the appropriate quarter by the dates specified by the Contract Administrator, as necessary for advertisement in the City's publications. The descriptions shall contain the proposed dates and times of the Program(s), a general description of the curriculum, cost of the Program(s), any special information that the participant must know, and the proposed location of the Program. (The City may modify a Program's description as necessary to accommodate other contractors or Programs with the same Program title.)

i. Network with the community and promote the approved Programs. Any flyers advertising City Programs must be approved by the Contract Administrator, or designee, prior to distribution. Any costs for such additional promotion and advertising shall be the sole responsibility of the Contractor and shall not be eligible for reimbursement by the City.

j. Obtain prior approval, in writing, from the City before changing the date, time or location of a Program activity.

k. Contact Program participants by telephone in the event of Program cancellations or schedule changes as necessary and in consultation with the City.

l. Maintain a flexible schedule that accommodates daily Park hours and special events. Park hours and current schedule of special events shall be discussed at the Pre-Submittal Conference on the date listed on the cover page of this RFP.

2.2 Programming. The Contractor shall:

a. Provide participants with safe, well-organized, instruction in a manner designed to provide the opportunity to develop the skills and/or maintain a proficiency in the Program(s).

b. Furnish, at its own expense, all staffing, water, supplies, equipment and materials necessary to conduct the Program and all related administrative functions thereto. Contractor shall not utilize any material or supplies or conduct any Program or activity which the City determines unsuitable for the purpose intended, or offensive or harmful to the City, its employees or patrons. If any items/services are required of the City, the Contractor shall clearly identify those items/services in its Proposal. In instances where additional equipment (i.e., porta-john, tents, etc.) are needed, fees will be assessed for use of these items. Such fees shall be considered program costs and the dollar amount will be deducted on the corresponding invoice.

c. Identify minimum and maximum enrollment levels for Program(s). The Contractor may not reduce the minimum number of participant spaces available with respect to the Program(s) offered without written permission from the City. The City, upon written request from the Contractor, may agree to reduce the number of participant spaces, if given adequate notice in advance of marketing the Program. The Contractor may increase the maximum number of spaces available at any time with the City's approval.

d. Participate, from time to time, in special events which may require additional Services to be provided by the Contractor(s). The number of annual special events will be determined by the City. This obligation does not guarantee the Contractor exclusivity at such events.

e. Provide a Program Manager who shall be responsible for the performance of the Agreement and remain the Contractor's contact person. If the Program Manager leaves during the term of this Agreement, then the Contractor will notify the City's Contract Administrator immediately. The Program Manager shall establish a routine for communications with the Contract Administrator or designee to provide a prompt and timely response to any concerns or problems that may arise. The time and frequency of direct meetings between the Program Manager and Contract Administrator or designee will be coordinated by the Program Manager and Contract Administrator or designee. The Program Manager shall contact the contract Administrator or designee to review overall performance, receive special instructions regarding special events, or discuss other pertinent items regarding the Agreement and the Contractor's performance.

f. Forfeit the Program(s) if the Contractor does not provide Services for two (2) consecutive scheduled days. Consistent "no-shows" or cancellations of the Contractor's Program, as documented by the City, shall cause the City to determine whether to find the Contractor in default of the Agreement and award the Agreement to another qualified contractor.

g. Conduct the operation of the Program in a manner that prevents damage to City property. In the event damage occurs to City's property or any adjacent property by reason of any Contractor's Services performed under this Agreement, the Contractor shall replace or repair the same at no cost to the City. If the City repairs or replaces the Contractor's damage, the cost of such repair or replacement shall be charged to the Contractor.

2.3 Personnel. The Contractor shall:

a. Provide adequate, experienced, adult instructional staff trained in the proper methods and techniques in order to properly and satisfactorily perform the Services. All members of the Contractor's instructional staff who will be instructing, facilitating or operating one or more of the programs must be eighteen (18) years of age or older. If a staff member under the age of eighteen (18) is instructing, facilitating or operating one or more Program sessions, then he/she must be accompanied by an adult member for the duration of the session. At least one (1) staff member trained and certified in CPR and First Aid and shall be on site during any Program activity.

b. Provide trustworthy, reliable employees and make a good faith effort to retain the same employees on the same schedule in the same area for as long as possible. The Contractor shall notify the Contract Administrator or designee prior to the change in staffing if possible or as quickly as possible thereafter. In addition, Contractor's staff members are required to: (i) read, write, speak and understand the English language, (ii) have the necessary public relations skills to deal with employees and customers in a professional, courteous, businesslike manner and (iii) be legally authorized to work in the State of Arizona.

c. All Contractors or employees assigned to the provide Services shall not have been convicted of a felony or a crime involving moral turpitude in the last ten (10) years. All Contractors and their employees shall submit to comprehensive background checks as deemed necessary by the City.

d. The Contractor's employees shall be neat and clean in appearance and shall wear a uniform or other identification that clearly identifies them as an employee of the Contractor.

2.4 Prohibited Noises. The Program(s) are to be conducted in public parks. The following distractions and annoyances are unacceptable and any occurrences shall result in termination of the Agreement:

a. Creation of unreasonably loud, disturbing and unnecessary noises.

b. Noises of such character, intensity or duration as to be detrimental to life and health of any individual or in disturbance of their public peace and welfare.

c. The sounding or blowing of any horn or signaling devices.

2.5 Security.

a. Keys to various areas of the Parks shall be made available to the Contractor. All costs incurred by the City because of lost keys will be billed to the Contractor.

b. The Contractor shall ensure that only its properly identified employees listed with the Contract Administrator or designee are permitted on the premises of

the Parks during the performance of the Contractor's duties. The Contractor will be held strictly liable for any damage or breach of security caused by its employees.

3. City Responsibilities.

3.1 Administrative Duties. The City shall:

a. Identify a Contract Administrator at the time of the Contractor's selection. The Contract Administrator will submit in writing to the Contractor the names of City personnel that will have authority to make changes or additions to the Agreement.

b. Determine and schedule the time and frequency of direct meeting between the Contract Administrator or designee and the Contractor's Program Manager.

c. Coordinate and perform the registration of all Program participants, the collection of fees and the processing of refunds. All fees shall be payable to the City. The City will return to the Contractor the agreed-upon percentage from the registration fees collected after the Program is complete.

d. Advertize through the normal City advertising mediums including, but not limited to, RAVE Magazine, City website, flyers and other promotional materials.

e. Cancel Programs at least seven days prior to the first Program meeting date. Cancellations shall be at the discretion of the City staff.

3.2 Programming. The City shall:

a. Assist in planning and development of the Programs. Staff is knowledgeable and will make key suggestions regarding factors such as recommended age of participants, days and times of operation, number and length of sessions, locations, course content and pricing. The City reserves the right to negotiate all of these factors with the Contractor.

b. Maintain City facilities and ensure proper functioning of all City equipment and resources as applicable.

c. Prohibit other contractors from obstructing Programs, except when the City sponsors a special City event or similar event.

d. Schedule inspections with the Contractor's Project Manager. Quality service and strict adherence to the Agreement will be expected from the Contractor.

3.3 Compensation.

a. The Program(s) shall be supported by fees charged and collected by the City from persons participating in the Program. The City shall retain a set percentage of all fees collected for the Services provided, such percentage shall not be less than the following:

Recreation Centers/Parks: 20%
Senior Programs: 15%

b. The fees initially charged to the Program participants are to be set forth in the Fee Proposal, attached as Exhibit D.

c. The City will return to the Contractor the agreed-upon percentage from the registration fees collected after the Program is complete.

EXHIBIT D
TO
CONTRACTOR AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND

_____

[Fee Proposal]

See following page(s).

FEE PROPOSAL

Activity Number	Description	Total Enrolled	Unit Price	Total

Subtotal	$
Less _____ % to City	$
Total Due	$

EXHIBIT B
TO
CONTRACTOR AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE NEXT LEVEL BASKETBALL CLUB

[Proposal]

See following pages.

March 1, 2010

City of Avondale
11465 W. Civic Center Drive
Avondale, AZ 85323
Solicitation Number PR 10-029

Dear City of Avondale,

4Davis' is a Limited Liability Corporation doing business as Next Level Basketball. We are a family owned business that is committed to providing services that promote the physical and emotional development of up and coming youth. Our services include:

- Individual and team basketball training and development
- Co-ed Basketball Clinics for grades 1-10
- Co-ed Basketball League for grades 1-10

4Davis' LLC dba Next Level Basketball is based on a culture of:
- Christian values
- Hard work, commitment to home, school and sports
- Respect for self and others
- Teamwork (on both the teams and within the community)

Next Level Basketball's goal is to service Avondale and the surrounding communities by providing a positive outlet for kids to socialize, exercise, and develop positive self-esteem. Our experience in mentoring and working with young kids along with managing businesses will aid us in establishing a service conducive to the needs of our community. Rick McGee has over 20 years experience in developing basketball programs, training, coaching, and mentoring kids. He is familiar with group development and one-on-one interactions. He provides them with a strong foundation for high school, college, and life. He has been directly responsible for securing over 25 college scholarships for high school athletes. In addition, he has helped to build various programs by working with several coaches, clubs, and local organizations.

Our principle office is located at 17374 W. Adams Street, Goodyear, AZ 85338. We have been in business for seven years and registered with Arizona Corporation Commission since November 2, 2006 under the EIN 20030426. We have not had any contract or subcontracts terminated within the last five years. We have not had any claims or litigations/arbitration within the last five years.

We thank you for taking time to review our proposal and look forward to discussing this opportunity in further detail in the near future.

4Davis' LLC dba Next Level Basketball
#20030426
17374 W. Adams St.
Goodyear, AZ 85338
480.206.3349
richard@4davis.com
Best Regards,

Richard G. McGee

Richard G. McGee, Coordinator/Director

SECTION 1: General Information

A. Please see attached A. Cover letter

B. Explain the legal organization of the Vendor

4Davis' is a Limited Liability Corporation dba as Next Level Basketball.

Contact information: 4Davis' LLC dba Next Level Basketball

EIN:	#20030426
Contact:	Richard McGee, Director
Legal Address:	17374 W. Adams St. Goodyear, AZ 85338
Phone:	480.206.3349
Email:	Richard@boyzturn.com

We have 4 staff members which include:

Rick McGee- Director
Yvette Davis-McGee- Operations Management
Donya Davis- Seay- Marketing/Promotions
Vernon Holmes- Trainer

C. Subcontractors

We will not have any subcontractors for this program.

D. General Description:

4Davis' is a Limited Liability Corporation doing business as Next Level Basketball. We are a family owned business that is committed to providing services that promote the physical and emotional development of children between the ages of 5-16 years. Our services include:

- Individual and Team training and development
- Co-ed Basketball Clinics for grades 1-10
- Co-ed Basketball League for grades 1-10

4Davis' LLC dba Next Level Basketball is based on a culture of:

- Christian Values
- Hard work, commitment to home, school and sports
- Respect for self and others
- Teamwork (on both the teams and within the community)

Our goal is to service Avondale and the surrounding communities by providing a positive outlet for children to socialize, exercise, and develop positive self-esteem. Our experience in mentoring and working with young children along with managing businesses will aid in establishing a service conducive to the needs of our community. Rick McGee has over 20 years experience in developing basketball programs, training, coaching, and mentoring children. He is familiar with group development and one-on-one interactions. He provides them with a strong foundation for high school, college, and life. In addition he has helped to build various programs by working with several coaches, clubs, and local organizations.

E. Termination

We have not had any contracts or subcontracts terminated within the last five years.

F. Claims and Litigation

We have not had any claims or litigation/arbitration within the last five years.

G. Vendor information Form

Please see attachment C. Vendor Information Form

SECTION 2: Experience and Qualification of the Vendor

A. Details description of Vendor's experience

4Davis/Next Level Basketball has been in existence for six years. During this time we have partnered with multiple organizations to provide more than 25 basketball tournaments, trained more than 500 students and provided over 25 scholarships. Networked with school districts, Athletic Directors, Coaches, and Principals to secure schools /facilities for clinics, tournaments, practices, training, and games. We have partnered and worked with places such as Moon Valley High School, Isaac Middle School, Verrado Middle School, Phoenix Christian, Glendale High School, North High School, Grand Canyon University, Shadow Mountain, Tessaract Middle School, Thunderbird Adventist Academy, King Ridge Predatory, Wigwam Middle School, Gainey Ranch Country Club in Scottsdale, and Phoenix College, US Airways Arena, Scottsdale YCMA, Litchfield YMCA, Peoria YMCA, and South Mountain YMCA .

B. List of organizations we have served:

From 1993 to 1996 Rick McGee was an integral part in establishing the youth basketball league at the Youngstown, OH; YMCA a city with a population of over 77,000 people. Started out by recruiting 50 kids which grew to over 900 kids in a 4 year period. Through partnership with the local school districts, word of mouth, radio, local sponsorships community centers, and grass roots marketing (door to door); the program grew, drawing families throughout the greater Youngstown area.

Experience and Qualifications of the Vendor-

- **Coordinator:Xstream Development**-Phoenix, AZ
  Vernon Holmes- Director/ Partner (623) 332-2538 Youth Club Basketball Tournaments
  1510 N. LaFresa Dr., Goodyear, AZ 85338
  Vernon.holmes@estreamdevelopment.com
  - Coordinate and facilitate youth basketball tournaments
  - Market and Recruit tri-state club teams
  - Point of Contact for parents, players, coaches, and staff

- **Coordinator: Excel Youth Basketball League**- Phoenix, AZ
  Brian O'Neal- Director (480.297.7932)
  P.O. Box 5061
  Goodyear, AZ 85338
  excelsport@cox.net
  - East and West side youth basketball team
  - Recruit, trained, and develop players
  - 2009 Team to place #1 in the region; #2 in nation at Las Vegas Nationals

- **Coordinator: Southwest Showcase**- Phoenix, AZ
  Ron Coleman-Director (623.764.2639)
  P.O. Box 86245
  Phoenix, AZ 86245
  info@southwestshowcase.com
  - Partnership to bring in club teams from AZ, CA, NV, UT, and NM for camps on a quarterly basis.
  - Assist in marketing event

- **Part-Owner of Triple Threat Basketball Scouting Service**; Youngstown, OH
  Brod Muse- Part Owner of Triple Threat Basketball Scouting Service;
  Youngstown, OH (740) 215-0406
  6476 Fox Hill Dr.
  Canal Winechester, OH 43110
  bm100@yahoo.com
  - Coordinated and facilitated Tri-State Basketball Show Cases for High School players.
  - Point of contact for parents, coaches, players, and staff
  - Liaison for high school players and college recruiters
  - Executed marketing and publicized events

- **Coordinator: YMCA Youth Basketball Coordinator**; Youngstown, OH
  Chester Leone-Director (330.506-4986)
  144 Wilson Ave.
  Struthers, OH 44504
  No email address
  - Marketing (word of mouth, radio, grass roots-door to door)
  - Program Coordinator
  - Oversaw program execution

- **Asst. Basketball Coach: Kennedy Catholic High School**, Youngstown, OH
  Tim Loomis- Head Coach (724) 456-6344
  5 Tangerwood Dr. ; Greenville, PA 16215
  Timloomis53@hotmail.com
  - National/ International Team recruiter
  - Coached and developed JV boys basketball players
  - Mentor and Coach JV and Varsity players
  - Instrumental in obtaining college scholarships for over 25 students

- **Asst. Basketball Coach: The Rayen High School**, Youngstown, OH
  Chester Leone- Athletic Director (330) 506-4986
  144 Wilson Ave.; Struthers, OH 44504
    - National /International Team recruiter
    - Coach and developed JV/ Varsity boys basketball teams
    - Instrumental in obtaining college scholarships for students

SECTION 3: Key Positions

A. Key positions

	Key Personnel	Title	Experience
1	Richard McGee	Director	• Start up of YMCA basketball program in Youngstown, OH • Director of Triple Threat Basketball Showcase • High School Basketball Coach
2	Yvette Davis	Operations Management	• District Sales Manager • Regional Bank Manager • Managing Partner of LLC
3	Donya Davis-Seay-	Marketing and Promotions	• Managing Partner of LLC • Coordinate production of t-shirt line. • Coordinated advertising and marketing for trade publications
4	Vernon Holmes	Trainer	• Director of Xstream Development Training • Helped over 50 people obtain scholarships for financial aid. • Has mentored over 100 high school age students.

B. Roles

Key Personnel	Roles and Responsibilities
Richard McGee	• Manage and oversee programs • Ensures equipment needs are met • Individual/Team Trainer
Yvette Davis	• Liaison with the City of Avondale to ensure all operational needs are met to include: staffing, scheduling, and financial responsibility.
Donya Davis- Seay-	• Liaison with the city of Avondale on marketing/promotions • Work with Director on soliciting and promoting sponsors • Develop and coordinate team t-shirts and medals.
Vernon Holmes	• Individual Training

C. Subcontracted

We will not be using any subcontractors

D. Resume and evidence of certifications

Please see attachment B. Resumes

SECTION 4: Program Description/Project Approach

A. 4Davis/Next Level Basketball LLC, will provide a multi faceted approach to basket ball development for Avondale clients. This will include: One-on-One Training, Clinics/Camps and Youth Recreational Basketball Leagues. Additional components of the program include impeccable operations and management that facilitates excellent customer service both with external customers and internal partnerships; monitored quality control to include scheduling and background checks for all staff members. For purposes of the request for proposal we have provided Exhibit C as an embedded document with following is matrix of our program highlights:

	One-On-One Team Training	**Clinics and Camps**	**Youth Recreational Basketball League**
Description	For those who are ready to take their game to the next level		
Key Elements	*Basic basketball fundamentals Advanced basketball skills *Team training- 1x monthly Individual training 2x monthly *Sign up via Avondale website or Next Level *Basketball Website Implement marketing strategies	*Sign up via Avondale website or Next Level Basketball website *Implement marketing strategies (see below) *Three times a year (Spring, Summer, and Fall) *Five hours on Saturday *Program minimum 40-60 kids *Ages 8-16 years old *Workshop on basics *Triple Threat (dribble, pass, and shoot) *Defense*Box out/ Rebound *Guest Speakers	League *Spring, Summer, Fall, and Winter leagues *Six week sessions *Saturdays from 8am- 5pm *Minimum of four teams per age group *Minimum of ten kids per team *Registration costs $45; late registration $55 * Play times *Grade school divisions * All participants will receive a tee-shirt and medal for participation *Coach and parent meetings to review: playbook, rules, and code of conduct *Set up scheduling- quickscores.com
Needs			*2 Volunteer Coaches per team Referees- Outsource $20 hr (grades 7th-10th) *Referees- (16 yrs. or older) for grades 1st -6th @ $5 per game *Time keepers- $5 hr. (16 yrs. or older) *Score Keeper $5 hr. (16 yrs. or older) *Site Supervisor- Director *Concessions- Volunteers (16 yrs. or older) *Custodians- Outsource

Operations and Management

Marketing

- Schools- Partnership with City
- Websites
  - City of Avondale
  - Next Level Basketball
  - West Valley View
  - NLB.com
  - Craig's list
  - Fox.com
  - Extreme Development.com
  - BoyzTurn.com
  - Excel Youth League.com
  - Southwest Showcase.com
  - ABL.com
  - Black Pages.com
- Flyers handout during clinic/basketball camps throughout city
- Word of Mouth/Network with local coaches
- Referrals
- Grass Root Program- Door-to-door
- Local businesses
- Local Churches
- Sponsors
- Advertising through community papers
  - Local community papers

SCOPE OF WORK

Note: The City reserves the right to modify the final scope of work for the resulting Contractor Agreement to specifically address the Contractor's Program.

1. Introduction. The Contractor, in cooperation with the City, will develop and operate sports and recreational activity programs (the "Programs" or "Services"), as more particularly described herein. The Contractor shall provide high quality instruction, personnel and equipment (utilizing City facilities) to afford the City's residents a wide variety of sports and recreational programs targeting both adult and youth activities, including, but not limited to, the following:

a. Basketball

The City intends that the Program(s) shall be conducted at one or more of the following facilities:

Facility	Address	Amenities
Friendship Park	**12325 West McDowell Road**	**Basketball Courts**
Festival Fields	**101 East Lower Buckeye Road**	**Basketball Courts**
Donnie Hale Park	**10857 West Pima Street**	**Basketball Courts**
Las Ligas Park	**12421 West Lower Buckeye Road**	**Basketball Courts**

Additionally, 4Davis/Next Level Basketball is requesting that indoor facilities be made available to accommodate our program. Specifically any shared use facilities that the City has access to.

2. Contractor Responsibilities.

2.1 Administrative Duties. The Contractor shall:

a. Obtain all necessary licenses, permits and certifications, where applicable, from the appropriate City, State or County departments and/or the appropriate sports or recreational activity licensing, certification or sanctioning authority.

b. Fully comply with all laws, ordinances, rules and regulations of the United States, State of Arizona, County of Maricopa and the City, including regulations specifically related to the Services.

c. Recruit, hire, supervise, evaluate and financially compensate qualified adult staff to conduct the Program(s).

d. Ensure that at least one (1) staff member is trained and certified in CPR and First Aid and shall be on site during any Program activity.

e. Prepare and submit an Emergency Contact Procedure to the Contract Administrator prior to the first Program activity.

f. Maintain and submit auditable records concerning Program attendance, participant evaluations of Programs and accounting records sufficient for the City of its duly authorized agents to determine the nature and amount of income from the Services.

g. Submit invoices to the City for payment within thirty (30) days after Services have been rendered and provide a copy of the Program rosters with each invoice. Invoices shall include, at a minimum, purchase order number, activity number, section number, description, total enrolled, price for the Program, and total due to Contractor minus the percentage due to City pursuant to the Fee Proposal.

h. Submit to the City's Contract Administrator, or authorized designee, written descriptions of proposed Programs for the appropriate quarter by the dates specified by the Contract Administrator, as necessary for advertisement in the City's publications. The descriptions shall contain the proposed dates and times of the Program(s), a general description of the curriculum, cost of the Program(s), any special information that the participant must know, and the proposed location of the Program. (The City may modify a Program's description as necessary to accommodate other contractors or Programs with the same Program title.)

i. Network with the community and promote the approved Programs. Any flyers advertising City Programs must be approved by the Contract Administrator, or designee, prior to distribution. Any costs for such additional promotion and advertising shall be the sole responsibility of the Contractor and shall not be eligible for reimbursement by the City.

j. Obtain prior approval, in writing, from the City before changing the date, time or location of a Program activity.

k. Contact Program participants by telephone in the event of Program cancellations or schedule changes as necessary and in consultation with the City.

l. Maintain a flexible schedule that accommodates daily Park hours and special events. Park hours and current schedule of special events shall be discussed at thePre-Submittal Conference on the date listed on the cover page of this RFP.

2.2 Programming. The Contractor shall:

a. Provide participants with safe, well-organized, instruction in a manner designed to provide the opportunity to develop the skills and/or maintain a proficiency in the Program(s).

b. Furnish, at its own expense, all staffing, water, supplies, equipment and materials necessary to conduct the Program and all related administrative functions thereto. Contractor shall not utilize any material or supplies or conduct any Program or activity which the City determines unsuitable for the purpose intended, or offensive or harmful to the City, its employees or patrons. If any items/services are required of the City, the Contractor shall clearly identify those items/services in its Proposal. In instances where additional equipment (i.e., port-a-john, tents, etc.) are needed, fees will be assessed for use of these items. Such fees shall be considered program costs and the dollar amount will be deducted on the corresponding invoice.

c. Identify minimum and maximum enrollment levels for Program(s). The Contractor may not reduce the minimum number of participant spaces available with respect to the Program(s) offered without written permission from the City. The City, upon written request from the Contractor, may agree to reduce the number of participant spaces, if given adequate notice in advance of marketing the Program. The Contractor may increase the maximum number of spaces available at any time with the City's approval.

d. Participate, from time to time, in special events which may require additional services to be provided by the Contractor(s). The number of annual special events will be determined by the City. This obligation does not guarantee the Contractor exclusivity at such events.

e. Provide a Program Manager who shall be responsible for the performance of the Agreement and remain the Contractor's contact person. If the Program Manager

leaves during the term of this Agreement, then the Contractor will notify the City's Contract Administrator immediately. The Program Manager shall establish a routine for communications with the Contract Administrator or designee to provide a prompt and timely response to any concerns or problems that may arise. The time and frequency of direct meetings between the Program Manager and Contract Administrator or designee will be coordinated by the Program Manager and Contract Administrator or designee. The Program Manager shall contact the contract Administrator or designee to review overall performance, receive special instructions regarding special events, or discuss other pertinent items regarding the Agreement and the Contractor's performance.

f. Forfeit the Program(s) if the Contractor does not provide Services for two (2) consecutive scheduled days. Consistent "no-shows" or cancellations of the Contractor's Program, as documented by the City, shall cause the City to determine whether to find the Contractor in default of the Agreement and award the Agreement to another qualified contractor.

g. Conduct the operation of the Program in a manner that prevents damage to City property. In the event damage occurs to City's property or any adjacent property by reason of any Contractor's Services performed under this Agreement, the Contractor shall replace or repair the same at no cost to the City. If the City repairs or replaces the Contractor's damage, the cost of such repair or replacement shall be charged to the Contractor.

2.3 Personnel. The Contractor shall:

a. Provide adequate, experienced, adult instructional staff trained in the proper methods and techniques in order to properly and satisfactorily perform the Services. All members of the Contractor's instructional staff who will be instructing, facilitating or operating one or more of the programs must be eighteen (18) years of age or older. If a staff member under the age of eighteen (18) is instructing, facilitating or operating one or more Program sessions, then he/she must be accompanied by an adult member for the duration of the session. At least one (1) staff member trained and certified in CPR and First Aid and shall be on site during any Program activity.

b. Provide trustworthy, reliable employees and make a good faith effort to retain the same employees on the same schedule in the same area for as long as possible. The Contractor shall notify the Contract Administrator or designee prior to the change in staffing if possible or as quickly as possible thereafter. In addition, Contractor's staff members are required to: (i) read, write, speak and understand the English language, (ii) have the necessary public relations skills to deal with employees and customers in a professional, courteous,
businesslike manner and (iii) be legally authorized to work in the State of Arizona.

c. All Contractors or employees assigned to the provide Services shall not have been convicted of a felony or a crime involving moral turpitude in the last ten (10) years. All Contractors and their employees shall submit to comprehensive background checks as deemed necessary by the City.

d. The Contractor's employees shall be neat and clean in appearance and shall wear a uniform or other identification that clearly identifies them as an employee of the Contractor.

2.4 Prohibited Noises. The Program(s) are to be conducted in public parks.

The following distractions and annoyances are unacceptable and any occurrences shall result in termination of the Agreement:

a. Creation of unreasonably loud, disturbing and unnecessary noises.

b. Noises of such character, intensity or duration as to be detrimental to life and health of any individual or in disturbance of their public peace and welfare.

c. The sounding or blowing of any horn or signaling devices.

2.5 Security.

a. Keys to various areas of the Parks shall be made available to the Contractor. All costs incurred by the City because of lost keys will be billed to the Contractor.

b. The Contractor shall ensure that only its properly identified employees listed with the Contract Administrator or designee are permitted on the premises of the Parks during the performance of the Contractor's duties. The Contractor will be held strictly liable for any damage or breach of security caused by its employees.

3. City Responsibilities.

3.1 Administrative Duties. The City shall:

a. Identify a Contract Administrator at the time of the Contractor's selection. The Contract Administrator will submit in writing to the Contractor the names of City personnel that will have authority to make changes or additions to the Agreement.

b. Determine and schedule the time and frequency of direct meeting between the Contract Administrator or designee and the Contractor's Program Manager.

c. Coordinate and perform the registration of all Program participants, the collection of fees and the processing of refunds. All fees shall be payable to the City. The City will return to the Contractor the agreed-upon percentage from the registration fees collected after the Program is complete.

d. Advertise through the normal City advertising mediums including, but not limited to, RAVE Magazine, City website, flyers and other promotional materials.

e. Cancel Programs at least seven days prior to the first Program meeting date. Cancellations shall be at the discretion of the City staff.

3.2 Programming. The City shall:

a. Assist in planning and development of the Programs. Staff is knowledgeable and will make key suggestions regarding factors such as recommended age of participants, days and times of operation, number and length of sessions, locations, course content and pricing. The City reserves the right to negotiate all of these factors with the Contractor.

b. Maintain City facilities and ensure proper functioning of all City equipment and resources as applicable.

c. Prohibit other contractors from obstructing Programs, except when the City sponsors a special City event or similar event.

d. Schedule inspections with the Contractor's Project Manager. Quality service and strict adherence to the Agreement will be expected from the Contractor.

3.3 Compensation.

a. The Program(s) shall be supported by fees charged and collected

SECTION 5 Pricing
Please see Attachment E – Exhibit D (separate envelope)

by the City from persons participating in the Program. The City shall retain a set percentage of all fees collected for the Services provided; such percentage shall not be less than the following:

Recreation Centers/Parks: 20%

Senior Programs: 15%

b. The fees initially charged to the Program participants are to be set forth in the Fee Proposal, attached as Exhibit D.

c. The City will return to the Contractor the agreed-upon percentage from the registration fees collected after the Program is complete.

B. <u>Alternative Approaches</u>

We do not have any alternative approaches appropriate for this program at this time.

IV. VENDOR INFORMATION FORM

By submitting a Proposal, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Contractor Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

4 Davis' LLC dba Next Level Basketball
VENDOR SUBMITTING PROPOSAL

20030426
FEDERAL TAX ID NUMBER

Richard McGee - Director
PRINTED NAME AND TITLE

Richard G McGee
AUTHORIZED SIGNATURE

17374 W. Adams St.
ADDRESS

480-206-3349 / 623.533.5865
TELEPHONE / FAX #

Goodyear, AZ 85338
CITY STATE ZIP

March 2, 2010
DATE

WEB SITE: www.nlb.vpweb.com

EMAIL ADDRESS: richard@4davis.com

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

- ✓ Small Business Enterprise (SBE)
- ✓ Minority Business Enterprise (MBE)
- ✓ Disadvantaged Business Enterprise (DBE)
- ✓ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise? Yes

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

Grand Canyon Minority Supplier Development Council - Certified 7/31/2007 to 7/31/2008

STATE OF ARIZONA

Office of the

CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Ernest G. Johnson, Executive Director of the Arizona Corporation Commission, do hereby certify that

******4DAVIS' LLC******

a domestic limited liability company organized under the laws of the State of Arizona, did organize on the 2nd day of November 2006.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said limited liability company is not administratively dissolved for failure to comply with the provisions of A.R.S. section 29-601 et seq., the Arizona Limited Liability Company Act; and that the said limited liability company has not filed Articles of Termination as of the date of this certificate.

This certificate relates only to the legal existence of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 26th Day of February, 2010, A. D.

Executive Director

By: 441203

GRAND CANYON MINORITY SUPPLIER DEVELOPMENT COUNCIL

Grand Canyon Minority Supplier Development Council
Affiliated with the National Minority Supplier Development Council

This Certificate Acknowledges That

NMSDC

4 Davis LLC

Qualifies as a Minority Business Enterprise, owned, controlled and managed by United State Citizens and has met the Certification Criteria established by the National Minority Supplier Development Council, Inc. and adopted by the Grand Canyon Minority Supplier Development Council, Inc

Date of Issuance: 07/31/2007 Date of Expiration: 07/31/2008
Certification Number: 0885 NAICS CODE: 424320, 424330, 423920

Ron Williams

Ron Williams President/CEO

Richard G. McGee

17374 W. Adams St.
Goodyear, AZ 85338
(480)206.3349
richard@4davis.com

Objective: To obtain a position where I can utilize my years of experience in coaching, mentoring, and social skills to build up individuals and families within the community.

Work Experience:

Discount Cab Company- October 2009 to present
Phoenix, AZ

- Marketing and Sales Specialist
- Cab Trainer
- Cab Driver

Sanderson Ford- November 2007- August 2009

- Sales, Marketing, and Advertising Agent
- Sales and Leasing Agent
- Assess and identify individual's needs for their lifestyle
- June 2008 Salesman of the month
- Generated sales leads and built rapport with customers
- Grew repeat business through generating sales, established strong relationships, and developed a strong network base.

Avondale Auto Group- December 2006- October 2007

- Team Lead- Responsible for personal sales in addition to partnering with new salesmen to help close floor and internet sales.
- Promoted to the Elite Selling Team in June 2007 as a result of being upfront and honest with customers, peers, and upper management.
- #1 Salesman four months in a row; won multiple incentives
- Won 2nd place price in the first month of employment
- Built strong respective relationships producing repeat business.

Triple Threat Scouting Service- May '04 to June '06
Youngstown, OH

- Self started business created to assist young boys in obtaining college scholarships, financial aid, grants, and other assistance in gaining a higher education.
- Manage, coordinate and market basketball showcase events drawing kids from Cleve, OH; PA, NY, MI, IN, and WV.
- Established and developed relationships with parents and college coaches to build trust and rapport.

Kennedy Catholic High School- October '01- March '06
Hermitage, PA

- Boys assistant basketball coach; three times state championships
- Head JV boys basketball coach; three time state champions
- Recruit, mentor, and develop young boys preparing them for college and the outside world.
- Assisted individuals and parents in obtaining a college education through financial aide and scholarships.

Youngstown Waste Water Department- August '93 -October '06
Youngstown, OH

- Experience in working with pump maintenance
- Train and induct new hires

The Rayen High School- September '96 to October '01

- Boys assistant basketball coach
- City and District championships
- Recruiter, mentor, and develop young boys preparing them for college and t he outside world.
- Assisted individuals and parents in obtaining a college education through financial aide and scholarships.

Volunteer Service:

- Partners with local basketball coaches to help recruit, train, and launch club basketball teams and build programs resulting in multiple championships.
- Facilitate basketball clinics throughout greater Phoenix market.
- Helped establish youth YMCA basketball league
    - Marketing and advertising
    - Recruiting and selection of teams
    - Coordinate staffing needs
    - Establish rules and regulations
    - Conflict Management

Education:

Golden West College- September '77 to June '80
Huntington Beach, CA
Associates Degree- Liberal Arts
The Rayen High School- June '77
High School Diploma

Attachment B

Yvette Davis-McGee

17374 W. Adams St.
Goodyear, AZ 85338
623.221.3497- cell
yvette@4davis.com

Objective:

Professional seeking to obtain a position in multi-unit management with a business seeking a professional with Applicable experience and knowledge in the business Industry.

Experience:

Forever 21- Phoenix, AZ (May '07- present)

- Responsible for managing over $52 M in sales
- Managed, coached, trained, and developed 9 stores
- Ensure each store is staffed and managed to company standards and expectations.
- Ensure each store is operationally sound
- Opened 3 new stores; closed 1

Charter One Bank- Cleveland, OH (May '04- April '06)

- Responsible for managing up to 12 profitable In-Store locations in 3 different markets averaging $145M in volume.
- Managed and coached teams in sales generation activities that drive results and maintain excellent customer service standards.
- Ensure each branch is operationally sound
- Opening/closing branches
- Training and development of direct reports and teams.
- Managed teams through a company acquisition and system conversion.
- Plan, coordinate, and help facilitate statewide team meetings.
- Recruit and retain talent
- Participate in bi-weekly strategic planning meetings
- Build and manage business partner relationships at state, region, and branch levels.

Too Brands, Inc. – Pittsburgh, PA (April "03 – May '04)
District Sales Leader

- Responsible for running a profitable district of 10 stores in 4 different markets at $10M in volume.
- District #1 in company growth
- District #1 in transaction build
- District #1 and #2 in company wide contests
- District top third in overall sales management
- District top third in overall customer loyalty program

- Reduced district shrink by 1.12%
- District associate turnover below company avg.
- Responsible for training and developing 10 direct reports and over 130 associates indirectly.
- Successfully managed and launched the Lead Brand Rep program at region level.

Too Brands, Inc- Columbus, OH (Aug. '01- May'03)
Stores Training Manager

- Responsible for training and development of field personnel (ranging from pt. sales to District Managers; as well as Home Office management).
- Provide, create, and assess training tools for field (all three divisions).
- Responsible for assimilating District Sales Leaders into the business.
- Work in partnership with various home office personnel.
- Increased computer and software skills
- Built relations with various Home Office departments, the field, and joint venture management outside of the company.
- Traveled and worked with Regional Sales Leade3rs on development of target markets and National Sales Meeting presentations.
- Special Projects:
    - New POS roll-out
    - Start up of new divisions (mish-mash; Goldmark)
    - Task Force Leader (Streamlining store operations)

Too Brands, Inc. - Pittsburg, PA (Dec. '98 – Aug. '01)
District Sales Leader

- Responsible for running a profitable district up to 16 stores and $17 M in volume in 4 markets.
- Consistently remained in top third of sales management, P&L, and customer loyalty management programs.
- Received award for second best comp store growth in the company.
- Pioneered the District Sales Leader Mentoring Program
- Won many contests and bonuses including the largest grand prize winnings in the company history.
- Oversaw region in Regional Sales Leader's absence.

Education

Southern Ohio College- Associates Degree Fashion Merchandising
University of North Dakota- General Requirements

Attachment B

DONYA DAVIS-SEAY

15252 W. Cortez Street
Surprise, AZ 85379
623.826.2994
Donya@4Davis.com

OBJECTIVE

To be an effective leader within an organization who is committed to their mission statement, personnel, and customer while increasing sales and operational goals for a healthy work environment.

CAREER SUMMARY

My retail sales, management, and buying experience affords me the leadership and mentoring skills for merchandising, operations, training and developing associates and managers for their next level. Strong organizational, operational, sales, and attention to details are strengths.

PROFESSIONAL EXPERIENCE

Dysart Education Foundation (DEF) – September 2008 to present
Director Member, Surprise, AZ

- Serve as a Director from 2008 through to spring of 2011
- Serve on the scholarship committee to recommend eligible graduating high school students
- Volunteer in activities to raise monies for scholarship funds to enrich education and activities for students, teachers, and the staff of Dysart Unified School District

Kohls Department Store – November 2006 to present
HR Operations Manager, Peoria, AZ

- Responsible for human resources, freight flow, inventory, and customer service. Generated $10.5 million FY09 with sales increase +13.8% to LY
- Recognized as the #2 store within the region for operational excellence for FY2009
- Manage staff of 85-110 throughout the year. FY09 improved associate retention over LY. Exceeded TY goal with -34% improvement
- Through training and development able to promote two part-time associates into key operational supervisory roles in FY09.
- Executive volunteer for A-Team events throughout the year which awards scholarships to organizations that promote the overall enhancement of life for children

4Davis' LLC – October 2003 to present
Partner, Surprise, AZ

- Provide a fun positive attitude clothing line for boys to be empowered and inspired to chase their dreams and have R.I.C.H. (Respect, Integrity, Commitment, Honesty) values
- Merchandise and coordinate production for boys t-shirts sizes 4-7 and 8-20
- Interview, commission, and manage graphic artists and fashion designers to create designs
- Coordinate advertising and marketing efforts for trade publications and customer marketing
- Manage day to day operations of the business

TJ Maxx – January '03 to October '05
Operations Manager, Peoria, AZ

- District Team of the Year for FY04 and 05, Regional Team of the Quarter for 2nd Quarter FY06. District winner LP Shrink Contest 2003 and 2005. Reduced shrink FY04 and FY05
- Silver Dollar Club Member FY05 $1.38 million net profit
- District training store for new back room processing procedures for Store Managers
- Responsible for training new hires and cross training and developing 35+ associates
- Motivate, train, and develop associates to their potential resulting in supervisor promotions
- Managed payroll and expenses to achieve the average rate of pay to plan and decrease attrition each year, surpassing the District

DONYA DAVIS-SEAY

- Increased positive customer service feedback through exceptional customer service, store cleanliness, and merchandise processed quickly to the sales floor

TJ Maxx – August 1999 to December 2002
Store Manager (September 1996 to August 1999, Merchandise/Operations Manager) Grand Forks, ND

- Analyzed business trends to drive sales ending in 1.62% comp sales increase to LY during new mall and new store competitors in the area FY03
- Trained and developed Operations Manager for Store Manager position before transferring to Peoria, AZ
- Achieved Regional Operational Store Award for FY01
- Implemented new motivational program to inspire and promote teamwork among all associates
- Increased positive customer standards throughout store resulting in regional recognition FY03

Harris' – May 1990 to March 1996
Associate Buyer, San Bernardino, CA

- Assisted in managing $5.1 million annually for nine department stores
- Purchased and managed Junior related/woven separates and Better Coordinate Collections
- Purchased and developed import programs based on selling analysis and market trends
- Negotiated gross margin results to determine markdown allowance, RTVs (return to vendor) and price adjustments for future orders
- Planned promotional pricing strategies, merchandised major sales catalogs and other advertisement vehicles
- Daily communication with department managers involving sales events, merchandising, markdowns, transfers, and stock levels

Child Development Center (CDC) – November 1986-1989
Director, RAF Mildenhall, England, UK

- Managed a reinvestment profit of $10K in FY89 through budgeting effective programs, sponsored activities, promotions, and community involvement
- Nominated for the Air Force Meritorious MWR (Morale, Welfare, Recreation) Award for demonstrating leadership in employee team building and developing a positive image and strong community support
- Implemented MWR Volunteer and Recognition programs as well as the CDC Employee of the Quarter Award program
- Developed and interpreted surveys to improve and maintain quality patron service
- Published monthly newsletters and articles in the community paper
- Created the monthly CDC Parent Newsletter with Family Focus

EDUCATION AND TRAINING

University of North Dakota, Grand Forks AFB, ND – 1996 to 1998
General Business classes
Riverside Community College, Riverside, CA – 1992 to 1994
General Business/Retail classes
Harris' Executive Training Program, San Bernardino, - CA 1990
Marketing of MWR Services Workshop, RAF Bentwaters, England, UK - 1988
USAFE Inventory Control Training, RAF Mildenhall, England, UK – 1988
Civilian Supervisor's Course, RAF Mildenhall, England, UK
Lowthian College, Minneapolis, MN – Fashion Merchandising Diploma 1982-1983

References upon request

Attachment B

Vernon B. Holmes

1510 North La Fresa Drive
Goodyear, AZ 85338
(623) 332-2538

OBJECTIVE: To obtain a position in Basketball training and development in which I can utilize my experience, development knowledge and skill to enhance company needs and production.

SUMMARY OF QUALIFICATIONS

- Highly experienced leader and developer, over 20 years experience in Sports training and development.
- Extensive training in, basketball, football and strength training,. Valuable job knowledge and experience working with recreational sports, High School, and College levels Sports and 15 years AAU Basketball as a Head Coach.
- Experienced as a Head and assistant coach for high school and college, experience using various training techniques.
- Team Leader and team player, consistently, motivating , others toward success.

RELEVANT ACCOMPLISHMENTS:

September 1979-1984 The Flyers Semi Pro football
(Tidewater Champion 1980-81). Hampton Va.

May 1988-1996 Pop Football Head Coach.
Phoenix AZ

March 1992 – 1993 YMCA Youth basketball quainter city of Goodyear
Goodyear AZ

October 1994 - 1996 Avondale Middle school Head Basketball Coach.

September 1996 – 1998 Assistant Football Coach Agua Fria High School
4A- Championship Finalist.

January 1998 -1999 Avondale Vibpers Semi Pro General Manager and
Head Coach.

October 2001 -2002 Glendale Community college Assistant Football Coach
(Valley of the Sun Bowl Championship Winner)

September 1999-2004 Millennium High school Boys basketball Varsity Head Coach
(4 Play off and 1 Final 4 appearances)

September 2004-2007 Phoenix College Senior Assistant Coach
(2-NCAA Final 4 appearances)

September 2007-2008 Assistant Basketball Coach Agua Fria High School
(4A- Championship Finalist.)

2006 Present - Established Xstream Development Sport Training Program
Company President Owner.

EDUCATION:

- University of Phoenix, Phoenix Arizona **BSIT**, November, 2008
- Rio Salado Community College, creditable courses Information Technology / Administration.
- Recent Microsoft Training Certificates, Microsoft SQL Server Performance Tuning - January, 2006.
- Microsoft Training Certificates Microsoft ASP Programming, ASP.NET - December, 2005.

Next Level Basketball Fee Proposals
Program: Individual and Team Training

Program Costs:	**$500**
Revenue:	**$2000**
Program Balance:	**$1500**

Activity Number	Description	Total Enrolled	Unit Price	Total
	Gym Rental Fee-Individual	4 wks.	$50 hr.	-$200
	Trainer Fee- Individual	4 wks.	$25 hr.	-$100
	Gym Rental Fee- Team	2 wks.	$50 hr.	-$200
	Trainer Fee- Team (Vendor)	2 wks.	$0	$0
	Equipment Supplied by Next Level	----------	--------	$0
	Individual Training Fee	50	$40	+$2000

Subtotal	**$1500**
Less _20_ % to City	**$300**
Total Due	**$1200**

*Gym rates subject to change due to indoor/outdoor use of gym

**Our goal is to facilitate the individual training at the same time as team training to save costs on Gym rental fees.

Attachment E

Richard S. McDee

EXHIBIT C
TO
CONTRACTOR AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE NEXT LEVEL BASKETBALL CLUB

[Scope of Work]

See following pages.

SCOPE OF WORK

1. Introduction. The Contractor, in cooperation with the City, will develop and operate basketball training, development and recreational programs, as more particularly described herein. The Contractor shall provide high quality instruction, personnel and equipment to afford the City's residents basketball training, basketball development and basketball recreational programs, including but not limited to, seasonal basketball camps, basketball skills clinics and youth basketball leagues.

2. Contractor Responsibilities. The Contractor shall:

2.1 Provide individual and team training and development for co-ed basketball clinics and leagues for grades first through tenth.

2.2 Provide clinics and camps three times a year, in the spring, summer and fall. Clinics and camps will take place for five hours on Saturdays. Clinics and camps shall include workshops on the fundamentals of basketball, including triple threat (dribble, pass, shoot) and defense (box out/rebound).

2.3 Provide youth basketball leagues in the spring, summer, winter and fall. Leagues duration shall be six weeks. Leagues shall take place on Saturdays from 8:00 a.m. to 5:00 p.m.

2.4 Provide participants with safe, well-organized instruction in a manner designed to provide the opportunity to develop the skills and/or maintain a proficiency in the Programs.

2.5 Furnish, at its own expense, all staffing, water, supplies, equipment and materials necessary to conduct the Programs and all related administrative functions thereto. Contractor shall not utilize any material or supplies or conduct any Program or activity which the City determines unsuitable for the purpose intended, or offensive or harmful to the City, City staff or patrons.

2.6 Maintain and submit auditable records concerning Program attendance, participant evaluations of Programs and accounting records sufficient for the City to determine the nature and amount of income from the Services.

CITY COUNCIL REPORT

SUBJECT:
Purchase Agreement - San Diego Police Equipment for ammunition

MEETING DATE:
November 21, 2011

TO: Mayor and Council

FROM: Kevin Kotsur, Chief of Police (623) 333-7201

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a sole source purchase agreement with San Diego Police Supply to purchase police ammunition in an amount not to exceed $15,000 annually and to authorize the Mayor or City Manager and City Clerk to execute the appropriate documents.

BACKGROUND:

In accordance with the Avondale City Code Section 25-23 staff is requesting a waiver to the advertising requirement as the State of Arizona has formerly, by contract award, established and authorized the vendor (San Diego Police Equipment) as a sole source. This sole source contract will establish a one year contract with four successive one year terms to allow the Police Department to purchase $15,000 annually and a total not to exceed the amount of $75,000 for the purchase of Federal brand ammunition over a five year period. Federal Ammunition has developed ammunition specifically for law enforcement use. San Diego Police Supply is the only authorized vendor for this product in the region.

DISCUSSION:

Police agencies are permitted to purchase Federal ammunition from regional vendors at a reduced cost. The regional vendor for Avondale is San Diego Police Equipment.

BUDGETARY IMPACT:

Funds for ammunition are included in the Police Department's approved budget.

RECOMMENDATION:

Staff is requesting that the City Council approve a sole source purchase agreement with San Diego Police Supply to purchase police ammunition in an amount not to exceed $15,000 annually and to authorize the Mayor or City Manager and City Clerk to execute the appropriate documents.

ATTACHMENTS:

Click to download

- Sole Source Justification
- Purchase Agreement

SOLE SOURCE JUSTIFICATION FORM

This form must be provided with all sole source procurement requests. Please provide detailed information on all questions.

Product or service requested: Federal brand ammunition designed for law enforcement purposes

Vendor: San Diego Police Supply (the only authorized vendor in the region serving Avondale Arizona)

1. How was it determined that this commodity or service is a sole source? Provide all documentation relevant to method for sole source determination.

   - Competitive Solicitation Process ___
   - Advertisement of City Need in the City Newspaper of Record ___
   - Formal Request for Information ___
   - Other (Please provide information below describing the method used) _X__

   San Diego Police Supply is the only authorized vendor for these products in our region

2. Why is no other commodity or service suitable to meet your requirements?

   - Not compatible with existing equipment. Please provide additional details.

     San Diego Police Supply is the only authorized vendor for this product in our region

   - Request is for testing purposes. Please describe what this basis for the tests and benefit to the City expected. (Sole source requests for testing purposes do not substantiate a sole source for additional requirements.)

     This ammunition has been in use by the Avondale Police Department for the past ten years and there is no need for testing, it is a proven product

   - Unique knowledge or skills. Please provide specific information that describes why this knowledge or skill is considered unique.

     N/A

- Void's warranty or guarantee. What is the duration of the warranty or guarantee and what terms require approval of this sole source request?

_____
_____
_____

3. Does this request represent a mandate from the state or federal government?
   Yes: __ No: x__

   If yes, please describe the mandate. _____
   _____
   _____

4. What are the consequences of not approving the sole source request?

   The City of Avondale will face a significant increase in the cost of ammunition by not using this vendor who provides this ammunition at a reduced rate to law enforcement agencies

5. What negative consequences will result by formally bidding this requirement?

   The City of Avondale will face a significant increase in the cost of ammunition by not using this vendor who provides this ammunition at a reduced rate to law enforcement agencies

6. What is the estimated cost of this request? It is estimated the amount of purchase will be $15,000 annually

7. How was the cost determined to be fair and reasonable?

   The cost of this ammunition is the best price available to law enforcement only

8. Is this request a one time requirement or is the requirement ongoing into future years?
   One Time: __ Ongoing: X__

   If ongoing, are there a definite number of ongoing years? requesting $15,000 for a five year period totaling $75,000

9. What other costs will be incurred with this request? Please take into consideration annual maintenance, upgrades in future years, and other request-specific factors.

   _____
   _____

10. Was this request budgeted for in the current or next fiscal year's budget?

Current: __ Next X the amount will be requested for the next fiscal year @ $15,000 per year__

11. Will approval of this request increase future budget requests from your department?
Yes: __No: _X_

If yes, what is the estimated amount of the increase? _____

What other methods of fulfilling this requirement have been explored? A comparison to private companies will result in an increase in overall expense to purchase this ammunition

Requesting Employee _____ Date:_____

Department Head Approval Kevin Kotsur Date: Nov. 10, 2011

Finance Department Approval* Loretta Browning LBrowning Date: Nov. 10, 2011 (If over $25,000)

City Manager Approval Charles P. McClure Date:_____

Confirmation; this vendor approved as a Sole Source by the Az State Procurement office.
LBrowning 11/10/2011

PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
SAN DIEGO POLICE EQUIPMENT CO., INC.

THIS PURCHASE AGREEMENT (this "Agreement") is made as of November 7, 2011, between the City of Avondale, an Arizona municipal corporation ("City"), and San Diego Police Equipment Co., Inc., a California corporation (the "Vendor").

RECITALS

A. The City desires to purchase law enforcement ammunition equipment (the "Materials") for use by the City's law enforcement agency.

B. Pursuant to the Avondale City Code, Section 25-23, the City has determined that the Vendor is the reasonable and practical source to provide the Materials and it would be impractical to solicit bids through the formal bid solicitation procedures.

C. The City solicited a proposal for the purchase of the Materials and Vendor submitted a quotation proposal (the "Quotation"), a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference. The City desires to accept the Quotation and enter into an Agreement with the Vendor.

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 November 6, 2012 (the "Initial Term"). This Agreement may be renewed for up to four successive one-year terms (each a "Renewal Term") if the following conditions are met: (i) at least thirty 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 (ii) the City approves the additional one-year term in writing, 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 will cause the Agreement to terminate at the end of the then-current term of this Agreement.

2. Purchase of Materials. This is an indefinite quantity and indefinite delivery Agreement for Materials. For purchase(s) determined by the City to be appropriate for this Agreement, the Vendor shall provide the Materials 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 "Materials Order"). Each Materials Order approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and (ii) be attached hereto as Exhibit B, and incorporated herein by reference. Materials Order(s) submitted without referencing this Agreement will be subject to rejection. By signing this Agreement, Vendor acknowledges and agrees that Materials Order(s) containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement, other than City's project-specific quantities, configurations or delivery dates, are hereby expressly declared void and shall be of no force and effect.

3. Compensation. For the Initial Term, the City shall pay Vendor, for items included in each respective Materials Order, the amounts calculated by multiplying the total units ordered by the City times the unit prices set forth in the Quotation. The annual aggregate amount for the Initial Term, including all charges for freight and taxes, shall not exceed $15,000.00 for the Materials. Thereafter, for each subsequent Renewal Term, if any, the City shall pay the Vendor an annual aggregate amount not to exceed $15,000.00 for the Materials. The maximum aggregate amount for this Agreement shall not exceed $75,000.00 for the Initial Term and the Renewal Term(s).

4. Freight. Unless otherwise agreed to in writing, signed by the City Manager or designee, all delivery terms are FOB Destination and are to be prepaid. All other freight charges are to be prepaid and charged on the invoice. Vendor shall retain title and control of the Materials until they are delivered and the City has accepted delivery. All risk of transportation and all related charges shall be the responsibility of the Vendor. All claims for visible or concealed damage shall be filed by the Vendor. The City will notify the Vendor promptly of any damages to the Materials and shall assist the Vendor in arranging for inspection. The City reserves the right to cancel and reject the Materials upon default by Vendor in time, rate, or manner of delivery.

5. Packing. No extra charges shall be made for packaging or packing material unless authority is expressly incorporated in this Agreement. Vendor shall be responsible for safe packing which must conform to the requirement of carrier's tariffs. All shipments must carry the correct quantity, product identification, purchase order number, receiving address and product department plainly marked on all packages.

6. Performance Warranty. The standard manufacturer's warranty will apply to the Materials purchased under this Agreement.

7. Price Warranty. Vendor shall give the City the benefit of any price reductions prior to the actual time of shipment. However, if the City authorizes shipment prior to the specified shipment date, the City shall have the advantage of any price reduction prior to the specified shipment date. Vendor warrants that the price for the Materials covered by the Quotation, which is attached hereto as Exhibit A, are based upon established online, catalog or market prices of materials sold in substantial quantities to law enforcement agencies.

8. Inspection; Acceptance. The Materials are subject to final inspection and acceptance by the City. The Materials failing to conform to the provisions of this Agreement

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 a non-conforming material, the City may elect to do any of the following by written notice to the Vendor: (i) waive the non-conformity; (ii) bring material into compliance and withhold the cost of same from any payments due to the Vendor; or (iii) return the Materials to the Vendor as set forth herein.

9. No Replacement of Defective Tender. Tender of the Materials shall fully comply with all provisions of the Agreement. If a tender is made which does not fully conform, this may constitute a breach of the Agreement.

10. Liens. The Materials shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

11. Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform it may demand that the other party give a written assurance of its intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

12. Indemnification. To the fullest extent permitted by law, the Vendor 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 of the Vendor, 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.

13. Applicable Law; Venue. In the performance of this Agreement, Vendor 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 suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

14. 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.

15. Termination; Cancellation.

15.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Vendor of written notice by the City.

15.2 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.

15.3 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.

15.4 Gratuities. The City may, by written notice to the Vendor, 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 Vendor or any agent or representative of the Vendor 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 Vendor an amount equal to 150% of the gratuity.

16. Miscellaneous.

16.1 Independent Contractor. The Vendor acknowledges and agrees that the Materials provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Vendor, 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 Vendor, its employees or subcontractors. Vendor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Vendor do not intend to nor will they combine business operations under this Agreement.

16.2 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 Vendor.

16.3 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.

16.4 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.

16.5 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.

16.6 Assignment. No right or interest in this Agreement shall be assigned by Vendor without prior, written permission of the City signed by the City Manager. Any attempted assignment by Vendor in violation of this provision shall be a breach of this Agreement by Vendor.

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

16.8 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 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 goods, shall not release the Vendor 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.

16.9 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.

16.10 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 Vendor any amounts Vendor owes to the City for damages resulting from breach of any obligation under this Agreement.

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

16.11 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, (C) given to a recognized and reputable overnight delivery service, to the address set forth below or (D) 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 Vendor: San Diego Police Equipment Co., Inc.
8205-A Ronson Road
San Diego, California 92111
Facsimile: (858) 974-8530
Attn:_____

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, (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, or (D) 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.

16.12 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Vendor 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). Vendor'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.

16.13 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 pursuant to subsection 17.2 above.

16.14 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.

[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)

"**Vendor**"

SAN DIEGO POLICE EQUIPMENT CO., INC.,
a California corporation

By:_____

Name:_____

Title:_____

(ACKNOWLEDGMENT)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2011, by _____, as _____ of SAN DIEGO POLICE EQUIPMENT CO., INC., a California corporation, on behalf of the corporation.

_____
Notary Public in and for the State of _____

(affix notary seal here)

EXHIBIT A
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
SAN DIEGO POLICE EQUIPMENT CO., INC.

[Quotation]

See following page.

FEDERAL PREMIUM LAW ENFORCEMENT AMMUNITION

speer LE

SAN DIEGO POLICE EQUIPMENT CO., INC.

8205-A RONSON ROAD
SAN DIEGO, CA 92111
Phone: (800) 367-8989 Fax: (858) 974-8530
sales@sandiegopoliceequipment.com

SIMUNITION

p.a.c.a. BODY ARMOR

QUOTATION

Date: 9/20/2011 Good Until: 10/19/2011 Terms: Net 30

To: CHRIS SMITH Agency: AVONDALE POLICE DEPT Quoted By: LESLIE

Phone: 623-333-7268 Fax: 623-478-3830 Email:

Quantity	Unit	Product Code		Description	Unit Price	Extended Price
30	CS/900	FED-XM193AF	**	FEDERAL 5.56MM 55GR FMJ-BT, ON STRIPPER CLIPS	$265.25	$7,957.50
10	CS/1000	CCI-53652	**	SPEER LAWMAN 40S&W 180GR TMJ	$193.69	$1,936.90
3	CS/1000	CCI-3519	**	CCI BLAZER 38SPL 158GR TMJ +P	$205.38	$616.14
1	CS/1000	CCI-53921	**	SPEER GOLD DOT 38SPL 135GR GDHP/SB +P	$319.62	$319.62
					$0.00	$0.00
					$0.00	$0.00
				[redacted]	$0.00	$0.00
					$0.00	$0.00
					$0.00	$0.00
					$0.00	$0.00
					$0.00	$0.00
					$0.00	$0.00
					$0.00	$0.00

NOTES: FOR DEPARTMENT PURCHASE ONLY

We do not collect sales tax for the State of Arizona, please pay any tax directly to the State.

SUBTOTAL:	$10,830.16
TAX %:	SEE NOTE
FREIGHT:	$0.00
TOTAL:	$10,830.16

EXHIBIT B
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
SAN DIEGO POLICE EQUIPMENT CO., INC.

[Materials Orders]

See following page(s).

CITY COUNCIL REPORT

SUBJECT:
Cooperative Purchasing Agreement - Felix Construction Company

MEETING DATE:
November 21, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that City Council approve a Cooperative Purchasing Agreement with Felix Construction Company for repair of the pipes on the Avondale Blvd. Bridge in the amount of $128,132.92 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

On 11/22/10, City Council approved a Development Agreement with Phoenix International Raceway (PIR). The City is responsible for the design and construction of water and sewer facilities to serve PIR. On 9/6/11 City Council approved a cooperative purchasing agreement with Felix Construction Company for the testing of the existing pipes on the PIR bridge. This testing showed repairs that need to be completed before the lines can be used.

DISCUSSION:

When the Avondale Blvd. bridge was constructed, two pipes were installed under the bridge for future use. These pipes were tested, and leaks were observed. Staff requested that Felix Construction Company prepare a proposal to repair the observed leaks, and retest the lines to confirm there are no more leaks. An allowance has been added for contingency in case more leaks are discovered. After completing the repairs, the pavement on either end of the bridge will be permanently replaced. To expedite this task, the contractor will use a Job Order Contract through City of Peoria, which was also used for the pipe testing. Staff has had experience using this contractor in the past, and they have performed to the satisfaction of the City.

BUDGETARY IMPACT:

Funding for this project will be split evenly from 514-1139-00-8520 and 513-1295-00-8610.

RECOMMENDATION:

Staff recommends that the City Council approve a cooperative purchasing agreement with Felix Construction Company for repair of the pipes on the Avondale Blvd Bridge in the amount of $128,132.92 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- Cooperative Purchasing Agreement

COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
FELIX CONSTRUCTION COMPANY

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of November 21, 2011, between the City of Avondale, an Arizona municipal corporation (the "City") and Felix Construction Company, an Arizona corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Peoria, Arizona ("Peoria"), entered into Contract No. ACON 23908 dated April 11, 2008, as amended by that certain Amendment Number One dated December 15, 2008, and as further amended by that certain Amendment Number Two dated March 25, 2009, and as further amended by that certain Amendment Number Three dated April 7, 2009, and as further amended by that certain Amendment Number Four dated June 17, 2009, and as further amended by that certain Amendment Number Five dated October 20, 2009, and as further amended by that certain Amendment Number Six dated February 23, 2010, and as further amended by that certain Amendment Number Seven dated April 7, 2010, and as further amended by that certain Amendment Number Eight dated February 3, 2011, (collectively, the "Peoria Contract") for the Contractor to provide job order construction contracting materials and services. A copy of the Peoria Contract is attached hereto as Exhibit A and incorporated herein by reference.

B. The City is permitted, pursuant to Section 25-24 of the City Code, to purchase such goods and services under the Peoria Contract, at its discretion and with the agreement of the awarded Contractor, and the Peoria Contract permits its cooperative use by other public entities including the City.

C. The City and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging a cooperative contractual relationship under the Peoria Contract, (ii) establishing the terms and conditions by which the Contractor may provide the City with job order construction contracting materials and services, as more particularly set forth in Section 2 below (the "Materials and Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Materials and 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 Contractor 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 February 29, 2012, unless terminated as

otherwise provided pursuant to the terms and conditions of this Agreement or the Peoria Contract.

2. Scope of Work. The Contractor shall provide the Materials and Services under the terms and conditions of the Peoria Contract, attached hereto as Exhibit A, and as more particularly set forth in the Scope of Work and Quotation, attached hereto as Exhibit B and incorporated herein by reference. By signing this Agreement, Contractor acknowledges and agrees that unauthorized pricing, exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement or the Peoria Contract, other than City's project-specific requirements, are hereby expressly declared void and shall be of no force and effect.

2.1 Inspection; Acceptance. All Materials and Services are subject to final inspection and acceptance by the City. Materials failing to conform to the requirements of this Agreement and/or the Peoria Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all return costs are the responsibility of the Contractor. Upon discovery of a non-conforming Materials or Services, the City may elect to do any or all of the following by written notice to the Contractor: (i) waive the non-conformance; (ii) stop the work immediately; or (iii) bring Materials or Service into compliance and withhold the cost of same from any payments due to the Contractor.

3. Compensation. The City shall pay Contractor an aggregate amount not to exceed $128,132.92 for Materials and Services at the unit rates set forth in the Peoria Contract, and as more particularly set forth in the Scope of Work and Quotation, attached hereto as Exhibit B.

4. Payments. The City shall pay the Contractor monthly, based upon acceptance and delivery of Materials and/or Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Peoria Contract and (ii) document and itemize all work completed 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 Peoria Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. The 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 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 (i) 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 (ii) 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 Section, 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 Section. 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 Section 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 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 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 the Contractor submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement.

8. Conflict of Interest. This Agreement may be canceled 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, 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.

10. 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 Contractor 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 Contractor shall be relieved of any subsequent obligation under this Agreement.

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work and Quotation and the Glendale Contract, 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 Peoria Contract (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 quotation or invoice containing any such Unauthorized Conditions or failure to demand strict performance of any term or condition set forth in this Agreement or under the Peoria Contract or to exercise or delay the exercise of any right or remedy provided in this Agreement, the Peoria Contract, or by law, or the City's acceptance of and payment for Materials or Services shall not alter or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations imposed by this Agreement, the Peoria 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 Agreement.

12. Indemnification; Insurance. To the extent provided under the Peoria Contract, the City shall be afforded all of the rights, privileges, insurance coverage and indemnifications afforded to Peoria, and such rights, privileges, insurance coverage and indemnifications shall inure 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 any event, 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 Materials of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

[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)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"**Contractor**"

FELIX CONSTRUCTION COMPANY, an
Arizona corporation

By:_____

Name:_____

Title:_____

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011, by _____, as _____ of FELIX CONSTRUCTION COMPANY, an Arizona corporation, on behalf of the corporation.

_____
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
FELIX CONSTRUCTION COMPANY

[Peoria Contract]

See following pages.

JOB ORDER CONTRACT

P08-0047

Water, Waste Water Treatment & Offsite Facilities Projects

CONTRACT FOR CONSTRUCTION

JOB ORDER CONTRACT AGREEMENT

FELIX CONSTRUCTION COMPANY

A CON 23908

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ARTICLE 7	JOB ORDER SCHEDULES
ARTICLE 8	INSPECTION OF CONSTRUCTION AND ACCEPTANCE
ARTICLE 9	INVOICING AND PAYMENT
ARTICLE 10	CHANGES
ARTICLE 11	INSURANCE & BONDS
ARTICLE 12	INDEMNIFICATION
ARTICLE 13	DISPUTES
ARTICLE 14	TERMINATION AND DEFAULT
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ARTICLE 16	STANDARD TERMS AND CONDITIONS

A CON 23908

JOB ORDER CONTRACTING
CONTRACT

THIS CONTRACT is entered into and made effective the 11th day of April 2008, by and between the City of Peoria, Arizona, an Arizona charter municipality (the "Owner"), and Felix Construction Company (the "Job Order Contractor"). The parties agree as follows:

1. DEFINITIONS.

1.1. Owner. Owner means Owner's senior manager, Contracting Officer or a duly authorized representative which means any person specifically authorized to act for Owner by executing the Contract and any modification thereto. Owner's duties include administration of the Contract, including the negotiation of change orders and modifications and assessing Job Order Contractor's technical performance and progress; inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptance of the Work in its entirety or any portion thereof, as required by the Contract documents.

1.2. Job Order Contractor. Job Order Contractor means Job Order Contractor's senior manager or its duly authorized representative or any person specifically authorized to act for Job Order Contractor by executing the Contract, and any modifications thereto. Job Order Contractor's duties include administration of the Contract and performance of the Work.

1.3. Contract. Contract means this agreement including its attachments and any Job Orders that may be issued.

1.4. Subcontract. Subcontract means any Contract including purchase orders (other than one involving an employer-employee relationship) entered into by Job Order Contractor calling for equipment, supplies or services required for Contract performance, including any modifications thereto.

1.5. Job Order. Job Order means a specific written agreement between the Owner and the Job Order Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

1.6. Work. Work means in response to Job Orders that may be mutually agreed upon and issued periodically by Owner, Job Order Contractor shall, except as may be specified elsewhere in the Contract, furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design, and construction work which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order and as further specified in Attachment "A" Contract Pricing Coefficients and in Attachment "B" Scope of Services both of which are incorporated herein and made a part hereof.

1.7. Punch List Preparation. A minimum of 20 days prior to Final Completion the Job Order Contractor, in conjunction with the Owner, shall prepare a comprehensive list of Punch list items, which the Owner may edit and supplement. The Job Order Contractor shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Job Order Contractor to complete all Work in accordance with the Contract Documents. Warranties required by the Contract Documents shall not

ACON23908

commence until the date of Final Completion unless otherwise provided in the Contract Documents.

1.8. **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and acceptance by the Owner. Final Completion shall not be deemed to have occurred and no final payment shall be due the Job Order Contractor or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and acceptance and all required Final Completion close-out documentation items has been produced to the Owner by the Job Order Contractor.

1.9. **Reference Standards**

1.9.1 The "Uniform Standard Specifications for Public Works Construction" and the "Uniform Standard Details for Public Works Construction" which are sponsored and distributed by the Maricopa Association of Governments (MAG), and which are hereinafter referred to as the "MAG Specifications", are hereby adopted as part of these contract documents.

1.9.2 July 15, 1997 by Section 23-50a of Ordinance 97-38, the City of Peoria adopted the "Uniform Standard Details for Public Works Construction from the Maricopa County Association of Governments by reference with certain exceptions.

A copy of these documents is kept on file at the Office of the City Clerk at the City of Peoria.

2. CONTRACT TERM

2.1. **Contract Term.** The term of the Contract shall commence on the date it was executed by both parties and be in effect for one (1) years in accordance with the terms and conditions of this Contract. The term can be extended up to an additional four (4) years, the optional periods exercised in twelve (12) month. Job Orders may be issued at any time during the term of this Contract. This Contract will remain in full force and effect during the performance of any Job Order.

2.2. **Job Order.** In response to Job Orders that may be mutually agreed upon and issued periodically by Owner, Job Order Contractor shall perform the Work, except as may be specified elsewhere in the Contract, which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order and as further specified in ***Attachment "A"*** (Pricing Matrix) and in ***Attachment "B"*** (General Scope of Services) and ***Attachment "C"*** (SIQ, Proposal Response, Detailed Scope and Schedule) all of which are incorporated herein and made a part hereof.

2.3. **Mutual Agreement.** This Contract embodies the agreement of Owner and Job Order Contractor to terms and conditions which will govern any Work that may be prescribed under a Job Order that may be issued by Owner and agreed to by Job Order Contractor. Nothing herein shall be construed as requiring Owner to issue any Job Order, nor requiring Job Order Contractor to accept any Job Order, it being the intent that both parties must mutually agree to any specific Work before a Job Order may be issued.

A CON 23908

3. PERFORMANCE OF THE WORK

3.1. Job Order Agreement. Performance of the Work shall be undertaken only upon the issuance of written Job Orders by Owner. Job Orders shall be in accordance with the requirements specified in ***Attachment "B"*** (General Scope of Services), and shall set forth, with the necessary particularity, the following:

3.1.1. Contract number along with Job Order Contractor's name;

3.1.2. Job Order number and date;

3.1.3. The agreed Work and applicable technical specifications and drawings;

3.1.4. The agreed period of performance and, if required by Owner, a work schedule;

3.1.5. The place of performance;

3.1.6. The agreed total price for the Work to be performed;

3.1.7. Submittal requirements;

3.1.8. Owner's authorized representative who will accept the completed Work;

3.1.9. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order; and

3.1.10. Such other information as may be necessary to perform the Work.

3.2. Job Order Contractor Duties and Obligations.

3.2.1. Permits & Responsibilities. Job Order Contractor shall be responsible for processing of drawings, for approval by appropriate oversight bodies; for obtaining any necessary licenses and permits; and for complying with any Federal, State and municipal laws, codes, and regulations applicable to the performance of the Work. Owner will reimburse Job Order Contractor for the actual, documented costs of construction permits required for the performance of the Work. Job Order Contractor shall also be responsible for all damages to persons or property that occur as a result of Job Order Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Job Order Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been accepted under the Contract.

3.2.2. Outdoor Construction Restrictions. Peoria Ordinance No. 98-11 restricts outdoor construction as listed in the following table:

	Construction Type	**April 2 – September 29**	**September 30 – April 1**
A	Concrete Work	5:00 a.m. to 7:00 p.m.	6:00 a.m. to 7:00 p.m.
B	Other Construction (within 500 feet of residential area)	6:00 a.m. to 7:00 p.m.	7:00 a.m. to 7:00 p.m.
C	Construction Work (more than 500 feet of residential area)	5:00 a.m. to 7:00 p.m.	5:00 a.m. to 7:00 p.m.

A CON 239086

3.2.2.1. No interference with the traffic flow on arterial streets shall be permitted during the hours of 6:00 a.m. to 8:30 a.m. or from 4:00 p.m. to 7:00 p.m. unless prior authorization is obtained in writing by the City of Peoria Traffic Engineer or their assignee. Specific work hours may be stipulated by the City of Peoria on the project barricade plan.

3.2.2.2. During off peak hours, the minimum number of lanes shall be two lanes (one in each direction) on streets with four lanes or less and four lanes (two in each direction) on streets with five or more lanes.

3.2.2.3. Night work must have prior authorization from the City. In addition, certain areas of the City may have seasonal or special event restrictions for construction work as designated by the City on a case by case basis.

3.2.3. Jobsite Superintendent. During performance of a Job Order and until the Work is completed and accepted, Job Order Contractor shall directly superintend the Work or assign a competent superintendent who will supervise the performance of Work and is satisfactory to Owner and has authority to act for Job Order Contractor.

3.2.4. Construction Layout. Job Order Contractor shall lay out its work in accordance with the Contract plans and specifications and shall be responsible for all measurements in connection with the layout of the Work. Job Order Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the Work. Job Order Contractor shall also be responsible for maintaining and preserving all control points established by Owner.

3.2.5. Survey Control Points. Existing survey markers (either brass caps or iron pipes) shall be protected by the Contractor or removed and replaced under direct supervision of the City Engineer or his authorized representatives. Survey monuments shall be constructed to the requirements of MAG Specifications, Section 405, and Standard Details. Lot corners shall not be disturbed without knowledge and consent of the property owner. The Contractor shall replace benchmarks, monuments, or lot corners moved or destroyed during construction at no expense to the Owner. Contractor and his sureties shall be liable for correct replacement of disturbed survey benchmarks except where the Owner elects to replace survey benchmarks using his own forces.

3.2.6. Traffic Regulations. All traffic affected by this construction shall be regulated in accordance with the City of Phoenix – Traffic Barricade manual, latest edition, and the City of Phoenix in the Traffic Barricade Manual shall be referred to as the City of Peoria City Engineer for interpretation.

At the time of the pre-construction conference, the Contractor shall designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring and altering traffic control measure, as necessary. At the same time the City will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried throughout the work area in an effective manner and that manner and that motorists, pedestrians, bicyclists and workers are protected from hazard and accidents.

A CON 239084

3.2.4.1 The following shall be considered major streets: All major Parkway, mile (section line), arterial and collector (mid-section line and quarter section line) streets so classified by the City of Peoria.

3.2.4.2 All traffic control devices required for this project shall be the responsibility of the Contractor. The Contractor shall place advance warnings; **REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT** and **DO NOT PASS** signs in accordance with the Traffic Barricade Manual.

3.2.4.3 The Contractor shall provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights signals and signs, and shall take all necessary precautions for the protection of the work and safety of the public. The Contractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes.

3.2.4.4. All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the Contractor shall conform to the standard design, generally accepted for such purposes and payment for all such services and materials shall be considered as included in the other pay items of the Contract.

3.2.4.5 The Contractor shall insure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Contractor shall notify the Inspector at least forty eight (48) hours in advance for City personnel to temporarily relocate said signs. The City Engineer will re-set all traffic and street name signs to permanent locations when notified by the Engineer that construction is complete unless otherwise stated in the specifications Payment for this item shall be made at the contract lump sum price for TRAFFIC CONTROL.

3.2.4.6 When construction activities or traffic hazards at the construction site require the use of flagmen, it shall be the Contractor's responsibility to provide adequate personnel including flagmen to direct traffic safely.

3.2.4.7 Manual traffic control shall be in conformity with the Traffic Barricade Manual, except the liaison officer shall be contacted at the Peoria Police Department at telephone number (623) 773-7052.

3.2.4.8 When traffic hazards at construction sites warrant the use of certified police personnel to direct traffic, arrangement should be made with the liaison officer at the Peoria Police Department at telephone number (623) 773-7052.

3.2.4.9 The assembly and turnarounds of the Contractor's equipment shall be accomplished using adjacent local streets when possible.

3.2.4.10 Equipment used and/or directed by the Contractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Provide a flagman or officer to assist with this operation.

A CON 239084

3.2.4.11 During construction, it may be necessary to alter traffic control. Alterations shall be in accordance with the Traffic Barricade Manual.

3.2.4.12 no street within this project may be closed to through traffic or to local emergency traffic without prior written approval of the City Engineer of the City of Peoria. Written approval may be given if sufficient time exists to allow for notification of the public at least two (2) days in advance of such closing. Partial closure of streets within the project shall be done in strict conformity with written directions to be obtained from the City Engineer.

3.2.4.13 Caution should be used when excavating near intersections with traffic signal underground cable. Notify the City Engineer twenty four (24) hours in advance of any work at such intersections. The Contractor shall install and maintain temporary overhead traffic signal cable as specified by the City Engineer when underground conduit is to be severed by excavations at intersections. The Contractor shall provide an off-duty uniformed police officer to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items shall be repaired and restored to the City Engineer's satisfaction. Magnetic detector loops shall under no circumstances be spliced.

3.2.4.14 The Contractor shall address how local access to adjacent properties will be handled in accordance with the specification herein.

3.2.4.15 Where crossings of existing pavements occur, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow as determined by the City Engineer or his authorized representative. If plates cannot be used, crossings shall be back-filled or the Contractor shall provide a detour.

3.2.7. <u>Operations & Storage</u>. Job Order Contractor shall confine all operations (including storage of materials) to areas authorized or approved by Owner.

3.2.8. <u>Cleaning Up & Refuse Disposal</u>. Job Order Contractor shall at all times keep the site, including storage areas, free from accumulations of waste materials. Before completing the Work, Job Order Contractor shall remove from the premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Owner. Upon completing the Work, Job Order Contractor shall leave the site in a clean and orderly condition satisfactory to Owner.

3.2.8.1. Final cleanup of the premises shall be included in the period of performance of the Job Order.

3.2.8.2. Job Order Contractor shall be responsible for all construction refuse disposal containers and their removal from the site.

3.2.8.3. Disposal of any hazardous materials not addressed and priced in the Job Order will be segregated for disposal by Owner unless Owner requires Job Order Contractor to dispose of the materials in which case, an equitable adjustment in the price will be negotiated and agreed.

3.2.8.4. The Contractor and/or subcontractor shall be required to use the City of Peoria Solid Waste Division's services for commercial collection of Solid Waste. This requirement is not intended to preclude other methods or means for hauling debris or excess

material from the project site such as trucking large volumes of material, including soil, building demolition, or hazardous and special wastes. The intent is to use City of Peoria Solid Waste service where standard waste disposal is needed. Specifically, all roll-off and front-load containers used on a City of Peoria construction site shall be contracted for through the City of Peoria Solid Waste Division at the prevailing rate. It is the contractor's responsibility to contact and make all necessary arrangements with the City of Peoria Solid Waste Division for these services. Any and all charges for these services are the responsibility of the contractor. The City Solid Waste Division may, at it's option, decline to provide service for business reasons at any time during the contract. Any exceptions to this requirement will be at the sole discretion of the City Solid Waste Division. Please contact the Solid Waste Customer Service Representatives at 623-773-7160.

3.2.9. Existing Improvements and Utilities. Job Order Contractor shall protect from damage all existing improvements and utilities at or near the site and on adjacent property of third parties, the locations of which are made known to or should be known by Job Order Contractor. Job Order Contractor shall repair any damage to those facilities, including those that are the property of third parties, resulting from failure to comply with the requirements of the Job Order or failure to exercise reasonable care in performing the Work. If Job Order Contractor fails or refuses to repair the damage promptly, Owner may have the necessary repair work performed and charge the cost to Job Order Contractor.

3.2.10. Safety. Job Order Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), all applicable state and local laws, ordinances, and regulations during the performance of the Work. Job Order Contractor shall indemnify Owner for fines, penalties, and corrective measures that result from the acts of commission or omission of Job Order Contractor, its subcontractors, if any, agents, employees, and assigns and its failure to comply with such safety rules and regulations.

3.2.10.1. Job Order Contractor Safety Compliance. Job Order Contractor shall furnish and enforce the use of individual protective equipment as needed to complete the Work, including hard hats, rain gear, protective foot wear, protective clothing and gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards, and high visibility reflective safety vests.

3.2.10.2. Job Order Contractor Provided Warnings. Job Order Contractor shall provide warning signs, barricades and verbal warnings as required.

3.2.10.3. Emergency Procedures. Job Order Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening situations.

3.2.10.4. Accident Notification. Job Order Contractor shall promptly notify Owner of any recordable accident involving personnel or damage to material and equipment. Copies of any injury reports or accident investigation reports shall be provided to the Owner.

3.2.10.5. Jobsite Safety Documents. Job Order Contractor shall maintain a set of OSHA articles and Material Safety Data Sheets (MSDS) at the jobsite office as they apply to the Work being performed. Copies shall be provided to Owner when requested.

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3.2.10.6. **Job Order Contractor's Safety Program.** Job Order Contractor shall submit to Owner a copy of its safety policies and program procedures which establish the safety rules and regulations as they are to be applied to performance of the Work. These documents shall be submitted by Job Order Contractor within fourteen (14) calendar days after issuance of the initial Job Order and prior to the commencement of the Work.

3.2.10.7. **Job Order Contractor Safety Representative.** Job Order Contractor shall assign, during performance of the Work, a designated safety representative to develop and monitor the project safety program. The name, company address, and telephone number of the assigned individual shall be submitted to Owner by Job Order Contractor along with its safety policies and program procedures.

3.2.10.8. **Emergency Medical Treatment.** Job Order Contractor shall make available for its employees and those of its subcontractors, while they are performing Work on the site, emergency medical treatment either at the site or at a nearby medical facility.

3.2.10.9. **Owner's Right to Monitor.** Owner reserves the right to approve and monitor Job Order Contractor's safety policies and program procedures as applied during performance of the Work. Failure to comply with safety policies and program procedures, once approved by Owner, shall be cause for the termination of the Job Order in accordance with *§ 14*.

3.2.10.10. **First Aid Kit.** Job Order Contractor shall provide and maintain on the jobsite, at all times when Work is in progress, a completely stocked first aid kit which contains all standard emergency medical supplies.

3.2.10.11. **Fire Extinguisher.** Job Order Contractor shall provide and maintain on the jobsite, at all times when Work is in progress, a fully charged fire extinguisher appropriate for the potential fire hazard.

3.2.11. Dissemination of Contract Information. Job Order Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract, any Job Order or the Work performed under this Contract, without the prior consent of Owner.

3.2.12. Shop Drawings. Job Order Contractor's duties under this Contract include the preparation of shop drawings or sketches necessary to permit orderly construction of Owner's design plans. Job Order Contractor agrees to provide detailed design drawings and plans if requested by Owner.

3.2.13. Jobsite Drawings and Specifications. Job Order Contractor shall keep on the Work site a copy of the drawings and specifications and shall at all times give Owner access thereto.

3.3. Owner Rights and Obligations.

3.3.1. Suspension of Work.

3.3.1.1. **Owner's Written Order.** Owner may order Job Order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for a period of time that Owner determines reasonably appropriate.

3.3.1.2. **Work Delay or Suspension.** If the performance of all or any part of the Work is suspended, delayed, or interrupted by an act of Owner in the administration of a

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Job Order, or by Owner's failure to act within the time specified in the Job Order, an adjustment shall be made for any increase in the cost of performance of the Job Order necessarily caused by the suspension, delay, or interruption, and the Job Order will be modified in writing accordingly.

3.3.1.3. **Job Order Contractor Costs.** A claim under this Subparagraph 3.3.1 shall not be allowed for any costs incurred more than thirty (30) calendar days before Job Order Contractor shall have notified Owner in writing of the act or failure to act (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Job Order.

3.3.2. **Owner's Right to Possession.** Owner shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, Owner shall furnish Job Order Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that Owner intends to take possession of or use. However, failure of Owner to list any item of Work shall not relieve Job Order Contractor of responsibility for complying with the terms of this Contract. Owner possession or use shall not be deemed an acceptance of any Work under this Contract.

3.3.2.1. **Owner's Possession or Use.** While Owner has such possession or use, Job Order Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Owner's possession or use, notwithstanding the terms of Subparagraph 3.2.1. If prior possession or use by Owner delays the progress of the Work or causes additional expense to Job Order Contractor, an equitable adjustment shall be made in the Job Order price or the period of performance, and the Job Order shall be modified in writing accordingly.

3.3.3. **Other Contracts.** Owner may undertake or award other Contracts for additional work at or near the site of Work under this Contract. Job Order Contractor shall fully cooperate with the other Job Order Contractors and with Owner's employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by Owner. Job Order Contractor shall not commit or permit any act that will interfere with the performance of its Work by any other contractor or by Owner's employees.

3.4. **Job Order Amendment.** Job Orders may be amended by Owner in the same manner as they are issued.

3.5. **Job Order Value.** The maximum Job Order value is three million dollars ($3,000,000).

4. JOB ORDER DOCUMENTS

4.1. **Specification and Drawings.** Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the drawings shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Owner, who shall promptly make a determination in writing. Any adjustment by Job Order Contractor without such a determination shall be at its own risk and expense. Owner shall furnish from time to time such detail drawings and other information as considered necessary, unless otherwise provided.

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4.1.1. Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of Owner is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" Owner, unless otherwise expressly stated.

4.1.2. Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed.

4.2. **Shop Drawings.** Shop drawings include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Job Order Contractor to explain in detail specific portions of the Work. Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract. Shop drawings means drawings submitted to Owner by Job Order Contractor showing in detail:

4.2.1. The proposed fabrication and assembly of structural elements and,

4.2.2. The installation (i.e., form, fit and attachment details) of materials or equipment.

4.2.3. The construction and detailing of elements of the Work.

4.3. **Shop Drawing Coordination.** Job Order Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Owner without evidence of Job Order Contractor's approval may be returned for resubmission. Owner will indicate its approval or disapproval of the shop drawings and if not approved as submitted shall indicate Owner's reasons therefore. Any work done before such approval shall be at Job Order Contractor's risk. Approval by Owner shall not relieve Job Order Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with *§ 4.4* below.

4.4. **Shop Drawing Modifications**. If shop drawings show variations from the Job Order requirements. Job Order Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If Owner approves any such variation, Owner shall issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

4.5. **Shop Drawing Omissions**. Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Job Order Contractor from performing such omitted or mis-described details of the Work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

4.6. **Owner Furnished Drawings**. Job Order Contractor shall check all Owner furnished drawings immediately upon receipt and shall promptly notify Owner of any discrepancies. Any errors or omissions in Owner furnished drawings are the responsibility of the Owner to rectify, including associated costs. Figures marked on drawings shall be followed in preference to scale

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measurements. Large scale drawings shall govern small scale drawings. Job Order Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby.

4.7. **Shop Drawing Submittal**. Job Order Contractor shall submit to Owner for approval an appropriate number of copies of all shop drawings as called for under the various headings of these specifications. Sets of all shop drawings will be retained by Owner and one set will be returned to Job Order Contractor with annotation of approval or rejection within one (1) week after submission, unless a longer review period is necessary by mutual agreement between Owner and Job Order Contractor.

4.8. **Use of Job Order Documents**. All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to Job Order Contractor or developed by Job Order Contractor pursuant to the Contract and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of Owner and may be used by Owner without any claim by Job Order Contractor for additional compensation, unless such material developed by Job Order Contractor does not result in an issued Job Order. In such cases, Job Order Contractor will receive reasonable reimbursement for the development of such materials before Owner uses them in any manner whatsoever. In addition, Owner agrees to hold Job Order Contractor harmless to the extent permitted by law from any legal liability arising out of the Owner's use of such materials.

5. MATERIAL AND WORKMANSHIP

5.1. **Suitability of Material and Equipment.** All equipment, material, and articles incorporated in the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Job Order Contractor may, at its option, use any equipment, material, article, or process that, in the sole judgment and prior written approval of the Owner, is equal to that named in the specifications.

5.2. **Owner Approval.** Job Order Contractor shall obtain Owner's approval of the equipment to be incorporated into the Work. When requesting approval, Job Order Contractor shall furnish to Owner the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the equipment. When required by the Contract or by Owner, Job Order Contractor shall also obtain Owner's approval of the material or articles which Job Order Contractor contemplates incorporating into the Work. When requesting approval, Job Order Contractor shall provide full information concerning the material or articles. When directed to do so, Job Order Contractor shall submit samples for approval. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

5.3. **Testing of Materials.** Unless otherwise specified in a Job Order, the Job Order Contractor shall be responsible for any required testing of materials prior to incorporation into the Work. Reimbursement for testing required by third party entities will be included in the individual Job Order.

5.4. **Workmanship**. All work under the Contract shall be performed in a skillful and workmanlike manner.

6. SITE CONDITIONS

6.1. **Site Investigation.** Job Order Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:

6.1.1. Conditions bearing upon transportation, disposal, handling, and storage of materials;

6.1.2. The availability of labor, water, electric power, and roads;

6.1.3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;

6.1.4. The visible conformation and conditions of the ground; and

6.1.5. The character of equipment and facilities needed preliminary to and during work performance.

6.2. **Surface and Subsurface Investigation.** Job Order Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the drawings and specifications made a part of this Contract. Owner will provide to Job Order Contractor all subsurface investigation reports it has commissioned, and has knowledge of, that reasonably reflect expected conditions at the location of the Job Order.

6.3. **Differing Site Conditions.** Job Order Contractor shall promptly, and before the conditions are disturbed, give a written notice to Owner of:

6.3.1. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract, or

6.3.2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

6.4. **Owner Investigation.** Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Job Order Contractor's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Job Order modified in writing accordingly.

6.5. **Written Notice of Differing Site Conditions.** No request by Job Order Contractor for an equitable adjustment to a Job Order under this *§ 6* shall be allowed, unless Job Order Contractor has given the written notice required.

6.6. **Payment Adjustment.** No request by Job Order Contractor for an equitable adjustment to a Job Order for differing site conditions shall be allowed if made after final payment under such Job Order.

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7. JOB ORDER SCHEDULES

7.1. **Construction Schedule.** If the Job Order Contractor fails to submit a schedule with the Job Order, Owner may withhold approval of progress payments until Job Order Contractor submits the required schedule. If required, the Job Order Contractor will submit for approval with the signed Job Order a practicable schedule showing the sequence in which Job Order Contractor proposes to perform the Work, and the dates on which Job Order Contractor contemplates starting and completing the several salient features of the Work (including acquiring materials, plant and equipment). The schedule may be a formal computerized schedule or a progress chart in a bar chart format of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. In either case, the basic information should be the same and the schedule or chart must contain as a minimum:\

7.1.1. A detailed list of work activities or work elements.

7.1.2. Show the logical dependencies (ties) to indicate what Work must be accomplished before other Work can begin.

7.1.3. Show early start and early finish dates along with late start and late finish dates for each work activity or work element.

7.2. **Failure to Submit Schedule.** Failure of Job Order Contractor to comply with the requirements of Owner under this clause shall be grounds for a determination by Owner that Job Order Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, Owner may terminate Job Order Contractor's right to proceed with the Work if not cured within seven (7) days after written notice is provided, or any separable part of it, in accordance with *§ 14*.

7.3. **Progress Report.** Job Order Contractor shall submit a progress report every thirty (30) days, or as directed by Owner, and upon doing so shall immediately deliver a current schedule to Owner if it has materially changed since the last submission of a schedule. If Job Order Contractor falls behind the approved schedule, Job Order Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by Owner. Without additional cost to Owner, Owner may require Job Order Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant or equipment, and to submit for approval any supplementary schedule or schedules in chart form as Owner deems necessary to demonstrate how the approved rate of progress will be regained.

7.4. **Emergency Work.** Job Order Contractor will give top priority to any emergency Work Owner may have and will allocate all resources necessary to accomplish such Work in accordance with Owner's schedule requirements. To the extent the Job Order Contractor incurs additional cost, expense or schedule delay in performing Owner's emergency Work, Owner will equitably adjust the Contract in accordance with *§ 10*.

8. INSPECTION OF CONSTRUCTION AND ACCEPTANCE

8.1. **Job Order Contractor Inspection System.** Job Order Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for conforms to Job Order requirements. Job Order Contractor shall maintain complete inspection records and make them available to Owner. All work shall be conducted under the general direction of Owner and is subject to inspection and test by Owner at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

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8.2. **Owner Inspections and Tests.** Owner inspections and tests are for the sole benefit of Owner and do not:

8.2.1. Relieve Job Order Contractor of responsibility for providing adequate quality control measures;

8.2.2. Relieve Job Order Contractor of responsibility for damage to or loss of the material before acceptance;

8.2.3. Constitute or imply acceptance; or

8.2.4. Affect the continuing rights of Owner after acceptance of the complete work.

8.3. **Job Order Contractor Responsibilities.** The presence or absence of an inspector does not relieve Job Order Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Owner's written authorization.

8.4. **Job Order Contractor Performance.** Job Order Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge to Job Order Contractor any additional cost of inspection or test when Work is not ready at the time specified by Job Order Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. Owner shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Job Order.

8.5. **Job Order Contractor Corrective Work.** Job Order Contractor shall, without charge, replace or correct Work found by Owner not to conform to Job Order requirements, unless Owner consents to accept the Work with an appropriate adjustment in Contract price. Job Order Contractor shall promptly segregate and remove rejected material from the premises.

8.6. **Failure to Replace or Correct Work.** If Job Order Contractor does not promptly replace or correct rejected Work, Owner may:

8.6.1. By Contract or otherwise, replace or correct the Work and charge the cost to Job Order Contractor; or

8.6.2. Terminate for default Job Order Contractor's right to proceed.

8.7. **Owner Inspection before Acceptance.** If, before acceptance of the entire Work, Owner decides to examine already completed Work by removing it or tearing it out, Job Order Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of Job Order Contractor or its subcontractors, Job Order Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Owner shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of time for performance.

8.8. **Owner Acceptance.** Unless otherwise specified in the Job Order, Owner shall accept, as promptly as practicable after completion and inspection, all work required by the Job Order or that portion of the Work that the Owner determines can be accepted separately. Acceptance shall

be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Owner's rights under any warranty or guarantee.

9. INVOICING AND PAYMENT

9.1. **Compensation**. As full consideration for the satisfactory performance by Job Order Contractor of Work prescribed under the Contract, Owner shall pay Job Order Contractor the amounts specified in the individual Job Orders.

9.2. **Invoices.** Job Order Contractor shall submit invoices to the City of Peoria, attention Project Manager at the following address:

City of Peoria
8401 W. Monroe St.
Peoria, AZ 85345

9.3. **Progress Payments.** Owner shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Owner, on estimates of Work completed submitted by the Job Order Contractor and approved by Owner. Job Order Contractor shall use an acceptable invoice form and shall include supporting documents to reflect a breakdown of the total price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the estimation of Work completed, Owner will authorize payment for material delivered on the site and preparatory work done if Job Order Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform the Work.

9.4. **Retention.** Not applicable.

9.5. **Owner's Property**. All material and work covered by progress payments made shall, at the time of payment, become the sole property of Owner, but this provision shall not be construed as:

9.5.1. Relieving Job Order Contractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or

9.5.2. Waiving the right of Owner to require the fulfillment of all of the terms of the Contract.

9.6. **Approval and Certification.** An estimate of the Work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the Owner or Owner's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the Work that are not approved for payment under this contract. The Owner may withhold an amount from the progress payment sufficient to pay the expenses the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the Work is certified and approved. The estimate of the Work shall be deemed received by the Owner on submission to any person designated by the Owner for the submission, review or approval of the estimate of the Work.

9.7. **Unpaid Amounts.** Owner shall pay all unpaid amounts due Job Order Contractor under this Contract within thirty (30) days, after:

9.7.1. Completion and acceptance of the Work;

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9.7.2. Presentation of a properly executed invoice;

9.7.3. Presentation of release of all claims against Owner arising by virtue of the Contract, other than claims, in stated amounts, that Job Order Contractor has specifically accepted from the operation of the release. A release may also be required of the assignee if Job Order Contractor's claim to amounts payable under this Contract has been assigned. Job Order Contractor shall complete a Job Order Contractor's release form acceptable to Owner; or

9.7.4. Consent of Job Order Contractor's surety, if any.

10. CHANGES

10.1. **Owner Changes.** Owner may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Job Orders, including changes:

10.1.1. In the specifications (including drawings and designs);

10.1.2. In Owner-furnished facilities, equipment, materials, services, or site; or

10.1.3. Directing acceleration in the performance of the Work, or otherwise altering the schedule for performance of the Work.

10.2. **Owner Change Orders.** Any other written order (which, as used in this paragraph, includes direction, instruction, interpretation, or determination) from Owner that causes a change shall be treated as a change order under this *§ 10*; provided, that Job Order Contractor gives Owner timely written notice stating the date, circumstances, and source of the order and that Job Order Contractor regards the order as a change order.

10.3. **Contract Adjustments.** Except as provided in this *§ 10*, no order, statement, or conduct of Owner shall be treated as a change under this *§ 10* or entitle Job Order Contractor to an equitable adjustment hereunder.

10.4. **Modification of the Job Order.** If any change under this *§ 10* causes an increase or decrease in Job Order Contractor's cost of, or the time required for, the performance of any part of the Work under a Job Order, whether or not changed by any such order, Owner shall negotiate an equitable adjustment and modify the Job Order in writing.

10.5. **Job Order Contractor Proposal.** Job Order Contractor must submit any proposal under this *§ 10* within thirty (30) calendar days after:

10.5.1. Receipt of a written change order under *§ 10.1* above; or

10.5.2. The furnishing of a written notice under *§ 10.2* above by submitting to Owner a written statement describing the general nature and amount of the proposal, unless this period is extended by Owner. The statement of proposal for adjustment may be included in the notice under *§ 10.2* above.

10.6. **Final Payment Limitation.** No proposal by Job Order Contractor for an equitable adjustment shall be allowed if asserted after final payment under the Job Order.

10.7. **Job Order Contractor Extension Justification.** Job Order Contractor shall furnish to the Owner a written proposal for any proposed extension in the period of performance. The proposal shall contain a price breakdown and period of performance extension justification.

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10.8. **Job Order Contractor Price Breakdown Structure.** Job Order Contractor, in connection with any proposal it makes for a Job Order change shall furnish a price breakdown itemized as required by Owner and the pricing matrix as required in the awarded contract.

11. INSURANCE & BONDS

11.1. **Job Order Contractor Insurance.** Job Order Contractor shall purchase and maintain in effect during the term of this Contract insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Job Order Contractor and Owner from claims which may arise out of or result from Job Order Contractor's operations whether such operations are performed by Job Order Contractor or by any subcontractor or by anyone for whose acts any of them may be liable.

11.1.1. WORKERS' COMPENSATION INSURANCE providing statutory benefits in accordance with the laws of the State of Arizona or any Federal statutes as may be applicable to the Work being performed under this Contract.

11.1.2. EMPLOYER'S LIABILITY INSURANCE with limits of liability not less than: $1,000,000 Each Accident; $1,000,000 Each Employee for Disease; and $1,000,000 Policy Limit for Disease.

11.1.3. COMMERCIAL GENERAL LIABILITY INSURANCE including Products/Completed Operations and Contractual Liability with limits of liability not less than: $2,000,000 General Aggregate; $2,000,000 Products/Completed Operations Aggregate; and $2,000,000 Each Occurrence.

11.1.4. AUTOMOBILE LIABILITY INSURANCE covering all owned, hired and non-owned motor vehicles used in connection with the Work being performed under this Contract with limits of liability not less than: $1,000,000 Each Person for Bodily Injury; $1,000,000 Each Accident for Bodily Injury; and $1,000,000 Each Occurrence for Property Damage.

11.2. **Owner as Additional Insured.** The policies providing Commercial General Liability and Automobile Liability insurance as required in ***§ 11.1*** shall be endorsed to name Owner as Additional Insured. Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance available to Owner.

11.3. **Policy Endorsement.** All policies providing Job Order Contractor's insurance as required in ***§ 11.1*** above shall be endorsed to provide the following:

11.3.1. Thirty days written notice of cancellation or non-renewal given to Owner at the address designated in ***§ 16.2***.

11.3.2. Waiver of subrogation in favor of Owner.

11.4. **Limits of Liability.** The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

11.5. **Certificate of Insurance.** Proof of compliance with these insurance requirements shall be furnished Owner in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company(ies) within ten (10) days of execution of this

agreement. Renewal or replacement certificates shall be furnished Owner not less than twenty-one (21) days prior to the expiration or termination date of the applicable policy(ies).

11.6. **Subcontractor Insurance.** Job Order Contractor shall require any and all subcontractors performing Work under this Contract to carry insurance of the types and with limits of liability as Job Order Contractor shall deem appropriate and adequate for the Work being performed. Job Order Contractor shall obtain and make available for inspection by Owner upon request current certificates of insurance evidencing insurance coverages carried by such subcontractors.

11.7. **Bonds.** If required by Owner, Job Order Contractor shall furnish Performance and Payment Bonds, each in an amount equal to one hundred percent (100%) of the Work, in a penal sum equal to the aggregate price of all Job Orders issued to the Job Order Contractor. The Performance and Payment Bonds must be submitted to Owner within ten (10) calendar days after issuance of a Job Order.

11.8. **Notice to Proceed.** Notice to Proceed will not be issued until properly executed bonds are received and accepted by Owner. A separate Notice to Proceed will be issued for each Job Order. The Notice to Proceed shall stipulate the actual contract start date, the contract duration and the contract completion date. The time required for the Contractor to obtain permits, licenses and easements shall be included in the contract duration and shall not be justification for a delay claim by the Contractor. The time required for the Contractor to prepare, transmit and obtain approval of applicable submittals shall be included in the contract duration and shall not be justification for a delay claim by the Contractor. No work shall be started until after all required permits, licenses, and easements have been obtained. No work shall be started until all applicable submittals have been submitted and returned approved by the Owner's Representative. The Contractor shall notify the City of Peoria's project manager or engineer at least seventy-two (72) hours before the following events:

11.8.1 The start of construction in order to arrange for inspection.

11.8.2 Shutdown of City water, sewer, drainage, irrigation and traffic control facility.

11.8.3 Shutdown of existing water wells and booster pumps. Shutdown shall not exceed seventy-two (72) hours for any installation. Only one installation may be shutdown at any time.

11.8.4 Coordination of all draining and filling of water lines and irrigation laterals and all operations of existing valves or gages with the project manager.

11.8.5 Start-up or testing of any water well or booster pump to be connected to any part of the existing City water system. This includes operation of existing valves necessary to accommodate the water.

12. **INDEMNIFICATION.** To the fullest extent permitted by law, the Job Order Contractor shall defend, indemnify and hold harmless the Owner, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Job Order Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Job Order Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury,

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sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Job Order Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Job Order Contractor may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

13. DISPUTES.

13.1. Party Cooperation. The parties are fully committed to working with each other throughout the term of the Contract and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Job Order Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

13.2. Field Level Resolution. Job Order Contractor and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between the parties' representatives named herein.

13.3. Job Order Contractor Performance. The Job Order Contractor shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Job Order Contractor, pending the final resolution of any dispute or disagreements between the parties.

13.4. Partnering. If requested and mutually agreed upon, the Owner and Job Order Contractor will share in the expense of an initial facilitated partnering workshop, followed up by periodic refresher meetings at mutually agreed times. The goal of the workshop will be to identify common goals, common interests, lines of communication, and a commitment to cooperative problem solving.

13.5. Owner's Representative. Owner designates the individual listed below as its representative, which individual has the authority and responsibility for avoiding and resolving disputes under this Contract. (Identify individual's name, title, address and telephone numbers)

City of Peoria, Materials Management
Mr. Herman Koebergen, Materials Manager
8401 W. Monroe, Annex
Peoria, AZ 85345

13.6. Job Order Contractor's Representative. Job Order Contractor designates the individual listed below as its representative, which individual has the authority and responsibility for avoiding and resolving disputes under this Contract. (Identify individual's name, title, address and telephone numbers)

KEVIN FELIX, PROJECT MANAGER
309 E. 10th DRIVE, MESA AZ 85210
480-464-6011
email KEVINF@felixconstruction.com

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13.7. **Owner's Resolution.** Any dispute which is not disposed of by agreement will be decided by the Owner, who will reduce its decision to writing and mail or otherwise furnish a copy thereof to the Job Order Contractor. Any dispute not finally resolved under this *§ 13* may be brought before the state courts of the State of Arizona and adjudicated in accordance with the laws of Arizona.

14. TERMINATION AND DEFAULT

14.1. **Termination for Convenience.** Owner may terminate performance of the Work under this Contract in whole or, from time to time, in part if Owner determines that termination is in Owner's interest. Owner shall effect such termination by delivering to Job Order Contractor a Notice of Termination specifying the extent of termination and the effective date.

14.2. **Notice of Termination.** After receipt of a Notice of Termination, and except as directed by Owner, Job Order Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this *§ 14*:

14.2.1. Stop work as specified in the notice;

14.2.2. Place no further subcontracts or orders (referred to as subcontracts in this *§ 14*) for materials, services or facilities, except as necessary to complete any Work not terminated;

14.2.3. Assign to Owner, if directed by Owner, all right, title, and interest of Job Order Contractor under the subcontracts to the extent they relate to the Work terminated, in which case Owner shall have the right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this *§ 14*;

14.2.4. As directed by Owner, transfer title and deliver to Owner:

14.2.4.1. The fabricated or unfabricated parts, Work in progress, completed Work, supplies, and other material produced or acquired for the Work terminated;

14.2.4.2. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Owner;

14.2.5. Complete performance of the Work not terminated;

14.2.6. Take any action that may be necessary, or that Owner may direct, for the protection and preservation of the property related to this Contract that is in the possession of Job Order Contractor and in which Owner has or may acquire an interest; and

14.2.7. Use its best efforts to sell, as directed or authorized by Owner, any property of the types referred to in *§ 14.2.3* above; provided, however, that Job Order Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Owner under the Contract, credited to the price or cost of the Work, or paid in any other manner directed by Owner.

14.3. **Final Termination Settlement Proposal.** After termination, Job Order Contractor shall submit a final termination settlement proposal to Owner in the form and with the certification

prescribed by Owner. Job Order Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination.

14.4. **Owner Payment.** Job Order Contractor and Owner may agree upon the whole or any part of the amount to be paid because of the termination. The amount will include a reasonable allowance for profit on work done. The Contract shall be amended, and Job Order Contractor paid the agreed amount.

14.4.1. If Job Order Contractor and Owner fail to agree on the whole amount to be paid Job Order Contractor because of the termination of work. Owner shall pay Job Order Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under *§ 14.4* above:

14.4.1.1. For Work performed before the effective date of termination, the total (without duplication of any items) of:

14.4.1.1.1. The cost of this Work;

14.4.1.1.2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in *§ 14.4.1.1.1.* above; and

14.4.1.1.3. A markup, including overhead and profit, on *§ 14.4.1.1.1.* above as is determined for pricing changes.

14.4.1.2. The reasonable costs of settlement of the Work terminated, including:

14.4.1.2.1. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

14.4.1.2.2. The termination and settlement of subcontracts (excluding the amounts of such settlements); and

14.4.1.2.3. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

14.5. **Destroyed, Lost, Stolen or Damaged Property.** Except for normal spoilage, and except to the extent that Owner expressly assumed the risk of loss, Owner shall exclude from the amounts payable to Job Order Contractor under Subparagraph 14.4.1 above, the fair value, as determined by Owner, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Owner or to a buyer.

14.6. **Amount Due Job Order Contractor.** In arriving at the amount due Job Order Contractor under this *§ 14*, there shall be deducted:

14.6.1. All unliquidated advances or other payments to Job Order Contractor under the terminated portion of the Job Order;

14.6.2. Any claim which Owner has against Job Order Contractor under the Contract; and

14.6.3. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Job Order Contractor or sold under the provisions of this *§ 14* and not recovered by or credited to Owner.

14.7. Partial Termination. If the termination is partial, Job Order Contractor may file a proposal with Owner for an equitable adjustment of the price(s) of the continued portion of any Job Order. Any proposal by Job Order Contractor for an equitable adjustment under this *§ 14* shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by Owner. Owner may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Job Order Contractor of the terminated portion of any Job Order, if Owner believes the total of these payments will not exceed the amount to which Job Order Contractor will be entitled.

14.8. Excess Payments. If the total payments exceed the amount finally determined to be due, Job Order Contractor shall repay the excess to Owner upon demand.

14.9. Job Order Contractor Records. Unless otherwise provided in this Contract or by statute, Job Order Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on Job Order Contractor's costs and expenses under this Contract. Job Order Contractor shall make these records and documents available to Owner, at Job Order Contractor's office, at all reasonable times, without cost. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

14.10. Default. If Job Order Contractor refuses or fails to prosecute the Work, or any separable part, with the diligence that will ensure its completion within the time specified in the Job Order including any extension, or fails to complete the Work within this time, Owner may terminate the Job Order Contractor's right to proceed with the Work (or separable part of the Work), upon thirty (30) days written notice to the Job Order Contractor. In this event, Owner may take over the Work and complete it by Contract or otherwise and may take possession of and use any materials, appliances, and plant on the site necessary for completing the Work.

14.11. Job Order Contractor's Right to Proceed. Job Order Contractor's right to proceed shall not be terminated under this *§ 14*, if:

14.11.1. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Job Order Contractor. Examples of such causes include: acts of God or of the public enemy, acts of Owner in its Contractual capacity, acts of another contractor in the performance of a Contract with Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather (The basis used to define normal weather will be data showing high and low temperatures, precipitation, and number of days of severe weather in the city closest to the site for the previous ten (10) years, as compiled by the United States Department of Commerce National Weather Service.), or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Job Order Contractor and the subcontractors or suppliers; and

14.11.2. Job Order Contractor, within 30 calendar days from the beginning of any such delay (unless extended by Owner), notifies Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of delay. If, in the judgment of Owner, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of Owner shall be final and conclusive on the parties, but subject to appeal and review under *§ 13*.

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14.12. Owner's Right to Terminate. The rights and remedies of Owner in this *§ 14* are in addition to any other rights and remedies provided by law or under this Contract.

14.13. Owner and Job Order Contractor Rights. If, after termination of Job Order Contractor's right to proceed, it is determined that Job Order Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Owner.

14.14. Liquidated Damages. Liquidated Damages shall be assessed for each calendar of delay. Liquidated Damages shall be in the amount per MAG Specs., Section 108.9) per day for each calendar day of delay. If the contract is not terminated, the contractor shall continue performance and be liable to the Owner for the liquidated damages until the products are delivered or services performed. In the event the City exercises its right of termination, the contractor shall be liable to the Owner for any excess costs, and in addition, for liquidated damages until such time the Owner may reasonably obtain delivery or performance of similar supplies or services.

14.15. Immigration Act. Contractor understands and acknowledges the applicability to Contractor of the Immigration Reform and Control Act of 1986 (IRCA). Contractor agrees to comply with the IRCA in performing under this contract and to permit City inspection of personnel records to verify such compliance.

15. WARRANTY OF CONSTRUCTION

15.1. Applicable Warranties. In addition to any other warranties in any Job Orders, Job Order Contractor warrants, except as provided in *§ 15.10*, that work performed conforms to the Job Order requirements and is free of any defect in equipment, material or design furnished, or workmanship performed by Job Order Contractor or any of its subcontractors or suppliers at any tier.

15.2. Warranty Duration. This warranty shall continue for a period of one (1) year from the date of final acceptance of the Work. If Owner takes possession of any part of the Work before final acceptance, this warranty shall continue for a period of one (1) year from the date possession is taken.

15.3. Job Order Contractor Corrective Work. Job Order Contractor shall remedy at Job Order Contractor's expense any failure of the Work to conform to the plans and specifications, or any construction defect. In addition, the Job Order Contractor shall remedy at Job Order Contractor's expense any damage to Owner's real or personal property, when that damage is the result of:

15.3.1. Job Order Contractor's failure to conform to requirements; or

15.3.2. Any defect of equipment, material, workmanship, or design furnished by the Job Order Contractor.

15.4. Job Order Contractor Restoration. Job Order Contractor shall restore any work damaged in fulfilling the terms and conditions of this *§ 15*. Job Order Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

15.5. Owner Notification. Owner shall notify Job Order Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

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15.6. **Failure to Correct Work.** If Job Order Contractor fails to remedy any failure, defect, or damage within ten (10) days after receipt of notice, Owner shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at Job Order Contractor's expense.

15.7. **Subcontractor and Supplier Warranties.** With respect to all warranties, expressed or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished for Job Orders issued under this Contract, Job Order Contractor shall:

15.7.1. Obtain all warranties required by the Job Order;

15.7.2. Require all warranties to be executed, in writing, for the benefit of Owner; and

15.7.3. Enforce all warranties for the benefit of Owner.

15.8. **Owner Remedy.** In the event Job Order Contractor's warranty under *§ 15.2* has expired, Owner may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

15.9. **Owner Furnished Material or Design.** Unless a defect is caused by the negligence of Job Order Contractor or subcontractor or supplier at any tier, Job Order Contractor shall not be liable for the repair of any defects of material or design furnished by Owner or for the repair of any damage that result from any defect in Owner-furnished material or design.

15.10. **Pre-Existing Work.** Job Order Contractor is not responsible for and does not warranty pre-existing work or facilities that may be assigned to Job Order Contractor except as modified by the Job Order.

15.11. **Owner's Rights.** This warranty shall not limit Owner's rights under *§ 8* of this Contract with respect to latent defects, gross mistakes, or fraud.

16. STANDARD TERMS AND CONDITIONS

16.1. **Contract Order of Precedence.** In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

16.1.1. Contract Modifications, if any;

16.1.2. This Contract, including Attachments;

16.1.3. Job Orders;

16.1.4. Drawings; and

16.1.5. Specifications.

16.2. **Certification.** By signature in the Offer section of the Offer and Contract Award page the Job Order Contractor certifies:

16.2.1. The submission of the offer did not involve collusion or other anti-competitive practices.

16.2.2. The Job Order Contractor shall not discriminate against any employee or applicant for employment.

16.2.3. The Job Order Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer. Failure

to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the vendor may be debarred.

16.2.4. The Job Order Contractor is licensed to perform the Work pursuant to Arizona Revised Statutes Title 32, Chapter 10.

16.3. **Bribes and Kick-Backs.** The Job Order Contractor shall not by any means:

16.3.1. Induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

16.3.2. Confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan subscription, advance, deposit of money, services or anything of value, present or promised;

16.3.3. Offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or,

16.3.4. Without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Job Order Contractor has a direct or indirect proprietary or other pecuniary interest.

16.4. **Applicable Law.** In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria 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.

16.4.1. Job Order Contractor warrants, for the term of this agreement and for six months thereafter, that is has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.

16.4.2. This contract shall be governed by the Owner. City and Job Order Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the Owner. This contract shall be governed by the laws of the State of Arizona. Any lawsuit pertaining to this contract may be brought only in courts in the State of Arizona.

16.4.3. This contract is subject to the provisions of ARS § 38-511; the Owner may cancel this contract without penalty or further obligations by the Owner or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Owner 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 consultant to any other party of the contract with respect to the subject matter of the contract.

16.5. **Legal Remedies.:** All claims and controversies shall be subject to resolution according to the terms of the City of Peoria Procurement Code.

16.6. **Contract.:** The contract between the Owner and the Job Order Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of

work, attachments, price sheet(s) and any amendments thereto, and (2) the offer submitted by the Job Order Contractor in response to the solicitation. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. However, the Owner reserves the right to clarify, in writing, any contractual terms with the concurrence of the Job Order Contractor, and such written contract shall govern in case of conflict with the applicable requirements stated in the Solicitation or the Vendor's offer. The Solicitation shall govern in all other matters not affected by the written contract.

16.7. Contract Amendments.: This contract may be modified only by a written Contract Amendment signed by persons duly authorized to enter into contracts on behalf of the Owner and the Job Order Contractor.

16.8. Contract Applicability.: The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this Solicitation. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the Owner are not applicable to this Solicitation or any resultant contract.

16.9. Severability. The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

16.10. Relationship to 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 Job Order Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Job Order Contractor should make arrangements to directly pay such expenses, if any.

16.11. Assignment-Delegation.- No right or interest in this contract nor delegation of any duty of Job Order Contractor shall be made without prior written permission of the Owner.

16.12. Job Order Contractor/Supplier Contract. The Job Order Contractor shall enter into written contracts with its subcontractor(s) and supplier(s), if any, and those written contracts shall be consistent with this Contract for Construction. It is the intent of the Owner and the Job Order Contractor that the obligations of the Job Order Contractor's subcontractor(s) and supplier(s), if any, inure to the benefit of the Owner and the Job Order Contractor, and that the Owner be a third-party beneficiary of the Job Order Contractor's agreements with its subcontractor(s) and supplier(s).

16.12.1. The Job Order Contractor shall make available to each subcontractor and supplier, if any, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract for Construction, including those portions of the Construction documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractor(s) and supplier(s).

16.12.2. The Job Order Contractor shall engage each of its subcontractor(s) and supplier(s) with written contracts which preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Job Order Contractor's agreements with its subcontractor(s) and supplier(s) shall require that in the event of default under, or termination of,

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this Contract for Construction, and upon request of the Owner, the Job Order Contractor's subcontractor(s) and supplier(s) will perform services for the Owner.

16.12.3. The Job Order Contractor shall include in its agreements with its subcontractor(s) and supplier(s) a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract for Construction that are included by reference in its written contract with the Job Order Contractor, and that it will abide by those terms, conditions and requirements.

16.13. Rights and Remedies. No provision in this document or in the vendor's offer shall be construed, expressly or by implication, as waiver by the Owner of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the Owner to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the Owner's acceptance of and payment for materials or services, shall not release the Job Order 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 Owner to insist upon the strict performance of the Contract.

16.14. Overcharges By Antitrust Violations. The Owner maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Job Order Contractor hereby assigns to the Owner any and all claims for such overcharges as to the goods and services used to fulfill the Contract.

16.15. Force Majeure. Except for payment for 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.

16.15.1. 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; floods; 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. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

16.15.2. Force majeure shall not include the following occurrences: late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences; 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 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. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand

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. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

16.16. Right To Assurance. Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

16.17. Right To Audit Records. The Owner may, at reasonable times and places, audit the books and records of any Job Order Contractor as related to any contract held with the Owner.

16.18. Warranties. Job Order Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Job Order Contractor's response, the Owner is responsible for selecting items, their use, and the results obtained from any other items used with the items furnished under this contract. Mere receipt of shipment of the material/service specified and any inspection incidental thereto by the Owner shall not alter or affect the obligations of the Job Order Contractor or the rights of the Owner under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.

16.19. Inspection. All material and/or services are subject to inspection and acceptance by the Owner. Materials and/or services failing to conform to the specifications of this Contract will be held at Job Order Contractor's risk and may be returned to the Job Order Contractor. If so returned, all costs are the responsibility of the Job Order Contractor. The Owner may elect to do any or all of the following:

16.19.1. Waive the non-conformance.

16.19.2. Stop the work immediately.

16.19.3. Bring material into compliance.

16.19.4. This shall be accomplished by a written determination from the Owner.

16.20. Title and Risk of Loss. The title and risk of loss of material and/or service shall not pass to the Owner until the Owner actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

16.21. No Replacement of Defective Tender. Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform. this shall constitute a breach of the Contract as a whole.

16.22. Shipment Under Reservation Prohibited. Job Order Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

16.23. Liens. All materials, service or construction shall be free of all liens, and if the Owner requests, a formal release of all liens shall be delivered to the Owner.

16.24. Licenses. shall maintain in current status, all Federal, State and Local licenses and created under this contract are the property of the Owner and shall not be used or released by the Job Order Contractor or any other person except with the prior written permission of the Owner.

16.25. Patents and Copyrights. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Owner and shall not be used or released by the Job Order Contractor or any other person except with the prior written permission of the Owner.

16.26. Cost of Bid/Proposal Preparation. The Owner shall not reimburse the cost of developing presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

16.27. Public Records. All offers submitted in response to this solicitation shall become the property of the Owner and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the Owner's Procurement Code.

16.28. Advertising. Job Order Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the Owner.

16.29. Delivery Orders. The Owner shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award

16.30. Funding. Any contract entered into by the Owner of Peoria is subject to funding availability. Fiscal years for the Owner of Peoria are July 1 to June 30. The Owner Council approves all budget requests. If a specific funding request is not approved, the contract shall be terminated.

16.31. A.R.S. Title 34 Provisions.

16.31.1. The maximum dollar amount of an individual job order shall be one million dollars ($3,000,000) or such higher or lower amount prescribed by the Owner in an action notice pursuant to A.R.S. title 38, chapter 3, article 3.1 or a rule adopted by the Owner as the maximum amount of an individual job order. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.

16.31.2. If the Job Order Contractor subcontracts or intends to subcontract part or all of the work under a job order and if this contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order, then:

16.31.2.1. The Job Order Contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the Job Order Contractor to do all or part of the work under one or more job orders:

16.31.2.1.1. A copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid.

16.31.2.1.2. A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.

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16.31.2.2. If not previously delivered to the subcontractor, the Job Order Contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order:

16.31.2.2.1. A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

16.31.2.2.2. The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

16.31.2.2.3. The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

16.31.3. The Owner will include the full street or physical address of each separate location at which the construction will be performed for each individual Job Order. The Job Order Contractor (and on behalf of each subcontractor at any level) hereby agrees to include in each of its subcontracts the same address information. The Job Order Contractor and each subcontractor at any level shall include in each subcontract the full street or physical address of each separate location at which construction work will be performed.

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Felix - Peoria JOC # P-07 - 00[illegible]47

Fee Matrix February 16, 2008

Fees to be added to JOC individual Job Order Cost															
Description	0 to 25,000			25,001 to 50,000			100,001 to 250,000			250,001 to 500,000			Over 500,000		
	Overh'd	Profit	**Fee**	Overh'd	Profit	**Fee**	Overh'd	Profit	**Fee**	Overh'd	Profit	**Fee**	Overh'd	Profit	Fee
Labor rates *	4.7%	10.0%	**14.7%**	4.7%	10.0%	**14.7%**	4.7%	10.0%	**14.7%**	4.7%	10.0%	**14.7%**	4.7%	10.0%	**14.7%**
Equipment rates **	4.7%	7.5%	**12.2%**	4.7%	7.5%	**12.2%**	4.7%	7.5%	**12.2%**	4.7%	7.5%	**12.2%**	4.7%	7.5%	**12.2%**
Rental Equipment	4.7%	10.0%	**14.7%**	4.7%	7.5%	**12.2%**	4.7%	7.5%	**12.2%**	4.7%	5.0%	**9.7%**	4.7%	5.0%	**9.7%**
Material cost	4.7%	10.0%	**14.7%**	4.7%	7.5%	**12.2%**	4.7%	7.5%	**12.2%**	4.7%	5.0%	**9.7%**	4.7%	5.0%	**9.7%**
Subcontractor cost	4.7%	5.0%	**9.7%**	4.7%	4.0%	**8.7%**	4.7%	4.0%	**8.7%**	4.7%	3.0%	**7.7%**	4.7%	3.0%	**7.7%**
Engineer services	4.7%	?	**?**	4.7%	?	**?**	4.7%	?	**?**	4.7%	?	**?**	4.7%	?	**?**
Taxes	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**
Bonds	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**
Permits	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**	0.0%	0.0%	**0.0%**

* Rates = Labor hourly cost + labor burden (does not include overhead or profit)

** Rates = Equipment ownership cost including fuel and insurance (does not include operator, overhead, or profit)

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Job Order Sample Cost/Pricing Matrix	Amount	% of Total	G&A + Fee
Direct Cost of the Work			
Materials	190,000	19.00%	4.7% + 5%
Labor	110,000	11.00%	4.7% + 10%
Equipment	55,000	5.50%	4.7% + 7.5%
Other Direct Job Costs	65,000	6.50%	4.7% + 3%
Subcontractors	400,000	40.00%	4.7% + 3%
Total Direct Cost Of the Work	820,000	82.00%	
Indirect Cost of the Work			
General & Administrative Expense	38,540	3.85%	
Job Order Contractor's Fee (profit)	38,575	3.86%	
Payment and Performance Bonds	8,971	1.00%	
Insurance	8,971	0.90%	
Arizona/County/city Privilege Taxes	44,948	4.49%	
Total Indirect Cost of the Work	140,000	14.00%	
Total Cost of the Work	960,000	96.00%	
Contingencies/Allowances			
Contractor's Contingency/Allowance	20,000	2.00%	
Owner's Contingency/Allowances	20,000	2.00%	
Total Contingencies/Allowances	40,000	4.00%	
Total Job Order Amount	1,000,000	100.00%	

A CON 23908

ATTACHMENT "B"
SCOPE OF SERVICES

1.0 GENERAL INFORMATION

This is a fixed price, indefinite quantity type Contract for the performance of a broad range of construction, repair and maintenance work on an as-needed basis as may be required by Owner. The specific work requirements will be identified in Job Orders to be issued by Owner.

2.0 DOCUMENTS

2.1 The currently applicable pricing structure contains pricing information for the Work to be accomplished in the pricing matrix specified. The Pricing matrix can only be updated at time of yearly contract renewal by mutually agreeable change order. Previously issued Job Orders and changes will not be retroactively re-priced although any changes priced after receipt of an update will be priced by the updated version of the new pricing matrix.

2.2 The construction specifications in effect at Contract signing, and provided to the Job Order Contractor, shall be the specifications under this Contract.

3.0 WORK AUTHORIZATION

Any Work required under this Contract shall be authorized by issuance of formal, written Job Orders, as follows:

3.1 As the need exists (as determined by Owner) for performance under the terms of this Contract, Owner will notify Job Order Contractor of an existing requirement.

3.2 Upon the receipt of this notification, Job Order Contractor shall respond within two (2) working days, or as otherwise agreed, by:

3.2.1 Visiting the proposed site in the company of Owner, or;

3.2.2 Establishing contact with Owner to further define the scope of the requirement.

3.3 After mutual agreement on the scope of the individual requirement, Job Order Contractor shall then prepare a proposal for accomplishment of the task unless Job Order Contractor, in its sole discretion, elects not to undertake the Work. If the Work is declined, Job Order Contractor will so notify Owner in a timely manner.

3.4 The price matrix shall serve as the basis for establishing the value of the Work to be performed.

3.5 Job Order Contractor's proposal shall be submitted within ten (10) working days unless otherwise agreed.

3.6 Upon receipt of Job Order Contractor's proposal, Owner will review the proposal for completeness and will reach agreement with Job Order Contractor on pricing, schedule, and all other terms, prior to issuance of a Job Order.

3.7 In the event Owner does not issue a Job Order after receipt of Job Order Contractor's proposal, Owner is not obligated to reimburse Job Order Contractor for any costs incurred in the preparation of the proposal, except as noted in *§ 4.8*.

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4.0 SCHEDULING OF WORK

4.1 For each Job Order, Owner will issue a Notice to Proceed. The first day of performance under a Job Order shall be the effective date specified in the Notice to Proceed. Any preliminary work started or material ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of Job Order Contractor. Job Order Contractor shall diligently prosecute the Work to completion within the time set forth in the Job Order. The period of performance includes allowance for mobilization, holidays, weekend days, normal inclement weather, and cleanup. Therefore, claims for delay based on these elements will not be allowed. When Job Order Contractor considers the Work complete and ready for its intended use, Job Order Contractor shall request Owner to inspect the Work to determine the status of completion. When Owner determines the Work to be Punch List Prepared as defined in 1.7, Owner will provide Contractor with a list of items to be completed or corrected prior to final payment for the Job Order. Job Order Contractor shall proceed promptly to complete and correct items on the list.

4.2 Job placement of materials and equipment shall be made with a minimum of interference to Owner operations and personnel.

4.3 Furniture and portable office equipment in the immediate work area will be moved by Job Order Contractor and replaced to its original location. If the furniture and portable office equipment cannot be replaced to its original location, Owner will designate new locations. If furniture and portable office equipment (or other items) must be moved and/or stored outside the immediate area, Owner will compensate Job Order Contractor for any such transportation and storage costs incurred.

4.4 Job Order Contractor shall take all precautions to ensure that no damage will result from its operations to private or public property. All damages shall be repaired or replaced by Job Order Contractor at no cost to Owner.

4.5 Job Order Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each Job Order. Proposed traffic control methods shall be submitted to Owner for approval.

5.0 QUALITY ASSURANCE/QUALITY CONTROL PROGRAM

Job Order Contractor shall submit, for Owner approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after issuance of the initial Job Order. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with Owner's inspectors.

6.0 DESIGN

Job Order Contractor's duties under the Contract include the preparation of shop drawings or sketches necessary to permit orderly construction of Owner's design plans. Job Order Contractor agrees to provide detailed design drawings and plans if requested by Owner, with reimbursement included as part of the Job Order Contractor's proposal.

7.0 TEMPORARY SANITATION FACILITIES

The Contractor shall provide ample toilet facilities with proper enclosures for the use of workmen employed on the work site. Toilet facilities shall be installed and maintained in conformity with all applicable state and local laws, codes, regulations and ordinances. They shall be properly lit and ventilated, and kept clean at all times.

A CON 239086

Adequate and satisfactory drinking water shall be provided at all times and under no circumstances and under no conditions will the use of common cups be permitted. The Contractor must supply sanitary drinking cups for the benefit of all employees.

7.1 DUST CONTROL AND WATER

The dust control measures **shall be in accordance with the requirements of the *"Maricopa County Health Department Air Pollution Control Regulations,"* namely Regulation II, Rule 21, subparagraph C and Regulation III, Rule 310 shall be rigidly observed and enforced. Water or other approved dust palliative in sufficient quantities shall be applied during all phases of construction involving open earthwork to prevent unnecessary discharge of dust and dirt into the air. The Contractor shall be responsible for compliance with these regulations. A Notice to Proceed will not be issued until the City of Peoria has received a copy of the Contractor's Dust Control Permit and Plan.**

The Contractor shall be required to obtain the necessary permit and all pertinent information from the Maricopa County Air Pollution Control Bureau, 2406 S. 24th Street #E-214, Phoenix, Arizona. (602) 506-6700 extension 372.

The Contractor shall keep suitable equipment on hand at the job site for maintaining dust control on the project streets, and shall employ sufficient labor, materials and equipment for that purpose at all times during the project to the satisfaction of the City Engineer.

Watering shall conform to the provisions of Section 225 of the MAG Standard Specifications. The cost of watering will be included in the price bid for the construction operation to which such watering is incidental or appurtenant.

Installation and removal of fire hydrant meters should be scheduled at least forty-eight (48) hours in advance through the City of Peoria Utilities Division at (623) 773-7160. A $1,000 deposit is required for each meter. An additional $28.00 service fee is also required. The cost of the water is at the prevailing rate.

7.2 ELECTRICITY

Owner shall furnish to Job Order Contractor from existing Owner facilities and without cost to Job Order Contractor, electricity necessary for the performance of work under this Contract. It is the responsibility of Job Order Contractor to determine the extent to which existing Owner electrical facilities are adequate for the needs of this Contract.

Upon completion of this Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of Job Order Contractor, and costs included in the Job Order Proposal, so as to leave the electrical power source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

8.0 WORK BY OWNER

Owner reserves the right to undertake or award Contracts for the performance of the same or similar type work contemplated herein, and to do so will not breach or otherwise violate the Contract.

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REQUEST FOR QUALIFICATIONS

P08-0047

Materials Management
Procurement
8314 West Cinnabar Street
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

PROPOSAL FORM

This form must be completed and stapled to the Value Added Plan, and the Subcontractor Selection Plan as part of your submittal.

Name of JOC Firm (Contractor): Felix Construction Company

Name of Contract Manager: Kevin Felix (PM), Steve Stayer (SS), (PM)Dana Watts (PM)

PPI Checklist:

☒ All reference lists have been submitted to the city.
☒ Surveys have been distributed to the past clients on the reference lists.
☒ The surveys have been completed and turned in to the City by the past clients.

VA Checklist:

☒ The Value Added Plan is stapled to this form.
☒ The Value Added Plan is 2 pages or less and is in the required format.
☒ The Value Added Plan does NOT contain any names, past projects, or information that may identify the contractor or critical team members.

Subcontractor Selection Plan Checklist:

☒ The Subcontractor Selection Plan is stapled to this form.
☒ The Subcontractor Selection Plan is no longer than 1 page.
☒ The Subcontractor Selection Plan does NOT contain any names, past projects, or information that may identify the contractor or critical team members.

Individual project bonding capacity:	$15,000,000
Total bonding capacity:	$60,000,000
Amount of bonded contracts currently in process:	$23,800,000

The Value Added Plan & Sub Contractors Plan should be attached to this form. The Value Added Plan must NOT contain any information that may identify the Firm or critical team members.

Felix Construction Company
Name of Company

Donald Felix, President
Printed Name of Firm Representative

Signature of Firm Representative

309 E. 10th Dr.
Street Address

Mesa, AZ 85210-8706
City / State / Zip

480-464-0011
Phone

480-464-0078
Fax

03 Jan 08
Date

A CON 23908

Materials Management
Procurement
8314 W. Cinnabar St.
Peoria, AZ 85345-6560
Phone (623) 773-7115
Fax (623) 773-7118

Value Added Options

Risk 1:	This JOC project will include a wide range of water and wastewater facility work. The City now has only very general descriptions of the job orders. A JOC Firm inexperienced with multiple disciplines might not meet the City's cost or schedule expectations.		
Value Added:	The project requires a JOC Firm to be familiar with cost, schedule, constructability, and construction for multiple disciplines - civil; structural; mechanical; electrical, instrumentation, and controls (E/I&C); etc. Contractor's focus for its entire 20-year history has been water and wastewater work. We already have, in-house, the experience to efficiently manage and build work in these and other disciplines. We have an A- General Engineering license for civil, structural, and mechanical, an L-11 Electrical license for E/I&C, a B-01 General Commercial license for buildings, and a Well Driller's license. We have two licensed Professional Engineers and one certified Construction Manager on staff. We specialize in Alternative Delivery Projects, and are very familiar with the JOC process. We regularly self-perform structural concrete, mechanical piping and equipment, electrical conduit and gear, and instrumentation and controls work. Again, all of this experience is in-house.		
Impact Cost (%):	Up to -3%	Impact Time (Days):	0

Risk 2:	This JOC project could include electrical, instrumentation, and controls (E/I&C) work, often a source of schedule variance. E/I&C standards are often evolving, making systems integration difficult during both design and construction.		
Value Added:	Contractor has an in-house E/I&C Group. This gives the project an added element of cost and schedule control. We do not have to employ a lower-tier subcontractor for electrical conduit and gear, instrumentation and controls, remote telemetry unit, SCADA, or security upgrades work. Our E/I&C Group has an Underwriter's Laboratory 508A Control Panels certification. With this capability and expertise, we can quickly respond to evolving design and construction standards, without delay to the project.		
Impact Cost (%):	Up to -3%	Impact Time (Days):	Up to -5 Working Days

Risk 3:	The City probably will have only verbal descriptions or sketches for some job orders. The City could be at risk for poor conceptual estimating.		
Value Added:	The project requires a JOC Firm to estimate costs quickly and efficiently, usually with only conceptual information. Contractor manages and builds many types of water and wastewater projects every day. We have proprietary estimating programs and forms already set up; these can be adapted to the current project. Further, we are used to estimating with limited information. Our goal is to have accurate and fair cost estimates, with no upwards fluctuations. Since we regularly self-perform structural concrete, mechanical piping and equipment, electrical conduit and gear, and instrumentation and controls, we have up-to-date labor, equipment, and materials costs. Additionally, we have a database of and current working relationships with over 250 material suppliers, over 150 equipment providers, and over 100 subcontractors. All of these are high quality, and can give us cost estimating advice in their specialties.		
Impact Cost (%):	Up to -1%	Impact Time (Days):	0

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8314 W. Cinnabar St.
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Risk 4:	The job order dollar amounts will vary - some will be large, some will be small. An uncommitted JOC Firm might pay less attention to the small orders. The City then would be at risk that problems were not identified and solved.		
Value Added:	The project requires a JOC Firm to be willing and able to commit problem-solving resources to all job orders, regardless of size. Contractor's entire approach to project management is to anticipate a project's problems, and to offer cost-effective and timely solutions. This means our project managers (PMs) are close to the project details, and actually support our field work. We have more PMs per revenue dollar volume than other companies. Our PMs work hard at understanding every available construction detail before we start building. The City will get the same high level of performance from Contractor whether the job orders are large or small. As further evidence of owner satisfaction with our project management approach, in our 20-year history we never have had a contract or subcontract terminated, we never have had a claim filed against us, and we never have filed a claim against anyone.		
Impact Cost (%):	Up to -1%	Impact Time (Days):	0

Risk 5:	This JOC project will include modifying existing water and wastewater facilities. Accurate underground utility locations, and control drawings, will be required before construction. Record drawings often are unavailable or inadequate.		
Value Added:	If underground utility record drawings are unavailable, we will recommend utility locating (vacuum excavating) at potential conflict locations. We have working relationships with several expert utility locating companies. If accurate controls drawings are unavailable, we are able to develop them.		
Impact Cost (%):	$1 spent up-front typically saves $3-4 spent later	Impact Time (Days):	Up to -5 Working Days

Risk 6:	Operations at existing facilities must be maintained during construction.		
Value Added:	Contractor already has a proprietary and proven Maintenance of Plant Operations (MOPO) standard plan which can be adapted to the current project. We will coordinate with the City and other stakeholders to schedule our work so that operations are maintained. Often such scheduling requires off-hours or weekend work. We will handle this as just another part of the project.		
Impact Cost (%):	Up to +2%	Impact Time (Days):	Up to -4 Working Days

Risk 7:	Projects could require building safety permits. Plan reviews could be on a project's critical path, but are controlled by another City department.		
Value Added:	City will state when any project must be completed. Project Team will meet with City's Building Safety Dept. and confirm their review and permit schedule. Contractor will include information on project schedule and updates. If the Building Safety Dept.'s schedule varies, we will be prepared to "accelerate" any necessary design or construction revisions in response.		
Impact Cost (%):	Up to +3%	Impact Time (Days):	Up to -10 Working Days

Risk 8:	The City already has clear expectations of this JOC project and the individual job orders. Contractor may not fully understand these. If SAVE members become involved on the project, there is a possibility of more entities and more expectations.		
Value Added:	Contractor will recommend scope / kickoff meetings before each job order. We will make sure that we fully understand the City's or the SAVE member's budget, schedule, quality, and safety expectations. These meetings are to us just good management practice. We do not expect that they will add cost or time to the job orders.		
Impact Cost (%):	0	Impact Time (Days):	0

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Subcontractor Selection Plan

1. General.
   a. Contractor will select major subcontractors based on qualifications only, or a combination of qualifications and price, but not on price alone. This is according to ARS 34-603 and ARS 41-2578.
   b. Contractor also will consider these important subcontractor selection factors:
      1) Owner's history, good or bad, with potential subcontractors.
      2) Owner's goals for disadvantaged business enterprise (DBE) utilization.
      3) Project benefits from early involvement by Design Assist subcontractors.
      4) Project requirements for Contractor to self-perform a minimum percentage of the construction work.
   c. Contractor will include this subcontractor selection plan, and the results from it, into the project's Construction Management Plan.
2. Selection on Qualifications and Price.
   a. This is the typical selection process.
   b. Determine what bid packages to issue. Break project into packages that give the Owner and the project the best cost and time values.
   c. Contact subcontractors who work regularly in the water / wastewater industry. Actively solicit DBEs.
      1) Owner and Contractor jointly set disparity goals if any for the project.
   d. Subcontractors complete prequalification forms. We have proprietary forms on file.
      1) Information requested is company identification, company background, individual and company experience, company financial, company insurance, company safety, and miscellaneous. The miscellaneous section can be tailored to a particular project.
   e. Evaluate subcontractor prequalification forms. We have proprietary forms on file.
      1) Evaluation categories and scoring are stated on the pre-qualification form.
      2) We look closely at work backlog and experience modification rating.
   f. Review qualified subcontractors with the Owner. Get Owner approval.
      1) Solicit enough potential subcontractors per bid package to insure receiving at least 3 bids per package.
   g. Provide qualified subcontractors with preliminary scopes of work. Get their comments and questions.
   h. Distribute bid packages to qualified subcontractors.
      1) A well-prepared scope of work is the key to receiving responsive, competitive bids. It eliminates the need to add money to offset ambiguity, prevents duplications between bids for sub-disciplines, allows bid evaluations on an equal basis, reduces contingencies, and reduces the likelihood of change orders.
   i. Receive and open bids, with the Owner as a witness.
   j. Evaluate bids. Conduct post-bid interviews if necessary. We have proprietary forms for both on file.
      1) Evaluation categories and scoring are stated in the bid package.
   k. Report to Owner on bidding process. Make recommendations on selected subcontractors. Get Owner approval.
   l. Award subcontracts.
3. Selection on Qualifications Only.
   a. Use this selection process if:
      1) Design Assist advice is needed during the preconstruction phase. Under Design Assist, major or specialist subcontractors or suppliers are selected early in the preconstruction phase so that they can work with the Project Team on constructability review. This allows increased construction planning, and allows reduced requests for information or requests for change orders.
      2) Proprietary services or products are required (sole-source specification)
      3) A shorter project schedule is necessary. Selection on qualifications only often can speed up the bid packaging, bidding, and GMP process.
   b. Propose to Owner to select on qualifications only. Get Owner approval. If no approval, go to Selection on Qualifications and Price above.
      1) Normally, Contractor intends that any subcontractor or supplier selected on qualifications only for the preconstruction phase will also be employed for the construction phase, also on qualifications only.
      2) Such carry-over from phase to phase does not mean that the subcontractor or supplier is not required to provide detailed cost estimates for his work to the Contractor for review.
   c. Determine what work packages to issue. Break project into packages that give the Owner and the project the best cost and time values.
   d. Contact subcontractors who work regularly in the water / wastewater industry. Actively solicit DBEs.

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1) Owner and Contractor jointly set disparity goals if any for the project.

e. Subcontractors complete prequalification forms. We have proprietary forms on file.
   1) Information requested is company identification, company background, individual and company experience, company financial, company insurance, company safety, and miscellaneous. The miscellaneous section can be tailored to a particular project.
   2) Qualifications include subcontractor's abilities in conceptual cost estimating, alternative systems evaluation, and value engineering.

f. Evaluate subcontractor prequalification forms. We have proprietary forms on file.
   1) Evaluation categories and scoring are stated on the pre-qualification form.
   2) We look closely at the subcontractor's key person and overall company experience with a particular part of the project.

g. Review qualified subcontractors with the Owner. Get Owner approval.

h. Provide qualified subcontractors with preliminary scopes of work. Get their comments and questions.

i. Distribute work packages to qualified subcontractors.
   1) Subcontractors or suppliers selected for Design Assist or proprietary services actually will help prepare these work packages. These packages will then be available for the Construction Management Plan, or if it becomes necessary to follow a competitive bidding process.

j. Report on selection process to Owner. Make recommendations on selected subcontractors. Get Owner approval.

k. Award subcontracts.

4. Summary.
   a. Our subcontractor selection plan will give the Owner and this project the greatest opportunity to obtain the best cost and time value. It uses methods according to ARS, typical for the industry, and familiar to the Owner.

DBE Outreach Plan

1. General.
   a. Contractor agrees to evaluate opportunities for the fair utilization of disadvantaged business enterprises (DBEs) during the construction phase of the project.
   b. We will actively participate in any goal setting for the construction phase DBE participation. We will assist the Owner in setting realistic goals after the Project Team develops sufficient project detail to allow this.
   c. We expect to meet any construction phase DBE goals that are set. If we cannot, then we will completely document our good faith efforts.
2. Specific.
   a. We have, and will maintain, current records on companies that are DBE-certified by agencies such as the Arizona Department of Transportation, the Maricopa County Department of Transportation, and the City of Phoenix. "DBE" also includes minority owned business enterprises (MBEs), women owned business enterprises (WBEs), and small business enterprises (SBEs).
   b We have current working relationships with many local materials suppliers, equipment providers, and subcontractors. We know their capabilities and how to select the right company for this project.
   c. We have, and we will maintain, current contacts with local community organizations that could advise us on DBE firms for participation in this project.
   d. We will actively solicit DBE participation through telephone, fax, email, meetings, advertising, and other reasonable and available means. We will completely document this effort.
   e. We will solicit DBE participation in sufficient time to allow DBEs to respond. We will provide specifications, drawings, and other project information in a timely manner.
   f. We will identify portions of the construction that could be done by DBEs, to increase the likelihood that they will participate.
   g. We will negotiate in good faith with interested DBEs. We will make decisions about their participation based on thorough investigations of their capabilities.
   h. We will select DBEs that will perform significant portions of the construction with their own forces.
3. Summary.
   a. We will use the outreach plan that we routinely use to meet DBE participation goals on ADOT, MCDOT, City of Phoenix, and other projects that are federally funded.

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SOLICITATION AMENDMENT

Solicitation No: P08-0047
Description: JOC for Water, Waste Water Treatment & Offsite Facilities Projects
Amendment No: Amendment # One (1)
Solicitation Due Date: January 3, 2008
Solicitation Due Time: 5:00 PM Arizona time

Materials Management Procurement
8314 West Cinnabar Avenue
Peoria, Arizona 85345-6560
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Peggy Ferrin, Ext. 7780

A signed copy of this Amendment shall be received by the City of Peoria, Materials Management no later than the Solicitation Due Date and Time.

SECTION V – CRITICAL DATES

DELETE: Critical dates

Task	Date
Pre-submittal Conference	December 13, 2007
Firms Submit Reference Lists	December 19, 2007
Surveys Due & Submittals Due	January 03, 2008
Interview (short-listed firms/individuals only)	January 24, 2008
Identification of Potential Best Value	January 25, 2007
Negotiations	January 29, 2007
Pre-Project Meeting	February 7, 2007

REPLACE: Critical dates

Task	Date
Pre-submittal Conference	December 13, 2007
Firms Submit Reference Lists	December 19, 2007
Surveys Due & Submittals Due	January 03, 2008
Interview (short-listed firms/individuals only)	January 24, 2008
Identification of Potential Best Value	January 25, 2008
Negotiations	January 29, 2008

All other provisions of this Solicitation shall remain in their entirety.

Vendor hereby acknowledges receipt and agreement with the amendment.

03 Jan 08

Signature Date

Donald Felix, President

Typed Name and Title

Felix Construction Company

Company Name

309 E. 10th Dr.

Address

Mesa, AZ 85210-8706

City State Zip

The above referenced Solicitation Amendment is hereby Executed

November 29, 2007

at Peoria, Arizona

Peggy A. Ferrin
Contract Officer

Copyright 2003 City of Peoria, Arizona

A CON 239085

SOLICITATION AMENDMENT

Solicitation No: P08-0047
Description: JOC for Water, Waste Water Treatment & Offsite Facilities Projects
Amendment No: Amendment # One (1)
Solicitation Due Date: January 3, 2008
Solicitation Due Time: 5:00 PM Arizona time

Materials Management Procurement
8314 West Cinnabar Avenue
Peoria, Arizona 85345-6560
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Peggy Ferrin, Ext. 7780

A signed copy of this Amendment shall be received by the City of Peoria, Materials Management no later than the Solicitation Due Date and Time.

Pre-Project Meeting February 7, 2008

All other provisions of this Solicitation shall remain in their entirety.

Vendor hereby acknowledges receipt and agreement with the amendment.

Signature Date

Typed Name and Title

Company Name

Address

City State Zip

The above referenced Solicitation Amendment is hereby Executed

November 29, 2007

at Peoria, Arizona

Peggy A. Ferrin
Contract Officer

Copyright 2003 City of Peoria Arizona
COP 207 (9/99)HFK

A CON 23908

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE 04/08/2008

PRODUCER 877-945-7378

Willis North America, Inc.
26 Century Blvd.
P. O. Box 305191
Nashville, TN 372305191

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Felix Construction Co.
309 E. 10th Drive
Mesa, AZ 85210

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: Westfield Insurance Company	24112-001
INSURER B: National Union Fire Ins. Co. of Pittsburg	19445-001
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY	CMM1618295	4/7/2008	4/7/2009	EACH OCCURRENCE	$ 1,000,000
		X COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurence)	$ 300,000
		CLAIMS MADE X OCCUR				MED EXP (Any one person)	$ 10,000
						PERSONAL & ADV INJURY	$ 1,000,000
						GENERAL AGGREGATE	$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$ 2,000,000
		POLICY X PRO-JECT LOC					
A		AUTOMOBILE LIABILITY	CMM1618295	4/7/2008	4/7/2009	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
		X ANY AUTO					
		ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		SCHEDULED AUTOS					
		HIRED AUTOS				BODILY INJURY (Per accident)	$
		NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
B		EXCESS/UMBRELLA LIABILITY	BE7657639	4/7/2008	4/7/2009	EACH OCCURRENCE	$ 1,000,000
		X OCCUR CLAIMS MADE				AGGREGATE	$ 1,000,000
							$
		DEDUCTIBLE					$
		X RETENTION $ 10,000					$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS / OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
		OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Umbrella/Excess Liability coverage is following form to all underlying policies, including Worker's Compensation.

It is agreed that City of Peoria is included as an Additional Insured as respects to General Liability as required by written contract.

With respects to General Liability policy, it is further agreed that such insurance as is afforded

CERTIFICATE HOLDER

City of Peoria
Attn: Herman Koebergnen
8314 West Cinnabar Street
Peoria, AZ 85435

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~XXXXXXXX~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE John B. Jacobs

© ACORD CORPORATION 1988

Willis

CERTIFICATE OF LIABILITY INSURANCE

DATE 04/08/2008

PRODUCER 877-945-7378

Willis North America, Inc.
26 Century Blvd.
P. O. Box 305191
Nashville, TN 372305191

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Felix Construction Co.
309 E. 10th Drive
Mesa, AZ 85210

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: Westfield Insurance Company	24112-001
INSURER B: National Union Fire Ins. Co. of Pittsburg	19445-001
INSURER C:	
INSURER D:	
INSURER E:	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

shall be Primary and Non-contributory with any other insurance in force for or which may be purchased by the Additional Insured, if required by written contract.

It is understood and agreed that the company waives its right of subrogation against the Additional Insured which may arise by reason of a payment of claim under General Liability policy, if required by written contract.

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

b. Supervisory, inspection, architectural or engineering activities.

2. "Bodily injury" or "property damage" occurring after:

a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

© ISO Properties, Inc., 2000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Persons or Organization:

City of Peoria

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

 Copyright, Insurance Services Office, Inc., 1992

Primary Contrib

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OTHER INSURANCE CONDITION AMENDED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

When required by written contract with any additional insured owner, lessee, or contractor to provide insurance on a primary and noncontributory basis, Condition **4.** of Section **IV** - Commercial General Liability Conditions is deleted and replaced by the following:

4. Other Insurance

If other valid and collectible insurance is available for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary and noncontributory except when **b.** below applies.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent, or on any other basis:

(1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk, or similar coverage for "your work;"

(2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner or

(3) If the loss arises out of the maintenance or use of aircraft, "autos," or watercraft to the extent not subject to Exclusion **g.** of Section **I** - Coverage **A**.

(4) If the loss is caused by the sole negligence of any additional insured, owner, lessee, or contractor.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

CONTRACT AMENDMENT

Solicitation No: **P08-0047B** Page 1 of 3
Description: JOC for Water,Waste Water Offsite Facilities
Amendment No: One (1) Date: 12/15/2008

Materials Management Procurement
8314 W. Cinnabar Ave.
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Peggy Ferrin

Article 16, Contract Standard Terms and Conditions, is amended to reflect the following changes: Paragraph 16.4, Applicable Law; Paragraph 16.17, Right to Audit Records; and Paragraph 16.27, Public Record, are hereby deleted and replaced with the following:

16.4 APPLICABLE LAW: In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria 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.

Contractor specifically understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. In addition, if this agreement pertains to construction, Contractor must also comply with A.R.S. § 34-301, as amended (Employment of Aliens on Public Works Prohibited) and A.R.S. § 34-302, as amended (Residence Requirements for Employees).

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

Signature	Date	Typed Name and Title	Company Name
	12/24/08	Donald Felix, President	Felix Construction Company

Address	City	State	Zip Code
309 East 10th Drive	Mesa	AZ	85210

Attested by:

Mary Jo Kief, City Clerk

CC Number

ACON23908A
Contract Number:

Official File

City Seal

(Rev 02/01/08)

Javier Setovich, Construction Superintendent

Peggy Ferrin, CPPB, Contract Officer

Ellen Van Riper, Assistant City Attorney

Approved as to Form: Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed 01/23/09, at Peoria, Arizona.

Herman F. Koebergen, Materials Manager

A CON 23908A

CONTRACT AMENDMENT

Solicitation No: **P08-0047B**
Description: JOC for Water,Waste Water Offsite Facilities
Amendment No: One (1) Date: 12/15/2008

Materials Management Procurement
8314 W. Cinnabar Ave.
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Peggy Ferrin

Article 16, Contract Standard Terms and Conditions, is amended to reflect the following changes: Paragraph 16.4, Applicable Law; Paragraph 16.17, Right to Audit Records; and Paragraph 16.27, Public Record, are hereby deleted and replaced with the following:

16.4 APPLICABLE LAW: In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria 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.

Contractor specifically understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. In addition, if this agreement pertains to construction, Contractor must also comply with A.R.S. § 34-301, as amended (Employment of Aliens on Public Works Prohibited) and A.R.S. § 34-302, as amended (Residence Requirements for Employees).

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

Signature	Date	Donald Felix, President Typed Name and Title	Felix Construction Company Company Name

Address	City	State	Zip Code
309 East 10th Drive	Mesa	AZ	85210

Attested by:

Mary Jo Kief, City Clerk

CC Number

ACON23908A
Contract Number:

Official File

City Seal

(Rev 02/01/08)

Javier Setovich, Construction Superintendent

Peggy Ferrin, CPPB, Contract Officer

Approved as to Form: Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed

_____, _____, at Peoria, Arizona.

Herman F. Koebergen, Materials Manager

Materials Management Procurement
8314 W. Cinnabar Ave.
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Peggy Ferrin

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter, "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this agreement and shall subject Contractor to penalties up to and including termination of this agreement at the sole discretion of the City. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any Subcontractors to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or the Subcontractor establishes that it has complied with the employment verification provisions prescribed by §§ 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

The provisions of this Paragraph must be included in any contract Contractor enters into with any Subcontractors who provide services under this agreement or any subcontract. "Services" is defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

Contractor warrants, for the term of this agreement and for six months thereafter, that is has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.

This contract shall be governed by the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the City. 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.

This contract is subject to the provisions of ARS §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 the 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 consultant to any other party of the contract with respect to the subject matter of the contract.

Materials Management Procurement
8314 W. Cinnabar Ave.
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Peggy Ferrin

16.17 RIGHT TO AUDIT RECORDS: The City may, at reasonable times and places, audit the books and records of any Contractor as related to any contract held with the City. This right to audit also empowers the City to inspect the papers of any Contractor or Subcontractor employee who works on this contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty made pursuant to Paragraph 16.4 above.

16.27 PUBLIC RECORD: All offers submitted in response to this solicitation 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. However, subsequent to the award of the contract, any information and documents obtained by the City during the course of an audit conducted in accordance with Paragraph 16.17 above for the purpose of determining compliance by Contractor or a Subcontractor with the Contractor Immigration Warranty mandated by Paragraph 16.4 above shall remain confidential and shall not be made available for public review or produced in response to a public records request, unless the City is ordered or otherwise directed to do so by a court of competent jurisdiction.

All other provisions of the contract remain in their entirety.

CONTRACT AMENDMENT

Solicitation No **P08-0047B** Page 1 of 3
Description JOC for Water, WWTreatment & Offsite Facilities
Amendment No Two(2) Date 3/25/2009

Materials Management Procurement
8314 W Cinnabar Ave
Peoria, AZ 85345
Telephone (623) 773-7115
Fax (623) 773-7118

Buyer Peggy Ferrin

This Contract is amended as follows:

Article 16, Contract Standard Terms and Conditions, is amended to reflect the following changes: Paragraph 16.5, Use of American Iron, Steel, and Manufactured Goods, Paragraph 16 6, Davis-Bacon Act - (40 U.S.C §276a-276a-5). Paragraph 16.7, ARRA Sec 1606 Davis-Bacon Act

16.5 ARRA Sec 1605. Use of American Iron, Steel, and Manufactured Goods (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. (b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that-- applying subsection (a) would be inconsistent with the public interest;

- iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality, or

Contractor hereby acknowledges receipt and agreement A signed copy shall be filed with the City of Peoria, Materials Management Division

Signature	Date	Typed Name and Title	Company Name
	4/1/09	Donald Felix, President	Felix Construction Company

DONALD FELIX, PRESIDENT

Address	City	State	Zip Code
309 East 10th Drive	Mesa	AZ	85210

Attested by

Mary Jo Kief, City Clerk

CC Number

ACON23908B
Contract Number

Official File

City Seal

(Rev 02/01/08)

3-3-2009
Shawn Kreuzwiesner, Utilities Engineering Manager

Peggy Ferrin, CPPB, Contract Officer

Ellen Van Riper, Assistant City Attorney

Approved as to Form Stephen M Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed

April 14, 2009, at Peoria, Arizona

Herman F Koebergen, Materials Manager

A CON 23908B

Materials Management Procurement
8314 W Cinnabar Ave
Peoria, AZ 85345
Telephone (623) 773-7115
Fax (623) 773-7118

Buyer Peggy Ferrin

- inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent
- If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.
- This section shall be applied in a manner consistent with United States obligations under international agreements

16.6 **Davis-Bacon Act - (40 U.S.C. §276a-276a-5).** All contracts or subsequent subcontracts for construction, alteration, renovation, or repair, including painting and decorating, of a public building or public work, or building or work, financed by federal funds which meets the $2,000 threshold are required to pay the federal prevailing wage rate for each class of laborer or mechanic employed Regulations applicable to grant-enabling statutes incorporating the Act can be found in 29 Code of Federal Regulations (CFR), Parts 1,3,5 and 7. These regulations stipulate that grant funds appropriated under statutes imposing the Davis-Bacon Act requirements shall not be paid to a grantee (the Department) until contractors or subcontractors performing work under the grant certify that they will comply with the Act's requirements. The Act also applies to any contract or subcontract for similar work on public grants from a federal agency, or where the federal government acts as guarantors of mortgages The only exception is for the transportation of materials and supplies by persons who are not employed directly at the work site, but are employed solely to make deliveries to the work site

Provider Agencies must ensure that contracts or subcontracts for any construction/alteration projects contain the wage determinations issued and that the appropriate clauses required by the Davis-Bacon regulations (29 CFR, section 5 5) are present It should be made clear in any announcements of projects or RFPs that federal grant funds are being used and that Davis-Bacon will apply even if the federal government is not a party to the contract or subcontract The prevailing wage must be paid regardless of any contractual relationship that may exist between a contractor or a subcontractor Although the Department is not responsible to review sub-contracts for compliance, it has the right to require a prevailing wage

Sanctions for post-certification violations include suspension of payment, advances, or guarantees of grant funds, and the forced restitution of wages that should have been paid and the removal of offending contractors or subcontractors from active employment lists.

Failure to comply can bring penalties that can be severe The contractor or subcontractor and their sureties are liable for any excess costs for completing the work; the Department may withhold accruals to ensure payment of prevailing wages to the workers; the contract or subcontract may be terminated and/or the contractor or subcontractor may be debarred for a period of three years.

Materials Management
Procurement
8314 W Cinnabar Ave
Peoria, AZ 85345
Telephone (623) 773-7115
Fax (623) 773-7118

Buyer Peggy Ferrin

16.7. **ARRA Sec. 1606. Davis-Bacon Act.** Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267, 5 U S C App) and section 3145 of title 40, United States Code.

All other provisions of the contract remain in their entirety

CONTRACT AMENDMENT

Solicitation No: P08-0047B Page 1 of 1
Description: Water, Waste Water Treatment and Offsite Facilities Projects
Amendment No: **Three (3)** Date: 4/7/2009

Materials Management Procurement
8314 W. Cinnabar Ave.
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Peggy Ferrin

In accordance with Special Terms and Conditions, **Contract Extension**, the above referenced contract shall expire on 04/10/09. CONTRACT EXTENSION ONE

Contract Term: 04/11/09 to 04/10/10

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

Signature	Date	Typed Name and Title	Company Name
	4/17/09	Donald Felix, President	Felix Construction Company

Address	City	State	Zip Code
309 East 10th Dr.	Mesa	AZ	85210

Attested by:

Mary Jo Kief, City Clerk

Requested by:

Recommended by:

Ellen Van Riper, Assistant City Attorney

CC Number

ACON23908C

Contract Number:

Approved as to Form: Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed April 28, 2009, at Peoria, Arizona.

Official File

Herman F. Koebergen, Materials Manager

City Seal
(Rev 02/01/08)

A CON 23908C

CONTRACT AMENDMENT

Solicitation No.: P08-0047B
Description: JOC – Water, Waste Water Treatment and Offsite Facilities Projects
Amendment No.: Four (4) **Date:** 06/17/2009

Materials Management Procurement
8314 West Cinnabar Avenue
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118
Buyer: Lisa Houg, CPPB

The above referenced contract is hereby amended as follows:

I. **Special Provisions** are added to comply with the Requirements for Contracts Utilizing Federal American Recovery and Reinvestment Act of 2009 (ARRA) – WIFA Funding. These Special Provisions replace the previous sections that were added in Contract Amendment #2 (Sections 16.5, 16.6 & 16.7).

A. **Compliance with Davis-Bacon Act (40 U.S.C. §276a-276a-5) Prevailing Wage Requirements (ARRA Section 1606):**

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and the through the Federal Government pursuant to the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code. In addition, all covered contracts shall include the standard contract clauses regarding prevailing wages and benefits included in the United States Department of Labor regulations found at 29 Code of Federal Regulations ("CFR") § 5.5, which are incorporated by reference in this contract. The contractor shall comply with the requirements of 29 CFR Part 3, which are also incorporated by reference in this Contract.

Signature	Date	Typed Name and Title	Company Name
	6/19/09	Donald Felix, President	Felix Construction Company

Address	City	State	Zip Code
309 E. 10th Drive	Mesa	AZ	85210

Attested by:

Mary Jo Kief, City Clerk

CC Number

ACON23908D
Contract Number:

Official File

City Seal

Requested by: Javier Setovich, Construction Superintendent

Lisa Houg
Recommended by: Lisa Houg, Contract Officer

Ellen Van Riper, Assistant City Attorney
Approved as to Form: Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed

June 29, 2009, at Peoria, Arizona.

Herman F. Koebergen, Materials Manager
For

A . CON . 23908D

The contractor or subcontractors shall insert in any subcontracts the clauses contained in 29 CFR § 5.5(a) (1) through (10) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the United States Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the City, the State of Arizona ("State"), the United States Department of Labor, or their employees or their representatives.

By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

B. <u>Use of American Iron, Steel, and Manufactured Goods – Buy American Requirements (ARRA Section 1605):</u>

The contractor acknowledges to and for the benefit of the City ("Purchaser") and the State that it understands the goods and services under this contract are being funded with monies made available by the ARRA (or are being made available for a project being funded with monies made available by the ARRA) and such law contains provisions commonly known as "Buy American" that require all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the Contractor pursuant to this contract. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this contract, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether

in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this contract necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

C. Whistleblower Protections Under The ARRA:

(a) The Contractor shall post a notice of employees' rights and remedies for whistleblower protections provided under Section 1553 of the ARRA (Pub. L. 111-5).
(b) The Contractor shall require that this provision be included in all subcontracts.

D. Reporting Requirements under the ARRA:

(a) This Contract requires the Contractor to provide products and/or services that are funded under the ARRA. Section 1512(c) of the ARRA requires each contractor to report on its use of Recovery Act funds under this Contract. These reports will be made available to the public.
(b) Reports from contractors for all work funded, in whole or in part, by the ARRA, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.
(c) The Contractor shall report the following information, using the online reporting tool available at www.FederalReporting.gov:
(1) The City of Peoria contract and order number, as applicable.
(2) The amount of ARRA funds invoiced by the Contractor for the reporting period.
(3) A list of all significant services performed or supplies delivered, including construction, for which the Contractor invoiced in the calendar quarter.
(4) Program or project title, if any.
(5) A description of the overall purpose and expected outcomes or results of the Contract, including significant deliverables and, if appropriate, associated units of measure.
(6) An assessment of the Contractor's progress towards the completion of the overall purpose and expected outcomes or results of the Contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the Contract (or portion thereof) funded by the ARRA.
(7) A narrative description of the employment impact of work funded by the ARRA. This narrative should be cumulative for each calendar quarter and only address the impact on the Contractor's workforce. At a minimum, the Contractor shall provide—
(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in Federal Acquisition Regulation (FAR) 2.101). This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
(ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.
(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the Contract is awarded if—
(i) In the Contractor's preceding fiscal year, the Contractor received—
(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans,

grants (and subgrants) and cooperative agreements; and
(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
(9) For subcontracts valued at less than $25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under $300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.
(10) For any first-tier subcontract funded in whole or in part under the ARRA, that is over $25,000 and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by Section 1512 of the ARRA. The Contractor shall provide detailed information on these first-tier subcontracts as follows:
(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
(ii) Name of the subcontractor.
(iii) Amount of the subcontract award.
(iv) Date of the subcontract award.
(v) The applicable North American Industry Classification System (NAICS) code.
(vi) Funding agency.
(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
(viii) Subcontract number (the contract number assigned by the prime contractor).
(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—
(A) In the subcontractor's preceding fiscal year, the subcontractor received—
(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
(2) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

E. <u>Central Contractor Registration Required:</u>

(a) The Contractor is required to properly register and maintain an updated registration with the Central Contractor Registration (CCR), which is the primary Federal Government repository for contractor information required for the conduct of business with the Federal Government. The requirements for

such registration are set forth in the Federal Acquisition Regulation (FAR), including the establishment of a "Data Universal Numbering System (DUNS) number," the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

(b) "Registered in the CCR database" means that—
(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
(2) The Federal Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(c) The DUNS number will be used by the City to verify that the Contractor is registered in the CCR database.

(d) If the Contractor does not become registered in the CCR database in the time prescribed by the City, the City will proceed to award the Contract to the next otherwise successful registered responding entity.

(e) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the City's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this Contract and is not a substitute for a properly executed contractual document.

CONTRACT AMENDMENT

Solicitation No P08-0047B Page 1 of 3
Description Water, Waste Water Treatment & Offsite Facilities Projects
Amendment No Five (5) Date 10/20/09

Materials Management Procurement
9875 N 85th Avenue
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Lisa Houg, CPPB

I. Article 16, Contract Standard Terms and Conditions, is amended to reflect the following changes: The following is hereby added to Paragraph 16.4, Applicable Law:

The contractor is required to comply with Clean Air Act – 42 U.S.C. §§ 7401, et seq.; the Clean Water Act – 33 U.S.C. §§ 1251-1387; and the Energy Policy and Conservation Act – 42 U.S.C. §§ 6421, et seq.

(Continued on next page)

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

Signature	Date	Typed Name and Title	Company Name
	10/22/09	Donald Felix, President	Felix Construction Company

Address	City	State	Zip Code
309 E. 10th Drive	Mesa	AZ	85210

Attested by
Mary Jo Waddell nee Kief
Mary Jo Kief, City Clerk

Requested by Joe Kurrus, Engineering Supervisor

Lisa Houg
Recommended by Lisa Houg, Contract Officer

Ellen Van Riper, Assistant City Attorney

Approved as to Form Stephen M Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed
November 5, 2009 at Peoria, Arizona

Herman F Koebergen, Materials Manager

CC Number

ACON23908E
Contract Number

Official File

City Seal

(Rev 02/01/08)

A CON 23908E

II. **Special Provisions** are added to comply with the Requirements for Contracts Utilizing Federal American Recovery and Reinvestment Act of 2009 (ARRA) – WIFA Funding.

F. Contract Work Hours and Safety Standards Act -- Overtime Compensation.

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.*

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

Materials Management Procurement
9875 N 85th Avenue
Peoria, Arizona 85345-6560
Phone (623) 773-7115
Fax (623) 773-7118
Buyer Lisa Houg, CPPB

(e) *Subcontracts*. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

G. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of Clause)

CONTRACT AMENDMENT

Solicitation No: P08-0047B Page 1 of 1
Description: Water, Waste Water Treatment and Offsite Facilities Projects
Amendment No: Six (6) Date: 2/23/2010

Materials Management Procurement
9875 N. 85th Avenue
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Lisa Houg, CPPB

In accordance with Special Terms and Conditions, **Contract Extension**, the above referenced contract shall expire on 04/10/10. CONTRACT EXTENSION TWO

Contract Term: 04/11/10 to 04/10/11

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

Signature	Date	Typed Name and Title	Company Name
	3/3/2010	Donald Felix, VICE-President	Felix Construction Company

Address	City	State	Zip Code
309 East 10th Dr.	Mesa	AZ	85210

Attested by:

Mary Jo Waddell, City Clerk

CC Number

ACON23908F
Contract Number:

Official File

City Seal
(Rev 02/01/08)

Requested by: Javier Setovich, Construction Superintendent

Recommended by: Lisa Houg, Contract Officer

Ellen Van Riper, Assistant City Attorney

Approved as to Form: Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed

March 11, 2010, at Peoria, Arizona.

Herman F. Koebergen, Materials Manager

A CON 23908F

CONTRACT AMENDMENT

Solicitation No **P08-0047B** Page 1 of 1
Description Water, Waste Water Treatment and Offsite Facilities Projects
Amendment No Seven (7) Date 04/07/10

Materials Management Procurement
9875 N 85th Ave , 2nd Fl
Peoria, AZ 85345
Telephone (623) 773-7115
Fax (623) 773-7118

Buyer Lisa Houg, CPPB

SECTION 3, ITEMS 3.2.4.6 AND 3.2.4.7 SHALL BE DELETED AND REPLACED WITH THE FOLLOWING:
New Job Order Contract Language:

3 2 4 6 The Police Department shall determine if construction activities or traffic hazards at the construction project *require* the use of Police Assistants or AZ Post Certified Peace Officers, alternatively, *if the Police Department determines that* flagmen are *sufficient*, it shall be the Contractor's responsibility to provide adequate personnel including flagmen to direct traffic safely. All City of Peoria projects shall use only City of Peoria Police Assistants or City of Peoria AZ Post Certified Officers, unless the Police Chief or their designee has determined that no such assistants or officers are available Arrangements for Police Assistant or Police Officer services should be made with the liaison officer at the Peoria Police Department at telephone number (623) 773-7062

3 2.4.7 Manual traffic control shall be in conformity with the Traffic Barricade Manual A traffic control plan shall be submitted to the Peoria Police Department indicating whether a need for traffic control exists during the project The traffic control plan shall be submitted electronically and the liaison officer shall be contacted at the Peoria Police Department at telephone number (623) 773-7062

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

Signature	Date	Typed Name and Title	Company Name
	4/8/2010	Donald Felix, President	Felix Construction Company

Address	City	State	Zip Code
309 E 10th Drive	Mesa	AZ	85210

Attested by

Mary Jo Waddell, City Clerk

CC Number

ACON 23908G
Contract Number

Official File

City Seal

(Rev 02/01/08)

4/21/10
Department Dan Nissen, Assistant City Engineer

Recommended by Lisa Houg, Contract Officer

Ellen Van Riper, Assistant City Attorney
Approved as to Form Stephen M Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed
April 28 2010, at Peoria, Arizona

Herman F Koebergen, Materials Manager

A CON 23908G

CONTRACT AMENDMENT

Solicitation No: P08-0047B Page 1 of 1
Description: Water, Waste Water Treatment and Offsite Facilities Projects
Amendment No: Eight (8) Date: 2/3/2011

Materials Management Procurement
9875 N. 85th Avenue
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Lisa Houg, CPPB

In accordance with Special Terms and Conditions, **Contract Extension**, the above referenced contract shall expire on 04/10/11. **The new Contract Term is : 04/11/11 to 04/10/12.**

In addition, the City would like to add the Cooperative language referenced in the original SIQ to the contract:

While this Proposal is for the City of Peoria, other public entities that have expressed interest in utilizing the resulting contract. In addition to the City of Peoria and with approval of the contracted Firm this contract may be extended for use by other municipalities, school districts and government agencies of the State. As a member of the Strategic Alliance for Volume Expenditures (SAVE), the City will act as the lead entity. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity. School District Procurement Rules A.A.C. R7-2-1191 through R7-2-1195 authorizes and governs intergovernmental procurements. Members of "SAVE", a group of schools/public entities have signed an intergovernmental agreement under such a cooperative purchase agreement to obtain economies of scale. After award, the contract may be utilized by the eligible school districts/public entities, recognizing potential equipment, logistical and capacity limitations by the Firm may limit the use of this award. No volume is implied or guaranteed.

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

Signature	Date	Typed Name and Title	Company Name
	2/4/2011	Donald Felix, President	Felix Construction Company

Address	City	State	Zip Code
309 East 10th Dr.	Mesa	AZ	85210

Attested by:
Wanda Nelson
Wanda Nelson, City Clerk

CC Number

ACON23908H
Contract Number:

Official File

City Seal
(Rev 02/01/08)

02-08-2011
Director: Bill Mattingly, Public Works Director

Recommended by: Javier Setovich, Construction Superintendent

Ellen Van Riper, Assistant City Attorney
Approved as to Form: Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed February 14, 2011, at Peoria, Arizona.

Herman F. Koebergen, Materials Manager
for

A CON 23908 H

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
FELIX CONSTRUCTION COMPANY

[Scope of Work and Quotation]

See following pages.

Arizona 85323

n of Work:

16" Smith Blair Double Expansion assembly
bridge and replace all packings,gaskets and
Replace all carbon steel gland bolts & limit
04 SST.
all MJ kits, megalugs,and BN&G kits that
ne pipe to exansion assembly.
DSBS and Air Vac on this Assembly.
sembly at 160 PSI. Repair as required.
test both ends of 16" left in place at 160 PSI.
es, replace assembly.
xisting leak in 12" sewer at south abutment by
bell & spigot that contains fishmouthed gasket
two (2) solid sleeves w/ megalugs.
steps 1-5 above on the 12" sewer line.

ons:

r bottom will be accessible to drive into the
without road building or staging platform
n. Access is necessary directly beneath the
s.

s:

aning
epair
weekend work

her:

16" lines left in place do not pass pressure
will attempt to locate leaks and advise the City
e of the findings. At that time this contract with
completed.
te assumes that the four (4) flexible
s will need to be replaced (worst case). If
ssembly of the existing exansion couplings
mines they can be repaired then there will be a

Journeyman (reg)	400.0	$ 34.50	$
Journeyman (ot)	0.0	$ -	$
Laborer (reg)	100.0	$ 28.50	$
Laborer (ot)	0.0	$ -	$
Labor Subtotal			*$*

Equipment

Unit	Hours	Rate	
Pick-up	16.0	$ 19.00	$
Pick-up w/ Tools	200.0	$ 24.00	$
Back Hoe	40.0	$ 45.00	$
Boom Truck	8.0	$ 55.00	$
Loader (CAT 950)	0.0	$ -	$
Excavator (CAT 325)	0.0	$ -	$
Water Truck	24.0	$ 60.00	$
Compactor CAT	0.0	$ -	$
Ext Reach Forklift	0.0	$ -	$
Grading Tractor (Case 480)	0.0	$ -	$
Water Wagon	0.0	$ -	$
Jumping Jack	0.0	$ -	$
Misc Tools / Supplies	0.0	$ -	$
Equipment Subtotal			*$*

Materials

Item	Quant	Cost	
From Worksheet	1 LS	$ -	$
16" S/B Expansion Couplings	2.0	$ 3,760.69	$
12" S/B Expansion Couplings	2.0	$ 3,216.90	$
Waterworks (Gaskets,Ftgs,Hardware)	1.0	$ 5,091.82	$
CLSM (Backfill)	10.0	$ 49.00	$
			$
			$
			$
			$
			$
			$
Material Subtotal			*$*

Contengnecy

Discipline	Quant	Cost	
12" Repair Contengency	2.0	$ 8,654.49	$
16" Repair Contengency	1.0	$ 9,555.38	$
Contegency Subtotal			*$*

Subcontractors

Discipline	Quant	Cost	
Traffic Control [Up & Down]Trafficade	2.0	$ 507.00	$
Traffic Control Daily	14.0	$ 228.00	$
(4) Traffic Plates [Trench Shore Rentals]	14.0	$ 30.00	$
(1) Bridle 3-Way	14.0	$ 2.32	$
Asphalt Paving [S&S Paving]	1.0	$ 3,978.00	$
Subcontractor Subtotal			*$*

Other

Item	Quant	Rate	
Rental 135' Boom Lift	1.0	$12,000.00	$
Rental 12,000 lb Reach Lift	1.0	$ 3,800.00	$
Lift Transportion (In/Out)	4.0	$ 250.00	$
Shipping for Expansion Couplings	1.0	$ 150.00	$
ROW Permit County	1.0	$ 1,156.00	$
Dump Fees	1.0	$ 150.00	$
J-Jon Rental	1.0	$ 225.00	$
Other Subtotal			*$*

Subtotal: Labor, Equipment, Materials, Subs, Other *$ 1*

rizona 85323

n of Work:

subsequent joint leaks in 16" line after initial completed.
will include cutting out small sections of pipe at d repairing with restrained solid sleeves, new d pipe as required.

ons:

r first Phase II quote

s:

r first Phase II quote.

her:

for each 12" Repair

Journeyman (reg)	32.0	$ 34.50	$
Journeyman (ot)	0.0	$ -	$
Laborer (reg)	16.0	$ 28.50	$
Laborer (ot)	0.0	$ -	$
Labor Subtotal			*$*

Equipment

Unit	Hours	Rate	T
Pick-up	0.0	$ -	$
Pick-up w/ Tools	16.0	$ 24.00	$
Back Hoe	0.0	$ -	$
Boom Truck	2.0	$ 55.00	$
Loader (CAT 950)	0.0	$ -	$
Excavator (CAT 325)	0.0	$ -	$
Water Truck	8.0	$ 60.00	$
Compactor CAT	0.0	$ -	$
Ext Reach Forklift	0.0	$ -	$
Grading Tractor (Case 480)	0.0	$ -	$
Water Wagon	0.0	$ -	$
Jumping Jack	0.0	$ -	$
Misc Tools / Supplies	0.0	$ -	$
Equipment Subtotal			*$*

Materials

Item	Quant	Cost	T
From Worksheet	1 LS	$ -	$
12" MJ L/P Sleeve	2.0	$ 156.00	$
12" Megalug	4.0	$ 21.00	$
12" MJ Regular Acc Set no Gland	4.0	$ 73.00	$
12" TJ PR250 DI Pipe	6.0	$ 31.00	$
			$
			$
			$
			$
			$
			$
Material Subtotal			*$*

FCC Electrical

Discipline	Quant	Cost	T
Felix Construction Electrical	1.0	$ -	$
			$
FCC Electrical Subtotal			*$*

Subcontractors

Discipline	Quant	Cost	T
			$
			$
			$
			$
			$
Subcontractor Subtotal			*$*

Other

Item	Quant	Rate	T
Rental 135' Boom Lift	2.0	$ 1,100.00	$
Rental 12,000 # Reach Lift	2.0	$ 400.00	$
			$
			$
			$
			$
			$
Other Subtotal			*$*

Subtotal: Labor, Equipment, Materials, Subs, Other *$*

rizona 85323

n of Work:

subsequent joint leaks in 16" line after initial completed.
will include cutting out small sections of pipe at d repairing with restrained solid sleeves, new d pipe as required.

ons:

r first Phase II quote

s:

r first Phase II quote.

her:

for each 16" Repair

Journeyman (reg)	32.0	$ 34.50	$
Journeyman (ot)	0.0	$ -	$
Laborer (reg)	16.0	$ 28.50	$
Laborer (ot)	0.0	$ -	$
Labor Subtotal			*$*

Equipment

Unit	Hours	Rate	T
Pick-up	0.0	$ -	$
Pick-up w/ Tools	16.0	$ 24.00	$
Back Hoe	0.0	$ -	$
Boom Truck	2.0	$ 55.00	$
Loader (CAT 950)	0.0	$ -	$
Excavator (CAT 325)	0.0	$ -	$
Water Truck	8.0	$ 60.00	$
Compactor CAT	0.0	$ -	$
Ext Reach Forklift	0.0	$ -	$
Grading Tractor (Case 480)	0.0	$ -	$
Water Wagon	0.0	$ -	$
Jumping Jack	0.0	$ -	$
Misc Tools / Supplies	0.0	$ -	$
Equipment Subtotal			*$*

Materials

Item	Quant	Cost	T
From Worksheet	1 LS	$ -	$
16" MJ L/P Sleeve	2.0	$ 345.62	$
16" Megalug	4.0	$ 130.00	$
16" MJ Regular Acc Set no Gland	4.0	$ 33.00	$
16" TJ PR250 DI Pipe	6.0	$ 46.50	$
			$
			$
			$
			$
			$
			$
Material Subtotal			*$*

FCC Electrical

Discipline	Quant	Cost	T
Felix Construction Electrical	1.0	$ -	$
			$
FCC Electrical Subtotal			*$*

Subcontractors

Discipline	Quant	Cost	T
			$
			$
			$
			$
			$
Subcontractor Subtotal			*$*

Other

Item	Quant	Rate	T
Rental 135" Boom Lift	2.0	$ 1,100.00	$
Rental 12,000 # Reach Lift	2.0	$ 400.00	$
			$
			$
			$
			$
			$
Other Subtotal			*$*

Subtotal: Labor, Equipment, Materials, Subs, Other *$*

SEND PAYMENTS TO:
AHERN RENTALS
PO BOX 271390
LAS VEGAS NV 89127-1390
TEL: 702-362-0623
FAX: 702-966-4864

SINCE 1953 AHERN RENTALS

CUSTOMER ASSISTANCE:
PHOENIX
1403 S BLACK CANYON HWY
PHOENIX AZ 85009-6567

TEL: 602-253-5438
FAX: 602-253-7619
MON - FRI 6:00-5:00
SATURDAY CLOSED
SUNDAY CLOSED

QUOTE

** COPY **

Customer:
FELIX CONSTRUCTION COMPANY
309 E 10TH DR
MESA AZ 85210-8706

Job Site:
AVONDALE PIR BRIDGE
AVONDALE BLVD & GILA RIVER
AVONDALE, AZ 85323

C#: 480-464-0011 J#: 480-464-0011
Map page/grid: ./.

Customer #.. 207073
Contract #.. 10103837
Contract dt. 10/25/11
Date Out.... 10/25/11 6:00 AM
Est return.. 10/25/11 6:00 AM
Job Loc..... GILA BRIDGE;AVONDALE BLVD &
Job #..... GILA BRIDGE
P.O. #..... QUOTE
Ordered By.. STEVE
Written By.. TERRYQ
Sales Rep... 9712 - KEVIN SHUGARR
Terms..... Net 10 Days

Qty	Equipment	Min	Day	Week	4 Week	Amount
1	BOOM,TELESCOPING,135',DSL,W/JIB EQP#: 6005892 CUSTOMER CALL WHEN DONE	1100.00	1100.00	4000.00	12000.00	1100.00
1	FORKLIFT,12000LB,54',TELESCOPING EQP#: 6055697 CUSTOMER CALL WHEN DONE	400.00	400.00	1500.00	3800.00	400.00

SALES ITEMS·

	Unit	Price
	EA	
DELIVERY CHARGE - NORMAL		50.00
PICKUP CHARGE - CUSTOMER CALL WHEN DONE		50.00

STEVE

Rus TAX

IF THE EQUIPMENT DOES NOT WORK PROPERLY NOTIFY CUSTOMER ASSISTANCE AT ONCE | MULTIPLE SHIFTS OR OVERTIME RATES MAY APPLY | CUSTOMER IS RESPONSIBLE FOR REFUELING, DAMAGES OR REPAIRS

1. Damage Waiver (12% of gross rental charges) will be charged absent of proof of insurance (see reverse side of this rental contract).
2. Customer must call branch location to obtain call off rental number and is responsible for Equipment until it is picked up.
3. If Customer fails to return equipment within the time specified above, Customer is deemed to have renewed the rental contract on the same terms and conditions.
4. Compliance with California Air Resources Board (CARB) Idling Regulation (Title 13, California Code of Regulations; § 2449(d)(3)): Any in-use off-road diesel vehicle may not idle for more than 5 consecutive minutes. Lessee is responsible for compliance with CARB off-road diesel engine idling limits and is responsible for any penalties or fines incurred for non-compliance.
5. For rentals of equipment registered in California's Statewide Portable Equipment Registration Program (PERP), you acknowledge receipt of a written copy of the registration certificate, the operating conditions and a written log for each equipment.

This Rental Contract consists of both sides of this document. I have had the opportunity to read the terms and conditions on both sides of this Rental Contract and have been instructed in the proper use and operation of the Equipment delivered and will ensure that all operators receive this training and the instructions contained in the manufacturer's operation manual, a copy of which has been provided with the Equipment, which will be read by each operator. I have understood the instructions provided, and all questions have been answered to my satisfaction.

X

CUSTOMER SIGNATURE | DATE | NAME PRINTED | DELIVERED BY | DATE

Terms: Payment Due within 10 days of invoice. A finance charge of 2% per month will be added to past due accounts.

Please visit us on the web at www.Ahern.com or you may call our 24 hour service at 800-400-1610.

1
IN-IW

TRAFFIC CONTROL PLAN FAX SUBMITTAL FORM
Maricopa County Department of Transportation
2901 W. Durango Street Phoenix, AZ 85009

Robert Prater
Office # (602) 506-4625
Mobile # (602) 722-5993
Fax # (602) 506-1021

Check One
[X] First Review
[ ] Re-submittal
[ ] Date Change
(Requires Original Approved TCP)

MCDOT Approval
Approved for Traffic Control
In MCDOT ROW Only
AUG 18 2011

PLEASE PROVIDE THE FOLLOWING INFORMATION

MCDOT Permit No. TC- 2011-0705 Date: 8-18-11 Page 1 of 3

Work Location: 115TH AVE & GILA RIVER Main Cross Roads: AVONDALE BLVD & GILA BRIDGE

Direction Affected: W/B [ ] E/B [ ] N/B [X] S/B [ ] Full Road Closure [ ] Special Event [ ]

Contractor: FELIX CONSTR. Off. # 480-464-0011 Fax # 480-464-0078

24 Hour Name: STEVE STAYER Phone # 602-390-3536

On-site Contact Name: STEVE Phone # 602-390-3536

Barricade Company: TRAFFICADE Off. # 602-431-0911 Fax # 602-272-3705

24 Hour Name: DISPATCH Phone # 602-431-0911

Start Date: 9-6-11 End Date: 10-21-11

MCDOT General Notes:

1) Bump signs shall be installed for all steel plates in the roadway. Steel plates shall be flush with the surface when the speed limit is 35mph or greater.
2) The contractor shall maintain shoulder for dust control and a safe drivable surface at all times.
3) All construction signs and barricades shall be lighted if installed overnight.
4) Open trench signs shall be installed for any open trench or pit excavation.
5) Traffic control flaggers shall be certified, properly equipped and use slow/stop paddles not flags.
6) Two (2) working days notice is required for all Traffic Control Plan approvals.
7) The contractor shall assist in the passage of any legal over-width vehicle through their construction zone.
8) Any shoulder detour longer than 5 days SHALL be paved 3" asphalt on native.

Maricopa County Arterial Full Closure Requirements:

1) Letter from registered civil engineer for permitted work stating why road must be closed. (No other physical way to perform work)
2) Documentation of the names and numbers of the departments notified (Fire, Police, Municipal Bus Routes, Trash, School District & any Businesses in the area)
3) Hotline numbers on signs sending 24-hour complaints to the contractor NOT the County.
4) Variable Message Sign or Static board showing the duration of the closure. Two weeks advance notice of a closure in the arterial road.

(ON SITE PRE-CONSTRUCTION MEETING REQUIRED)

5) Traffic control inspector must survey the location to determine if a full closure is necessary. (This must be done prior to placing signage to show closure)

PERMIT COST $1,156.00

Revised APR 2009

Drake Materials
5745 N. Scottsdale Rd., Suite B-110
Scottsdale, AZ 85250
Office: 480-607-3999
Fax: 480-607-3335
Dispatch: 480-607-7718

MATERIAL QUOTE

Today's Date:	**SEPTEMBER 22, 2011**		
Customer:	**FELIX CONSTRUCTION**	**Project Name:**	**CITY OF AVONDALE**
Contact Name:	**STEVE STAYER**	**Project Address:**	**AVONDALE BLVD @GILA RIVER BRIDGE**
Contact #:		**City:**	**AVONDALE**
E Mail Address:		**Expiration Date:**	**10-31-2011**
Quoted by:	**GEORGE LATTIN**	**Plant #:**	**2-SUN CITY**

We are pleased to provide quotes for our products, subject to our standard terms and conditions as shown below:

PRODUCT ID	PRODUCT DESCRIPTION	YARDS/TONS	PRICE	USE
PHCLSM	½ SACK ABC SLURRY	40CY	$49.00	

NOTE EXTRA CHARGES LISTED BELOW

ANY ADDITIONAL PRODUCTS-ADDERS-CHARGES – WILL BE PRICED ACCORDINGLY

Short Load/Delivery Charge		Additional Products & Charges			
1.0 – 2.0 cy	$110.00	Color Washout (per/trk)	$20.00	Non Chloride Accelerator (per/unit)	$1.00
2.5 – 3.5 cy	$75.00	Liquid Color (per/lb.)	$2.05	Retarder(per/hr)	$1.25
4.0 – 5.5 cy	$50.00	Mono Fibers 1 (lb./yd)	$6.50	Hot – Cold H20 (per/cy)	$1.25
Ice (per/lb.)	$.50	Fibrillated Fibers 1.5 (lb./yd)	$7.50	Weekend Charge (per/cy)	$3.00
		Energy Surcharge (per/ld)	$15.00	Plant Opening Fee's	TBD

Standard Terms/Conditions:

1) This quotation is subject to Drake Materials Terms and Conditions set forth.
2) Quotation expires within 30 calendar days, unless written award or P.O. has been accepted by Seller or Seller extends quote offering in writing.
3) A 2% discount is allowed on the above-quoted prices if your account is 100% current (you may not discount one project while another remains past due) AND payment is received on or before the 10th of the month following delivery. Finance charges accrue starting at 8% the first day of the 2nd month following purchase; 16% for balances carried into the 3rd month following purchase.
4) Delivery Charge of $110.00 per load will be imposed, if 1.0 - 2.0 cubic yards is ordered and delivered. Delivery Charge of $75.00 per load will be imposed, if 2.5 - 3.5 cubic yards is ordered and delivered. Delivery Charge of $50.00 per load will be imposed, if 4.0 - 5.5 cubic yards is ordered and delivered.
5) Allowed unloading time of 6 minutes/yard for concrete, and 10 minutes/yard for grout or shotcrete. Stand-by is billed $1.41 per minute.
6) Notification of claims or disputes in product or delivery must be given in writing no more than 30 days after delivery.
7) All quoted prices for products listed above will meet ACI C-94 requirements for ready mix concrete, when placed according to mix design criteria and field curing specifications.
8) Liquid color is available. Drake Materials assures color will be properly batched and controlled but assumes no responsibility for the in place results.
9) Products must be ordered by their product code. Drake Materials assumes no responsibility for orders placed without product codes.
10) Quoted prices for all products listed above are subject to increases at the discretion of MRM unless stated otherwise.
11) Standard Mixes will be supplied up to a 5" slump. Higher slumps require the use of a flowable admixture at an extra cost.

TRAFFICADE
Work Zone Services
P: 602.431.0911 F: 602.272.2827
2533 West Holly Street / Phoenix, Arizona / 85009

FELIX CONSTRUCTION
CONTACT: STEVE
RE: P.I.R BRIDGE
BID DATE: 10 / 25 / 11

DAILY LUMP SUM COST FOR TRAFFIC CONTROL

24HR RIGHT LANE CLOSURE – WORK AREA: 3000 FT.
Provide a right lane closure in one direction and another right lane closure in the opposite direction on Avondale Blvd over the P.I.R Bridge for the above mentioned distance. 24hr set up. Lump sum price for equipment rental daily is $228.00 Lump sum price to set up OR pick up this closure is $507.00

EXLUSIONS:
Variable Message Boards, Shadow Truck, Project Specialty Signs, Concrete or Water Filled Barrier Wall and Police Officers.

TERMS / CONDITIONS:

1. **Any variation to the above Lump Sum set-ups could result in an adjusted price per day.**
2. **Additional labor outside of daily Lump Sum will be billed accordingly.**
3. **Job check and service will be provided on a regular basis at no charge.**
4. **Sales tax is not included and will be added to all billings. Tax rate subject to change if the prevailing rate changes.**
5. **0% Retention**

TRAFFICADE ESTIMATOR: Luis Aguilar
602-431-0911
Luis@trafficade.com

Bonded

Licensed

Insured

S&S PAVING & CONSTRUCTION, INC.

3401 East Illini Street
Phoenix, Arizona 85040-1838
License # ROC083980, ROC174519

Phone: 602-437-0818
Fax: 602-437-2372

September 28, 2011

Felix Construction Company
309 East 10th Drive
Mesa, AZ 85210

Attention: Steve Stayer

The undersigned proposes to furnish all material and perform all labor necessary to complete the following:

Re: 115th Ave & Gila River Bridge, Roadway Paving of 4 areas 8' x 10' @ 5" AC

Saturday Patch:	Cost:	$3,678.00
Joint Seal:	Cost:	$625.00
	Total:	$4,303.00
Monday Patch:	Cost:	$3,353.00
Joint Seal:	Cost:	$625.00
	Total:	$3,978.00

Exclusions:
Engineering, layout / grades, survey, testing costs, barricades, traffic control plan, flagmen, message boards, police officer. Offsite, grading and drainage, pollution or other permits. Cost of bonds, government required bonds, **Sales tax**. Repair or adjustment of utilities. Crack fill, or routing. Striping, signage, prime coat, fog seal, reflectors, pavement marking removal. Removal or handling of other trade spoils. Dewatering, fabric, silt fence, hay bales, SWPP, track out pad, safety fence. Soil sterilant, fuel surcharges. Lime stabilization, lime treated ABC, CLSM, ABC or cement slurry. Hazardous waste handling or removal.

Notes:
Above prices will apply to all work performed prior to 12-31-11. This proposal is valid for 30 days. Acceptance after this time will be subject to review and approval by S&S Paving & Construction, Inc. If accepted, this proposal will be signed, attached to, become a part of any other contract. This quotation is based on unit prices and payment will be based on field measurements at the applicable unit prices. Quotation is based on grade being previously prepared by others and ready to receive the A.C. material. This quotation is based on 1 move-in per each work item. Additional mobilizations would be an extra $800.00 each, based on the equipment required plus a full day for the equipment and crew. We are not responsible for any error or omissions committed by engineering firms contracted by the owner. Payment is based on monthly estimated less 10% retention (due by the 20th of the following month), net due upon completion. We will be furnished with the following: (per Arizona revised statutes 33-9-01) A. Name and address of construction lender. B. Legal description of the job site. C. Name and address of the owner. No soils report is acknowledged with this quotation.

All of the above work to be completed in a substantial and workmanlike manner for the sum of AS QUOTED ABOVE
Payment to be made each 30 days as the work progresses to the value of (%) per cent of all work completed. The entire amount of contract to be paid within 30 days after completion. Any alteration or deviation from the above specifications involving extra cost of material or labor will only be executed upon written orders for same, and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing. Contractor reserves the right to withdraw above proposal if not accepted within 30 days. Should suit be commenced to enforce payment, I promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit. FINANCE CHARGES of 1.5 % PER MONTH will be charged on all past due invoices over 30 days.

Respectfully Submitted,

Rick Stevens

Rick Stevens Contractor

ACCEPTANCE

You are hereby authorized to furnish all materials and labor required to complete the work mentioned in the above proposal, for which the undersigned agrees to pay the amount mentioned in said proposal, and according to the terms thereof.

Date_____20_____

Company Name

TRENCH SHORE RENTAL QUOTE

TRAINING DATABASE - 001

3020 South 19th Avenue
Phoenix, AZ 85009
www.tsraz.com
602-253-3311 phone 602-253-3320 fax

Remit to:
P. O. Box 13641
Scottsdale, AZ 85267
480-361-8452 phone

Invoice Date: 9/27/2011

Status: Closed

Invoice #: 60051
Date Out: Mon 9/19/2011 8:30AM
Operator: Sonia Marin
Salesman: Adam Huffman
Terms: On Account

Customer # 23

Felix Construction
309 E 10th Dr
MESA, AZ 85210

480 464-0011 FAX 480 464-0078

Job Descr: 115TH AVE & BROADWAY
PO #: 39510
Job #:115TH AVE & BROADWA

Qty	Key	Items Rented	Status	Returned Date	Rental Fee
4	CROSP0810-1 (2619)	CROSSING PLATE, 8 X 10 1Day $7.50 1Week $52.53 4Wks $157.58	Returned	9/27/11 12:03pm	$270.12
1	BRIDLE3-1 (2623)	BRIDLE, 3-WAY 1Day $2.32 1Week $16.22 4Wks $64.89	Returned	9/27/11 12:03pm	$20.86
1	COLDMXBOX- (3139)	COLD MIX BOX 1Day $3.10 1Week $21.70 4Wks $86.80	Returned	9/27/11 12:03pm	$27.90
4	SHOB05-34-1 (2686)	SHORING, BARE 5' 34"-55" 1Day $3.20 1Week $12.80 4Wks $38.41	Returned	9/21/11 1:35pm	$38.40
1	PUMPCAN-1 (2738)	PUMP CAN 1Day $4.64 1Week $18.54 4Wks $55.62	Returned	9/21/11 1:35pm	$13.92
1	RELEASE48-1 (2739)	RELEASE TOOL, 48" 1Day $0.95 1Week $3.78 4Wks $11.34	Returned	9/21/11 1:35pm	$2.85
2	FINN0406-1 (3131)	FINN FORM 4 X 6 1Day $1.87 1Week $7.47 4Wks $22.41	Returned	9/21/11 1:35pm	$11.22

Qty	Key	Items Sold		Price Each	Price
1	COLDMIXTON (3190)	COLD MIX, TON	Sold	120.00	$120.00
1	|DEL-DELC2-1 (3394)	DELIVERY ZONE 2, CRANE	Sold	135.00	$135.00
1	|FUEL (3325)	FUEL SURCHARGE	Sold	15.00	$15.00
1	|DEL-PUF2 (3114)	PICKUP ZONE 2, FLATBED	Sold	85.00	$85.00
1	|FUEL (3325)	FUEL SURCHARGE	Sold	15.00	$15.00

DELIVERY AND PICKUP

Delivery Date: Mon 9/19/11 8:30 AM
Pickup Date: Mon 10/17/11 8:30AM
Address: 115TH AVE & BROADWAY; Avondale, AZ, 85323

Contact: STEVE
Phone: 6023903563

Contact:: STEVE
Phone:: 602 390 3563

DEL TO 115TH AVE & BROADWAY, IN AVONDALE* ROBERT DLE* S. ON BROADWAY TO BRIDGE 2 PLATES ON S/END
2 ON N/END
9/22/11 PP U OF SHORES & ACCS. PER JOE PU#S890

TRAINING DATABASE

Run Date 10/24/11 HD SUPPLY WATERWORKS, LTD.

FELIX CONSTRUCTION CO
STOCK-PHOENIX
309 E 10TH DR
MESA AZ 85210
Telephone: 480-464-0011
Fax: 480-464-0078

HDSWW - PHOENIX AZ
3622 S 30th St
Phoenix AZ 85040
Telephone: 602-268-8781
Fax: 602-268-8973

Attention: STEVE @ 602-390-3536 TO COORD

10/12/11 Bid ID: 2905862 STEVES @ GILA RIVER /PRI BRIDGE II Page 1

Line	Quantity	Sell Per	Description	Net Price	Extended Price
			CUSTOMER'S LIST		
			Bid Item 1		
			16IN-DIP-POTABLE WATER-NEW		
990	2	EA	611-16005010-000 16 EXP JOINT SINGLE END EXPANSION JOINT 16" NOMINAL, FLANGED ENDS CHROME PLATED SLIP PIPE LIMIT RODS, 10" TRAVEL EPOXY COATED BODY BUNA N & LUBRCTED FLAX PACKING 304SS BOLTS / NUTS *CUSTOMER PAYS FREIGHT TO SHIP	3,760.69	7,521.38
			Bid Item Sub-total:		**7,521.38**
			Bid Item 2		
			16IN-DIP-POTABLE WATER-PARTS		
30	8	EA	SBLAIR 641648 FLAX GASKET 16 611-16005010-000 NOTES: DI PIPE *CUSTOMER PAYS FREIGHT TO SHIP	58.47	467.76
700	10	EA	SBLAIR 641647 BUNA-N GASKET 16 611-16005010-000 NOTES: DI PIPE *CUSTOMER PAYS FREIGHT TO SHIP	67.61	676.10
70	10	EA	SBLAIR 90275002 304SS BOLTS 304SS GLAND BOLTS NOTES: EXIST EXPANSION JOINT *CUSTOMER PAYS FREIGHT TO SHIP	13.71	137.10
800	40	EA	SBLAIR 100025202 304SS NUTS 304SS NUTS FOR GLAND BOLTS NOTES: EXIST EXPANSION JOINT *CUSTOMER PAYS FREIGHT TO SHIP	3.71	148.40
110	10	EA	SBLAIR 90432202 LIMIT ROD	33.91	339.10

Run Date 10/24/11 HD SUPPLY WATERWORKS, LTD.

FELIX CONSTRUCTION CO
STOCK-PHOENIX
309 E 10TH DR
MESA AZ 85210
Telephone: 480-464-0011
Fax: 480-464-0078

HDSWW - PHOENIX AZ
3622 S 30th St
Phoenix AZ 85040
Telephone: 602-268-8781
Fax: 602-268-8973

Attention: STEVE @ 602-390-3536 TO COORD

10/12/11 Bid ID: 2905862 STEVES @ GILA RIVER /PRI BRIDGE II

Line	Quantity	Sell Per	Description	Net Price	Extended Price
			304SS LIMIT-ROD FOR: 611-16005010-000 NOTES: EXIST EXPANSION JOINT *CUSTOMER PAYS FREIGHT TO SHIP		
890	10	EA	SBLAIR 100025202 304SS NUTS 304SS NUTS FOR LIMIT ROD NOTES: EXIST EXPANSION JOINT *CUSTOMER PAYS FREIGHT TO SHIP	3.71	37.10
			Bid Item Sub-total:		**1,805.56**
150	4	EA	16 316SS HEX BOLT & NUT KIT	126.00	504.00
160	4	EA	16X1/8 FLG FF 55% NEOPRENE GSK (GASKET) +	13.00	52.00
180	2	EA	16X2 MJ TAPT CAP(I) CP DI C153	180.00	360.00
190	6	EA	16 MJ REGULAR ACC SET L/GLAND	33.00	198.00
200	6	EA	16 MEGALUG MJ RESTR. BLK 1116	130.00	780.00
210	1	EA	BR2B1732IP200 SAD 16X2IP 17.32-19.19 DBL STRAP BRNZ SAD	515.00	515.00
220	1	EA	VALMATIC 38.2 AIR RELEASE VLV 2 THRD AIR RELEASE VALVE WATER TYPE W/EPOXY INTERIOR W/PRIME EXTERIOR CI BODY, 316SS TRIM BUNA-SEATING 150 PSI-CWP *CUSTOMER PAYS FREIGHT TO SHIP 3-4 WEEK LEAD TIME ARO	270.00	270.00
280	1	EA	B2969 2 MIPTXMIPT BALL CORP	152.00	152.00
			Bid Item 3		
			12IN-DIP-SANITARY SEWER - NEW		
1100	2	EA	611-12755010-000 12 EXP JOINT SINGLE END EXPANSION JOINT	3,216.90	6,433.80

Run Date 10/24/11 HD SUPPLY WATERWORKS, LTD.

FELIX CONSTRUCTION CO
STOCK-PHOENIX
309 E 10TH DR
MESA AZ 85210
Telephone: 480-464-0011
Fax: 480-464-0078

HDSWW - PHOENIX AZ
3622 S 30th St
Phoenix AZ 85040
Telephone: 602-268-8781
Fax: 602-268-8973

Attention: STEVE @ 602-390-3536 TO COORD
10/12/11 Bid ID: 2905862 STEVES @ GILA RIVER /PRI BRIDGE II

Line	Quantity	Sell Per	Description	Net Price	Extended Price
			12" NOMINAL, FLANGED ENDS CHROME PLATED SLIP PIPE LIMIT RODS, 10" TRAVEL EPOXY COATED BODY BUNA N & LUBRCTED FLAX PACKING 304SS BOLTS / NUTS *CUSTOMER PAYS FREIGHT TO SHIP		

Bid Item Sub-total: **6,433.80**

Bid Item 4

12IN-DIP-SANITARY SEWER -PARTS

300	8	EA	SBLAIR 641646 FLAX GASKET 12 611-12755010-000 NOTES: DI PIPE *CUSTOMER PAYS FREIGHT TO SHIP	58.47	467.76
750	10	EA	SBLAIR 641645 BUNA-N GASKET 12 611-12755010-000 NOTES: DI PIPE *CUSTOMER PAYS FREIGHT TO SHIP	67.61	676.10
340	8	EA	SBLAIR 90275002 304SS BOLTS 304SS GLAND BOLTS NOTES: EXIST EXPANSION JOINT *CUSTOMER PAYS FREIGHT TO SHIP	13.71	109.68
850	32	EA	SBLAIR 100025202 304SS NUTS 304SS NUTS FOR GLAND BOLTS NOTES: EXIST EXPANSION JOINT *CUSTOMER PAYS FREIGHT TO SHIP	3.71	118.72
380	8	EA	SBLAIR 90258202 LIMIT ROD 304SS LIMIT-ROD FOR: 611-12755010-000 NOTES: EXIST EXPANSION JOINT *CUSTOMER PAYS FREIGHT TO SHIP	33.91	271.28
930	8	EA	SBLAIR 100025202 304SS NUTS 304SS NUTS FOR LIMIT ROD NOTES: EXIST EXPANSION JOINT *CUSTOMER PAYS FREIGHT TO SHIP	3.71	29.68

Run Date 10/24/11 HD SUPPLY WATERWORKS, LTD.

FELIX CONSTRUCTION CO
STOCK-PHOENIX
309 E 10TH DR
MESA AZ 85210
Telephone: 480-464-0011
Fax: 480-464-0078

HDSWW - PHOENIX AZ
3622 S 30th St
Phoenix AZ 85040
Telephone: 602-268-8781
Fax: 602-268-8973

Attention: STEVE @ 602-390-3536 TO COORD

10/12/11 Bid ID: 2905862 STEVES @ GILA RIVER /PRI BRIDGE II

Line	Quantity	Sell Per	Description	Net Price	Extended Price
			Bid Item Sub-total:		**1,673.22**
420	4	EA	12 316SS HEX BOLT & NUT KIT	60.00	240.00
430	4	EA	12X1/8 FLG FF 55% NEOPRENE GSK (GASKET)	9.00	36.00
			+		
450	2	EA	12X2 MJ TAPT CAP(I) CP DI C153	92.00	184.00
460	6	EA	12 MJ REGULAR ACC SET L/GLAND	21.00	126.00
470	6	EA	12 MEGALUG MJ RESTR. BLK 1112	73.00	438.00
480	1	EA	BR2B1314IP200 SAD 12X2IP 13.14-14.58 DBL STRAP BRNZ SAD	200.00	200.00
490	1	EA	VALMATIC 48AXP 2X1 THRD AIR RELEASE VALVE SEWAGE TYPE W/EPOXY INTERIOR W/PRIME EXTERIOR CI BODY, 316SS TRIM BUNA-N SEATING 150 PSI *CUSTOMER PAYS FREIGHT TO SHIP 3-4 WEEK LEAD TIME	518.00	518.00
560	1	EA	B2969 2 MIPTXMIPT BALL CORP	152.00	152.00
			12IN-DIP		
580	2	EA	12 MJ L/P SLEEVE(I) CP DI C153	156.00	312.00
590	4	EA	12 MJ REGULAR ACC SET L/GLAND	21.00	84.00
600	4	EA	12 MEGALUG MJ RESTR. BLK 1112	73.00	292.00
			+ **OTHER ITEM(S)**		
630	2	EA	12X2 MJ CAP (I) DI C153 P401	191.00	382.00
640	2	EA	12 MJ L/P SLEEVE(I) C153 P401 DI 12X12	362.27	724.54
			AIR VALVES FOR TESTING		

Run Date 10/24/11 HD SUPPLY WATERWORKS, LTD.

FELIX CONSTRUCTION CO
STOCK-PHOENIX
309 E 10TH DR
MESA AZ 85210
Telephone: 480-464-0011
Fax: 480-464-0078

HDSWW - PHOENIX AZ
3622 S 30th St
Phoenix AZ 85040
Telephone: 602-268-8781
Fax: 602-268-8973

Attention: STEVE @ 602-390-3536 TO COORD

10/12/11 Bid ID: 2905862 STEVES @ GILA RIVER /PRI BRIDGE II

Line	Quantity	Sell Per	Description	Net Price	Extended Price
660	2	EA	2" ARI AIR RELEASE VLV SCOTTS W/O BLUE 90 ELL	334.86	669.72
			ADDED ITEMS CUSTOMER LIST		
1280	2	EA	16 MJ L/P SLEEVE(I) CP DI C153	345.62	691.24
1290	4	EA	16 MEGALUG MJ RESTR. BLK 1116	130.00	520.00
1300	4	EA	16 MJ REGULAR ACC SET L/GLAND	33.00	132.00
1310	108	FT	12 TJ PR350 DI PIPE US PIPE	31.00	3,348.00
1320	108	FT	16 TJ PR250 DI US PIPE (Need 6' for each repair)	46.50	5,022.00
			ESTIMATED FREIGHT CHARGE STD		
680	1	EA	SBLAIR	25.00	25.00
690	1	EA	VALMATIC	50.00	50.00

Subtotal: 34,411.46

Tax: .00

Bid Total: 34,411.46

CITY COUNCIL REPORT

SUBJECT:
First Amendment to Professional Services Agreement - Kimley-Horn and Associates, Inc. - South Avondale CADD Services

MEETING DATE:
November 21, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a First Amendment to the Professional Services Agreement with Kimley-Horn and Associates for South Avondale CADD Services in the amount of $35,526, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

The City Council approved a Professional Services Agreement with Kimley-Horn and Associates, Inc. on January 24, 2011 to provide computer-aided drafting services for water and sewer infrastructure extension to Phoenix International Raceway in southern Avondale. Kimely-Horn prepared plans for this work under the direction of Public Works to be included in the contract documents used to solicit construction bids for this work. In the course of completing the work, staff determined that additional services were required to address issues that developed during the design and approval process.

DISCUSSION:

Staff requests that the City Council approve Amendment No. 1 to the Professional Services Contract with Kimley-Horn and Associates, Inc. to include the following tasks:

Task No. 1: Design related services - $13,566

- Preliminary design to maintain separation, minimum depth and minimum deflection of water and sewer lines;
- Supplement City design efforts to develop specifications and detail drawings related to a mid-design change in pipe materials;
- Additional design support for connections to Rigby Water Co. lines;
- Design support to indicate and avoid existing utility locations.

Task No. 2: Additional Coordination with City Subconsultants - $3,528

- Existing utility coordination and avoidance efforts;
- Survey sub to obtain survey base map information;
- Coordination with City Pressure Reducing Station consultant;
- Coordination with City staff.

Task No. 3: Address Third Review Comments - $13,170

- Expedited schedule required additional reviews by City and County and response to comments to ensure accuracy of the plans;

Task No. 4: Address Fourth Review Comments - $5,262

- Kimley-Horn budgeted 44 additional hours in the Amendment to address fourth review comments.

The above additional services provide a product that should substantially reduce construction costs due to better coordination with existing utilities and better constructability of the pipelines. The total cost of this Amendment is $35,526 for a total contract amount of $94,323 and extends the contract completion date to January 31, 2012.

BUDGETARY IMPACT:

Funding is available in line item 514-1139-00-8520.

RECOMMENDATION:

Staff recommends that the City Council approve a First Amendment to the Professional Services Agreement with Kimley-Horn and Associates for South Avondale CADD Services by increasing the agreement amount by $35,526 for a total of $94,323, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- PSA Amendment 1

FIRST AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
KIMLEY-HORN AND ASSOCIATES, INC.

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "First Amendment") is made as of November 21, 2011, between the City of Avondale, an Arizona municipal corporation (the "City") and Kimley-Horn and Associates, Inc., a North Carolina corporation (the "Consultant").

RECITALS

A. The City and the Consultant entered into Professional Services Agreement No. 13153 dated January 24, 2011 for computer-aided drafting services for water and sewer infrastructure extension projects in southern Avondale (the "Agreement").

B. The City has determined that additional design, coordination and review services, as more particularly set forth in Exhibit A, attached hereto and incorporated herein by reference (the "Additional Services") are necessary to complete the work related to the Agreement.

C. The City and the Consultant desire to enter into this First Amendment to (i) provide for Additional Services, (ii) extend the term of the Agreement and (iii) increase the Consultant's compensation.

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 to amend the Agreement as follows:

1. Term of Agreement. The term of the Agreement is hereby extended through January 31, 2012.

2. Scope of Work. Consultant shall provide the Additional Services as set forth in the Additional Services Scope of Work and Fee Proposal, attached hereto as Exhibit A.

3. Compensation. Consultant's total compensation under the Agreement shall be increased by no more than $35,526.00 from $58,797.00 to $94,323.00 as consideration for the Additional Services as more particularly set forth in Additional Services Scope of Work and Fee Proposal attached hereto as Exhibit A.

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.

5. Non-Default. By executing this First Amendment, the Consultant affirmatively asserts that (i) the City is not currently in default, nor has been in default at any time prior to this First 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 First Amendment are forever waived.

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

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this instrument 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)

"**Consultant**"

KIMLEY-HORN AND ASSOCIATES,
INC., a North Carolina corporation

By:_____

Name:_____

Title:_____

(ACKNOWLEDGMENT)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2011, by _____ as _____ of KIMLEY-HORN AND ASSOCIATES, INC., a North Carolina corporation, on behalf of the corporation.

_____
Notary Public in and for the State of _____

(affix notary seal here)

EXHIBIT A
TO
FIRST AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
KIMLEY-HORN AND ASSOCIATES, INC.

[Additional Services Scope of Work and Fee Proposal]

See following pages.

City of Avondale
PIR Water and Sewer Line CADD Services

Scope of Services – Water & Sewer

Additional Services No. 1

Introduction

The additional services to be provided to the City of Avondale for the PIR Waste and Sewer CADD Services Project include the following out of scope services for design services, additional meetings and coordination, and additional redline comments.

Task 1- Design Related Services

Kimley-Horn and Associates (KHA) will provide the following design services;

- Preliminary design to maintain separation of water and sewer;
- Preliminary design to maintain minimum depth of lines;
- Preliminary design to maintain minimum deflection of water and sewer lines;
- City staff determined it was in the City's best interest to change the sewer force main pipe material mid-design, requiring more design effort than was anticipated. KHA will assist by supplementing the City staff's design effort.
- The City acquired Rigby Water Company, and connections to this system from the new line required more effort than was anticipated. KHA will provide design for the connection of these water lines to the proposed improvements.
- KHA will provide additional services to indicate location of additional utilities and revising the design to avoid these exiting utilities discovered as the project continued.
- Design of restrained length required for the water line; and
- KHA will provide AutoCAD details for unique improvements not addressed in standard details.

Task 2- Additional Coordination with City Subconsultants

KHA will provide the following additional coordination and meetings:

- Additional coordination with utility agencies and city staff to find, plot, and avoid exiting utilities discovered as the project continued.
- Additional coordination with City Survey Subconsultant to obtain base map information;
- Additional coordination with City Pressure Reducing Station Subconsultant; and
- Additional coordination with City Staff on out of scope services.

Scope of Services – Water & Sewer

Additional Services No. 1

Task 3 – Address Third Review Comments

Because of the expedited schedule additional submittals were required. These were additional comments from the city and Maricopa County Department of Transportation. Additional submittals were required due to working with city staff and utility agencies to indicate on the plans the locations of existing utilities, discovered as the project continued, and avoiding conflicts with the proposed improvements.

Task 4 – Address Fourth Review Comments

KHA has budgeted 44 hours to address additional comments that may arise on the project. KHA will address minor comments from city, utility agencies, or reviewing agencies. These comments will not require design modifications.

Task	Project Manager	Designer/ Engineer	Tech/ Cadd	Clerical	Total Hours	Fee Estimate
	$ 165	$ 129	$ 90	$ 72		
TASK 1 -Design Related Services						
Provide Design Services	40	54			94	$ 13,566.00
					0	$ -
					0	$ -
Total	40	54	0	0	94	$ 13,566.00
TASK 2- Additional Coordination & Meetings						
Additional Meetings and Coordination	12	12			24	$ 3,528.00
					0	$ -
					0	$ -
					0	$ -
Total	12	12	0	0	24	$ 3,528.00
TASK 3 - Address 3rd Review Comments						
Address comments	24	40	45		109	$ 13,170.00
					0	$ -
					0	$ -
					0	$ -
Total	24	40	45	0	109	$ 13,170.00
TASK 4 - Address 4th Review Comments						
Address Comments	8	18	18		44	$ 5,262.00
					0	$ -
					0	$ -
					0	$ -
Total	8	18	18	0	44	$ 5,262.00
Total Hours	**84**	**124**	**63**	**-**	**271**	**$ 35,526.00**

CITY COUNCIL REPORT

SUBJECT:
Professional Services Agreement - Brown and Caldwell, Inc. for VFD Evaluation and Design

MEETING DATE:
November 21, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a Professional Services Agreement between the City of Avondale and Brown & Caldwell, Inc., to provide Variable Frequency Drive evaluation and design, which will provide the information required for upgrades and replacement of current equipment at several of the water production well and booster sites, for a price not to exceed $82,126.00 and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

A variable frequency drive (VFD) is an electronic controller that adjusts the speed of an electric motor by regulating the power being delivered. VFDs provide continuous control, matching motor speed to the specific demands of the water production booster sites. VFDs are used with the City's booster pumps because they allow operators to fine-tune processes and to maintain system pressures while reducing costs for energy and equipment maintenance. These VFDs are in use daily controlling the various pumps and, under normal operations and over years of continual service, these drives have a shelf-life. This results in a 10-15 year replacement schedule. The VFDs at Rancho Sante Fe Booster, Coldwater Booster, Northside Well #6 and Booster, and Well #10 are either approaching or are in this preventative maintenance window. The engineering services provided by Brown & Caldwell will confirm the equipment that needs replacement, provide recommendations for new equipment, provide the designs for those replacement projects, as well as the estimated construction costs. This information will be used by the Public Works Department to plan and allocate funds for the necessary replacements and construction projects.

DISCUSSION:

The City of Avondale has secured a contract price with Brown and Caldwell by selecting this vendor initially from the EN 10-057 FY2010/2011 Professional Consultants Selection list. Per procurement procedures, the Public Works Department formed a committee to evaluate relevant experience, availability, capability, construction management experience, and previous performance with the City of Avondale from this approved Professional Consultants Selection list. This additional information was reviewed and rated by the department with Brown and Caldwell providing qualificationsand experience that best fit the needs for this desired scope of work

BUDGETARY IMPACT:

The funding for the work associated under this professional services agreement is available in the Water Production Budget, Other Professional Services, and line item: 501-9122-00-6180.

RECOMMENDATION:

Staff is recommending that City Council approve a Professional Services Agreement between the City of Avondale and Brown and Caldwell, Inc., to provide Variable Frequency Drive (VFD) evaluation and design, which will provide the information required for upgrades and replacement of current equipment at several of the water production well and booster sites, for a price not to exceed $82,126.00 and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

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 November 21, 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 in response to the RFQ (the "SOQ"), attached hereto as Exhibit B and incorporated herein by reference, and the City desires to enter into an Agreement with the Consultant to perform electrical engineering evaluation services of the variable frequency drives at various water production facilities and provide a design for replacing the equipment (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 November 21, 2012.

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 $82,126.00 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 warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

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. Termination; Cancellation.

12.1 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.

12.2 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.

12.3 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.

12.4 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.

12.5 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 canceled 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.

12.6 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.

13. Miscellaneous.

13.1 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.

13.2 Applicable Law; Venue. 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 Maricopa County, Arizona.

13.3 Laws and Regulations. 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 abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, 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 standards.

13.4 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.

13.5 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.

13.6 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.

13.7 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.

13.8 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.

13.9 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.

13.10 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.

13.11 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.

13.12 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.

13.13 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.

13.14 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.

13.15 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, (C) given to a recognized and reputable overnight delivery service, to the address set forth below or (D) 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 Consultant: Brown and Caldwell, Inc.
201 East Washington Street, Suite 500
Phoenix, Arizona 85004
Facsimile: (602) 567-4001
Attn: Peter Parr

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, (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, or (D) 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.

13.16 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.

13.17 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 13.18 below, 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 (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 13.18 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.

13.18 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.

13.19 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 12.2 above.

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

13.21 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.

13.22 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 Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. 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 Agreement. 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

(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)

"**Consultant**"

BROWN AND CALDWELL, INC., an
Arizona corporation

By:_____

Name:_____

Title:_____

(ACKNOWLEDGMENT)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2011, by _____ as _____ of BROWN AND CALDWELL, INC., an Arizona corporation, on behalf of the corporation.

_____
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.

REQUEST FOR STATEMENTS OF QUALIFICATIONS FOR FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

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

SOLICITATION INFORMATION AND SELECTION SCHEDULE

Solicitation Number:	**EN 10-057**
Solicitation Title:	**FY 2010/2011 Professional Consultants Selection List**
Release Date:	**March 25, 2010**
Final Date for Inquires and Place to Send Inquiries	**April 5, 2010** Sue McDermott, P.E., City Engineer City of Avondale Engineering Dept. 11465 West Civic Center Drive, Suite 120 Avondale, Arizona 85323 smcdermott@avondale.org
SOQs Due Date, Time and Location:	**April 15, 2010** **3:00 p.m.** (local time, Phoenix, Arizona) City of Avondale 11465 West Civic Center Drive, Suite 200 Avondale, Arizona 85323-6804
Letters to Final Listed Firms:	**June 28, 2010**
City Representatives:	**Sue McDermott** **smcdermott@avondale.org** **623-333-4200** **Loretta Browning** **lbrowning@avondale.org** **623-333-2200**

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I. INTRODUCTION

1. Purpose. The City of Avondale (the "City") is seeking Statements of Qualification ("SOQ") from professional consulting engineering firms ("Vendors") to be considered for a Professional Consultants Selection List aimed at capital improvement projects during the 2010/2011 and 2011/2012 Fiscal Years. Only Vendors capable of providing the requested discipline category of professional services will receive consideration. Qualified Vendors are invited to submit SOQs.

2. Discipline Categories of Projects. During Fiscal Years 2010/2011 and 2011/2012, the City plans to contract approximately twenty (20) projects per Fiscal Year for professional services for specific projects that fall within 16 (sixteen) different discipline categories listed below. The scope of work for these specific projects may include studies, site investigations, planning, preliminary design concepts, and contract document development (preparing detailed plans, schedules, designs, assembly of specifications and reports). Project duties may also involve budget estimating, engineering designs, phasing, recommendations for future infrastructure needs (master plans), improvement district administration and presentations at public meetings. Please note, all projects involving the preparation of design plans and specifications require the design plans and specifications to be sealed by a Professional registered in the State of Arizona.

The Professional Consultants Selection List discipline categories are:

- Water Distribution System – Feasibility studies, wells, distribution systems, pump stations, storage facilities and treatment plants.

- Wastewater Systems – Studies, collection and disposal system designs, treatment plants and lift stations.

- Transportation Engineering – Roadway improvement projects, master plans, transportation planning, traffic calming projects, sidewalks and intersection designs, including roundabouts.

- Traffic Engineering – Speed, volume and classification studies, traffic signal warrant studies, other traffic engineering and traffic control studies (such as All-way STOP warrant studies), pedestrian & bicycle studies, Safe Routes to School plans and studies, school crosswalk studies, traffic signal design, traffic control design such as signing and pavement marking, traffic crash analysis, design of safety improvement projects, including roundabout study, design and analysis, design of bike lane/transit/crosswalk facilities, street lights, and Intelligent Transportation Systems (ITS such as Traffic Operations Center design, variable message signs, fiber optic and conduit design, and Wireless Advanced Traffic Management Systems).

- Surveying - Including topographic surveys, boundary surveys, construction staking, as-built surveys, right-of-way and easement investigation, ALTA and preparation of legal descriptions.

- Hydrology/Hydraulic Projects – Master plans, hydrology studies and designing storm water drainage facilities.

- Plan Review Services - Includes plan review of subdivision plats, residential and commercial developments, construction plans for water, sewer, paving, drainage, street/traffic lights and grading.

- Landscape Architect - Master plans, conceptual planning, site designs, parks and public open spaces, streetscapes, bicycle and pedestrian pathway design, scenery planting and irrigation.

- Hydrogeological Engineering - Provide aquifer impact and well feasibility studies. Ability to provide well abandonment services. Design of wells; provide construction inspection/observation services during the drilling of new or replacement wells.

- GIS Programs - Services to support Geographic Information Systems Programs including: data collection and development, map compilation, transformation and systems integration.

- Geotechnical and Environmental **-** Geotechnical engineering, pavement design, materials sampling and testing, pavement evaluation, design recommendations and specifications. Environmental site assessments, compliance audits, risk evaluations and recommendations.

- Foundation and Structural Design - To include load calculations and recommendations for construction of retaining walls, steel reinforced concrete structures, small buildings, and vehicular and pedestrian bridges.

- Electrical Design and Supervisory Control and Data Acquisition (SCADA) Programming - Provide design and inspection services for electric power supply, control systems and equipment specifications. Design and programming of local SCADA systems, PLC programming, and telemetry.

- Construction Management - Provide Construction Management at Risk (CMAR) and Design Build process management or construction administration and inspection services, such as estimation, bid document preparation, QA/QC services, shop drawing review, and post design services.

- Architect - Planning and new building development, renovation, interior and exterior design and construction management of public building projects.

- Subsurface Utility Investigation - To include various types of investigation methods to verify the horizontal and vertical location of underground utilities using surface geophysical techniques such as Ground Penetrating Radar ("GPR"), electromagnetic, magnetic

or other energy fields, probing and vacuum exploration. Electromagnetic methods include the following: pipe and cable locators, inductive, conductive, active and passive modes), terrain conductivity, ground resistivity techniques, optical methods, and computer-driven algorithms coupled with data collection techniques.

II. STATEMENT OF QUALIFICATIONS REQUIREMENTS

1. Preparation/Submission of SOQ. Vendors are invited to participate in the competitive selection process for the Professional Consultants Selection Lists for Fiscal Year 2010/2011 and 2011/2012 outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

a. Interested parties must submit **one (1) original** and **eight (8) copies** (nine (9) total hardcopy submittals) and one (1) electronic copy of the SOQ.

b. The SOQ shall be submitted with a cover letter with an original ink signature by a person authorized to bind the Vendor. Any erasures, interlineations, or other modifications in the SOQ shall be initialed in original ink by the authorized person signing the SOQ.

c. The SOQ shall be a maximum of 15 pages to address the SOQ criteria (excluding the cover letter, résumés and the Vendor Information Form, but including the materials necessary to address project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2" x 11") with criteria information shall be counted. However, one page may be substituted with an 11" x 17" sheet of paper, folded to 8 1/2" x 11", showing a proposed project schedule, a discipline category/staffing matrix, or organizational chart and only having criteria information on one side. The cover letter, cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include additional project-specific information or SOQ criteria responses. The minimum allowable font for the SOQ is **11 pt**.

d. All Vendors shall (i) examine the entire RFQ, (ii) seek clarification of any item or requirement that may not be clear, (iii) check all responses for accuracy before submitting a SOQ and (iv) submit the entire SOQ by the official Due Date and Time. Negligence in preparing a SOQ confers no right of withdrawal after the SOQ Due Date and Time.

e. All SOQs shall be sealed and clearly marked with the SOQ title and number**, FY 2010/2011 Professional Consultants Selection List (EN 10-057)**, on the lower left hand corner of the sealed mailing envelope. A return address must also appear on the outside of the sealed SOQ. The City is not responsible fore the pre-opening of, post-opening of, or the failure to open, any SOQs not properly addressed or identified.

f. All SOQs 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 by the time and date indicated on the cover page of this RFQ.

g. Telegraphic (facsimile), electronic (email) or mailgram SOQs will not be considered.

2. Irregular or Non-responsive SOQ. The City will consider as "irregular" or "non-responsive" and reject any SOQ not prepared and submitted in accordance with this RFQ, or any SOQ lacking sufficient information to enable the City to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions shall be cause for rejection.

3. Inquiries. Any question related to the RFQ shall be directed to the City Representative whose name appears on the cover page of this RFQ. Questions shall be submitted in writing by the date indicated on the cover page of this RFQ. Any correspondence related to the RFQ shall refer to the title and number, page and paragraph. However, the Vendor shall not place the RFQ number and title on the outside of any envelope containing questions, because such an envelope may be identified as a sealed SOQ and may not be opened until after the Due Date and Time.

4. Late SOQs. Late SOQs will not be considered, except as provided by the City Procurement Code. A Vendor submitting a late SOQ shall be so notified.

5. Withdrawal of SOQ. At any time prior to the specified Due Date and Time, a Vendor (or designated representative) may withdraw its SOQ. Facsimile, electronic (email) or mailgram SOQ withdrawals will not be considered.

6. Amendment of SOQ. At any time prior to the specified Due Date and Time, a Vendor (or designated representative) may amend its SOQ. Facsimile, electronic (email) or mailgram SOQ amendments will not be considered.

7. Cost of SOQ Preparation. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. SOQs submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Vendor is responsible for all costs incurred in responding to this RFQ. All materials and documents submitted in response to this RFQ become the property of the City and will not be returned.

8. Offer. An SOQ submittal is an offer to contract with the City based upon the terms, conditions and specifications contained in this RFQ and the Vendor's responsive SOQ, unless any of the terms, conditions, or specifications is modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the Vendor has signed, and the City has approved, a professional services agreement between the City and the Vendor in the form included herein.

9. Public Record. All SOQs 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.

10. Confidential Information.

a. If a Vendor believes that a SOQ or protest contains information that should be withheld from the public record, a statement advising the City Representative of this fact shall accompany the submission and the information shall be identified.

b. The information identified by the Vendor as confidential shall not be disclosed until the City Representative makes a written determination.

c. The City Representative shall review the statement and information and shall determine in writing whether the information shall be withheld.

d. If the City Representative determines to disclose the information, the City Representative shall inform the Vendor in writing of such determination.

11. Vendor Licensing and Registration. Prior to the award of the Agreement, the successful Vendor 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 Vendor shall provide licensure information with the SOQ.

12. Certification. By submitting a SOQ, the Vendor certifies:

a. The submission of the SOQ did not involve collusion or other anti-competitive practices.

b. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.

c. 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 or agent in connection with the submitted SOQ. Failure to sign the SOQ, or signing it with a false statement, shall void the submitted SOQ and any resulting Agreement.

d. It (including the firm's employees, representatives, agents, lobbyists, attorneys, and subcontractors) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the City Manager, Assistant City Managers, Department Heads, and other staff. All contact must be addressed to the City's Procurement Agent, except for questions submitted as set forth in Section 3, Inquiries, above.

e. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached Professional Service Agreement including the Exhibits.

13. Protests. Any Bidder may protest this RFQ issued by the City, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the City Procurement Code.

III. STATEMENT OF QUALIFICATIONS FORMAT; SCORING

A Selection Committee composed of representatives from the City will conduct the selection process according to the schedule on the cover page of this RFQ. Upon receipt of an SOQ, each submittal will be reviewed for compliance with the submittal requirements by the Selection Committee. SOQs shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements may result in a determination that the SOQ is non-responsive. Additionally, the Selection Committee will evaluate and award points to each SOQ based upon the evaluation criteria as outlined in this document. Points listed below are the maximum number of points possible for each criteria and not the minimum number that the Selection Committee may award. Up to ten (10) of the highest rated professional consultants from each discipline category will be selected for inclusion on the Professional Consultants Selection shortlist.

These Professional Consultant Selection shortlists will be used to invite Vendors to submit proposals to provide professional services on specific project assignments. The City reserves the right to conduct formal interviews with selected Vendors depending upon the size and complexity of the specific project. The final Professional Consultant Selection List will be used by the City for at least one year and at the discretion of the City Manager for a second consecutive year.

For large or complex projects or for very specialized work, the City may use a separate Request for Proposals or Request for Qualifications process.

All processes will be conducted in accordance with ARIZ. REV. STAT. Title 34.

Section 1: General Factors and Compliance 10 pts

a. One page cover letter as described in Section II, 1(b) addressed to Sue McDermott, City Engineer.

b. Completed Discipline Specialty Check List – Please ONLY check the discipline category(ies) for which you are particularly qualified, fully addressed and desire to be considered.

c. Title sheet with the following information:
   1. Title: Statement of Interest to provide Professional Services for Capital Improvement Projects for the 2010/2011 and 2011/2012 Fiscal Years.
   2. Submitted to: City of Avondale City Clerk
   3. Submittal date: April 15, 2010 (local time, Phoenix, Arizona)

4. Submitted by: Engineering firm or Individual (submitting) include address, contract person and telephone number.

d. Provide a statement regarding the following:

1. Your firm's familiarity and capability of compliance with City's standard insurance requirements and contract documents. A sample copy of the City's Professional Services Agreement is attached hereto. A copy of the City's "Notice of Request for Proposal" which includes standard contract provisions, terms and conditions is available upon request.

2. Your firm's design philosophy and approach to developing sound engineering recommendations and your approach to problem resolution.

e. Vendor Information Form shall be attached as separate appendix and excluded from the page count limitation pursuant to Section II(1)(c).

Section 2: Vendor's relevant experience, availability and capability 50 pts

a. Provide a brief description of the firm including the number and types of personnel who would serve on projects.

b. Provide a list of relevant projects in which the firm had a significant contribution with an emphasis on local experience. Include references and telephone numbers of clients familiar with the projects.

c. Provide a general description of the company that is proposing to provide the required services. Explain the legal organization of the company.

d. Provide identification information of your firm. Include the legal name, address and legal form of the firm (e.g., partnership, corporation, joint venture, sole proprietorship). If a join venture, identify the members of the joint venture and provide all of the information required under this section for each member. If the firm is a wholly owned subsidiary of another company, identify the parent company. Provide the name, address and telephone number of the person to contact concerning the SOQ.

e. Identify the location of the firm's principal office and the local work office, if different.

Section 3: Personnel qualification and pertinent experience 40 pts

a. Provide the firm's general or specific experience pertaining to the Professional Consultant Selection List discipline category(ies) the firm desires to be considered for.

b. Provide a matrix listing all categories within the discipline for which the firm is qualified to provide services and identify the participating staff/key personnel. Include a matrix listing for all subcontractors.

c. Provide certifications, licenses and memberships in professional associations, societies or boards.

d. Provide a résumé for the personnel who will serve in key positions for projects, including specific experience for each person on relevant projects, the number of years the personnel has been with the present firm and the total years of experience. Résumés shall be limited to one (1) page, double-sided per résumé. Résumés shall be attached as an appendix and excluded from the page count limitation pursuant to Section II(1)(c).

Total Possible Points for SOQ Submittal: 100

IV. AWARD OF AGREEMENT

1. Award of Agreement. The selected Vendor from the Professional Consultants Selection List for each specific project will be required to execute the City's standard Professional Services Agreement in a form acceptable to the City Attorney. A sample of the standard agreement is included with this RFQ. If the City is unsuccessful in negotiating an Agreement with the highest-scoring firm, the City may then negotiate with the second, then third, highest-scoring firm until an Agreement is executed. City Council approval may be required. The City reserves the right to terminate the selection process at any time.

2. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFQ, the City expressly reserves the right to: (i) waive any immaterial defect or informality, (ii) reject any or all SOQs or portions thereof and (iii) reissue an RFQ.

V. DISCIPLINE SPECIALTY CHECK LIST
FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

Name of Firm _____

Address _____

City _____ State _____ Zip _____

Contact Name: _____

Title: _____

Telephone _____ Fax _____

Please check only those discipline categories for which you are particularly qualified, fully addresses, and desired to be considered.

_____ Water Distribution System

_____ Wastewater Systems

_____ Transportation Engineering

_____ Traffic Engineering

_____ Surveying

_____ Hydrology/Hydraulic Projects

_____ Plan Review Services

_____ Landscape Architects

_____ Hydrogeological Engineering

_____ GIS Programs

_____ Geotechnical and Environmental Engineering

_____ Foundations & Structural Design

_____ Electrical & SCADA Programming

_____ Construction Management

_____ Architects

_____ Subsurface Utility Investigation

VI. VENDOR INFORMATION FORM

By sending a Statement of Qualifications, the submitting firm certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

_____	_____
FIRM SUBMITTING SOQ	FEDERAL TAX ID NUMBER
_____	_____
PRINTED NAME AND TITLE	AUTHORIZED SIGNATURE
_____	_____
ADDRESS	TELEPHONE FAX #
_____	_____
CITY STATE ZIP	DATE
WEB SITE: _____	EMAIL ADDRESS: _____

MINORITY/WOMEN-OWNED SMALL BUSINESSES (check appropriate item):

_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)
_____ Minority Business Enterprise (MBE)
_____ Small Business Enterprise (SBE)

Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise?

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

REQUEST FOR STATEMENTS OF QUALIFICATIONS
FOR

FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

EN-10-057

Addendum No. 1

Date: April 6, 2010

From: Sue McDermott

Subject: Addendum No. 1 to Solicitation No. EN 10-057

Bid Deadline: **April 15, 2010**, 3:00 p.m. local time, Phoenix, Arizona

SCOPE

This Addendum forms a part of the Contract and clarifies, corrects, or modifies the original Request for Qualifications documents prepared by the City of Avondale. Acknowledge receipt of this addendum in the space provided on the attached form. This acknowledgement and addendum must accompany the submitted Statement of Qualifications. Failure to do so may subject the Vendor to disqualification.

This Addendum No. 1 consists of the modification of the RFQ, Section I, Introduction, Paragraph 2, Discipline Categories of Projects and Section II, Statement of Qualifications Requirements, Paragraph (1)(a), Preparation/ Submission of SOQ.

ADDENDUM

1. Page A-1, Section I, Introduction, Paragraph 2, is hereby amended as follows:

   2. Discipline Categories of Projects. During Fiscal Years 2010/2011 and 2011/2012, the City plans to contract approximately twenty (20) projects per Fiscal Year for professional services for specific projects that fall within 16 (sixteen) different discipline categories listed below. The scope of work for these specific projects may include studies, site investigations, planning, preliminary design concepts, and contract document development (preparing detailed plans, schedules, designs, assembly of specifications and reports). Project duties may also involve budget estimating, engineering designs, AND

phasing, recommendations for future infrastructure needs (master plans). ~~improvement district administration and presentations at public meetings.~~ Please note, all projects involving the preparation of design plans and specifications require the design plans and specifications to be sealed by a Professional registered in the State of Arizona.

The Professional Consultants Selection List discipline categories are:

- Water Distribution System – Feasibility studies, wells, distribution systems, pump stations, storage facilities and treatment plants.

- Wastewater Systems – Studies, collection and disposal system designs, treatment plants and lift stations.

- Transportation Engineering – Roadway improvement projects, master plans, transportation planning, traffic calming projects, sidewalks and intersection designs, including roundabouts.

- Traffic Engineering – Speed, volume and classification studies, traffic signal warrant studies, other traffic engineering and traffic control studies (such as All-way STOP warrant studies), pedestrian & bicycle studies, Safe Routes to School plans and studies, school crosswalk studies, traffic signal design, traffic control design such as signing and pavement marking, traffic crash analysis, design of safety improvement projects, including roundabout study, design and analysis, design of bike lane/transit/crosswalk facilities, street lights, and Intelligent Transportation Systems (ITS such as Traffic Operations Center design, variable message signs, fiber optic and conduit design, and Wireless Advanced Traffic Management Systems).

- Surveying - Including topographic surveys, boundary surveys, construction staking, as-built surveys, right-of-way and easement investigation, ALTA and preparation of legal descriptions.

- Hydrology/Hydraulic Projects – Master plans, hydrology studies and designing storm water drainage facilities.

- Plan Review Services - Includes plan review of subdivision plats, residential and commercial developments, construction plans for water, sewer, paving, drainage, street/traffic lights and grading.

- Landscape Architect - Master plans, conceptual planning, site designs, parks and public open spaces, streetscapes, bicycle and pedestrian pathway design, scenery planting and irrigation.

- Hydrogeological Engineering - Provide aquifer impact and well feasibility studies. Ability to provide well abandonment services. Design of wells; provide construction inspection/observation services during the drilling of new or replacement wells.

- GIS Programs - Services to support Geographic Information Systems Programs including: data collection and development, map compilation, transformation and systems integration.

- Geotechnical and Environmental **-** Geotechnical engineering, pavement design, materials sampling and testing, pavement evaluation, design recommendations and specifications. Environmental site assessments, compliance audits, risk evaluations and recommendations.

- Foundation and Structural Design - To include load calculations and recommendations for construction of retaining walls, steel reinforced concrete structures, small buildings, and vehicular and pedestrian bridges.

- Electrical Design and Supervisory Control and Data Acquisition (SCADA) Programming - Provide design and inspection services for electric power supply, control systems and equipment specifications. Design and programming of local SCADA systems, PLC programming, and telemetry.

- Construction Management - Provide Construction Management at Risk (CMAR) and Design Build process management or construction administration and inspection services, such as estimation, bid document preparation, QA/QC services, shop drawing review, and post design services.

- Architect - Planning and new building development, renovation, interior and exterior design and construction management of public building projects.

- Subsurface Utility Investigation - To include various types of investigation methods to verify the horizontal and vertical location of underground utilities using surface geophysical techniques such as Ground Penetrating Radar ("GPR"), electromagnetic, magnetic or other energy fields, probing and vacuum exploration. Electromagnetic methods include the following: pipe and cable locators, inductive, conductive, active and passive modes), terrain conductivity, ground resistivity techniques, optical methods, and computer-driven algorithms coupled with data collection techniques.

2. Page B-1, Section II, Statement of Qualifications Requirements, Paragraph (1)(a) is hereby amended as follows:

1. Preparation/Submission of SOQ. Vendors are invited to participate in the competitive selection process for the Professional Consultants Selection Lists for Fiscal Year 2010/2011 and 2011/2012 outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

a. Interested parties must submit **one (1) original** and **eight (8) copies** (nine (9) total hardcopy submittals) and ~~one (1) electronic copy of the SOQ~~ ONE

ORIGINAL COPY OF THE SOQ ON A CD-ROM (OR ELECTRONIC MEDIA APPROVED BY THE CITY) IN PRINTABLE ADOBE OR MICROSOFT WORD FORMAT (OR OTHER FORMAT APPROVED BY THE CITY). FAILURE TO ADHERE TO THE SUBMITTAL QUANTITY CRITERIA SHALL RESULT IN THE SOQ BEING CONSIDERED NON-RESPONSIVE.

CITY OF AVONDALE
ACKNOWLEDGMENT OF ADDENDA RECEIVED
REQUEST FOR QUALIFICATIONS

FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

EN10-057

Addendum No. 1

_____, affirms that ADDENDUM No. 1 has
(Name of Vendor/Designee)
been received and that the information contained in ADDENDUM No. 1 has been incorporated in formulating the Vendor's Offer.

_____, _____2010
Signed Date

_____
Print Name

_____
Title

_____
Company Name

_____
Address

_____
City, State, Zip Code

END OF ADDENDUM No. 1

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

[Consultant's SOQ]

See following pages.

Brown AND Caldwell

201 East Washington Street, Suite 500
Phoenix, Arizona 85004

Tel: (602) 567-4000
Fax: (602) 567-4001

April 15, 2010

Ms. Sue McDermott, PE
City Engineer
City of Avondale Engineering Department
11465 West Civic Center Drive
Suite 120
Avondale, AZ 85325

RE: Statement of Qualifications for FY 2010/1011 Professional Consultants Selection List, EN10-057

Dear Ms. McDermott:

Brown and Caldwell (BC) is pleased to submit our qualifications to the City of Avondale for the FY 2010/2011 Professional Consultants Selection List. BC is a multi-discipline environmental consulting firm that can fulfill all of your Water and Wastewater Systems Engineering, Hydrogeological Engineering, Electrical Design and SCADA, and Construction Management needs. We have been providing the requested services for municipal clients in Arizona for over 32 years.

Our belief is that quick response and communication is essential between our team leaders and your project managers.

We propose a full service team of experienced professionals for the disciplines outlined within the Discipline Specialty Checklist.

We appreciate the opportunity you have presented Brown and Caldwell and look forward to working with you and your team and to tackle the challenges that face your community.

Respectfully,

Brown and Caldwell

Larry Ayers, PE, DBIA
Vice President, Principal-in-Charge

Randy D. Tirpak
Project Manager

1. General Factors and Compliance

V. DISCIPLINE SPECIALTY CHECK LIST
FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

Name of Firm Brown and Caldwell

Address 201 East Washington Street, Suite 500

City Phoenix State Arizona Zip 85004

Contact Name: Larry Ayers, PE, DBIA

Title: Vice President

Telephone 602-567-4000 Fax 602-567-4001

Please check only those discipline categories for which you are particularly qualified, fully addresses, and desired to be considered.

X Water Distribution System

X Wastewater Systems

_____ Transportation Engineering

_____ Traffic Engineering

_____ Surveying

_____ Hydrology/Hydraulic Projects

_____ Plan Review Services

_____ Landscape Architects

X Hydrogeological Engineering

_____ GIS Programs

_____ Geotechnical and Environmental Engineering

_____ Foundations & Structural Design

X Electrical & SCADA Programming

X Construction Management

_____ Architects

_____ Subsurface Utility Investigation

Title Page

Statement of Interest to Provide Professional Services for Capital Improvements Projects for the 2010/2011 and 2011/2012 Fiscal Years

Submitted to:

City of Avondale City Clerk
Ms. Sue McDermott, PE, City Engineer
City of Avondale
11465 West Civic Center Drive, Suite 120
Avondale, AZ 85323

Submittal Date:

April 15, 2010 @ 3:00 p.m. (local time, Phoenix, Arizona)

Submitted By:

Brown and Caldwell
201 East Washington Street, Suite 500
Phoenix, Arizona 85004
Larry Ayers, PE, DBIA, Vice President
602-567-4000

Insurance Requirements and Contract Documents

Brown and Caldwell (BC) has reviewed the City of Avondale's (City) insurance requirements and contract documents included in this notice of Request for Proposal. We will comply with these requirements upon award of any project.

Design Philosophy and Approach

Our design philosophy and approach to developing sound engineering and problem resolution is based on our 60 years of experience in the water and wastewater industry. Our design standards and specifications are continually updated to reflect ever changing technology and are based on our experience and proven practices. We will utilize the most appropriate and local project team customized for each project with the City. Staff assignments will be maintained for the duration of each project to ensure continuity and cost-effective service. Dedicated and committed oversight by senior management and senior technical experts will help to ensure that our projects are high quality, delivered on time, on budget, and are reliable and operable over the facility's life. We will strive to deliver the highest value solution by reviewing the options with the City and recommending only economical proven technologies and techniques.

BC will begin each project by meeting with City staff to define the project objectives, budget, and schedule. These key elements will drive our development of an internal Project Management Plan (PMP). This PMP provides a roadmap for completing the project on-time, within budget, and to the City's satisfaction. The PMP identifies budget and cost control, staffing and resource needs, schedule, and quality control requirements. If the project changes, either by unforeseen conditions or the City's preference, the PMP will be revised to reflect the changes.

Schedule. Our schedule management techniques, tools, and experienced staff are fundamental elements of our formula for on-time project completion. Schedule control is initiated at the outset of the project and is used by the project manager to ensure the project, as well as all of its component tasks are delivered on-time. Recovery plans and schedules prepared with MS Project or Primavera will be developed if necessary and implemented rapidly to ensure schedule adherence.

Budgeting. A key element of our cost control measures is tied closely to achieving the agreed and understood scope of work. Our project tracking system provides weekly updates on all project cost and resource information and allows us to measure project progress against project costs. This frequent information check allows flexibility to make timely adjustments in the project scope, or implement management changes.

Quality Assurance/Quality Control (QA/QC). BC requires every project to build well-defined QA/QC into every phase of the project as part of our Project Delivery System (PDS). This system is a proprietary computerized QA/QC system covering all phases of a project including procurement, negotiation, execution, closeout, and follow-up. The focus of this system is meeting our clients' critical project success factors, which often involve issues beyond the technical scope of services and can change over the course of a project.

2. Relevant Experience, Availability and Capability

Firm Description, Availability and Capability

BC is a national environmental engineering, consulting, and construction management firm with 1,400 professionals offering a wide range of services on water, wastewater, and infrastructure engineering projects. Our nationally recognized consulting firm has a 60-year history of delivering innovative, economical solutions to challenges encountered by public and private clients.

BC practices a strong "knowledge sharing" philosophy. This benefits all projects executed by BC by essentially providing a company-wide team of experienced professionals who will communicate, plan, and act as an extension of the City's staff. This approach provides for faster responses and best solutions if and when challenges are encountered. BC's knowledge sharing philosophy contributes positively to project management and quality assurance.

In Arizona, our staff mix is a perfect fit for the City's Consultant List, consisting of 110 engineering professionals, hydrogeologists, geologists, operators, permitting specialists, and construction managers who can support a wide array of your needs. The office is fully automated with the latest computer technology, software, and AutoCAD capabilities. When a project is identified by the City BC will tailor a team to fit the individual project.

Our **staff capabilities** in the Phoenix office are identified in the chart below. The Phoenix office staff will also be supported by our multi-disciplined and technical professionals throughout the country in various BC offices.

Phoenix Office Personnel	Number of Personnel
Water/Wastewater Engineers	**15**
Hydrogeologists/Hydrologists	**7**
Design Engineers/Designers	**6**
PLT and SCADA Programmers	**3**
Electrical Inspectors	**3**
CADD Operator	**2**
Construction Managers/Construction Project Managers	**6**
Construction Inspectors	**8**
Environmental Services, Technical and Clerical	**60**

Relevant projects in which BC has provided a significant contribution are listed below.

Relevant Projects

Project, Location, Reference	Brief Description	Relevance to Discipline Specialty
Well N, ***City of Goodyear, AZ*** Steve Lampert; 623-882-7607	Prime contractor for a design-build project, to convert an agricultural well into a potable water well.	▪ Studies ▪ Site Investigations ▪ Planning ▪ Preliminary Design Concepts ▪ Contract Document Development
Bullard Water Campus, ***City of Goodyear, AZ*** Steve Lampert; 623-882-7607	Led three design-build teams that delivered new potable water sources and treatment projects.	▪ Studies ▪ Site Investigations ▪ Planning ▪ Preliminary Design Concepts ▪ Contract Document Development

Project, Location, Reference	Brief Description	Relevance to Discipline Specialty
Various Well Projects, City of Chandler, AZ Robert Fortier; 480-782-3591	Provided hydrogeological and engineering design services for new potable water wells.	▪ Studies ▪ Site Investigations ▪ Planning ▪ Preliminary Design Concepts ▪ Contract Document Development
Adaman Water Model, *City of Goodyear, AZ* David Iwanski; 623-693-9304	Provided full range of water resources technical and regulatory support.	▪ Studies
Well Investigations, Design, and Installation, *City of Phoenix, AZ* Andy Brown; 602-495-7683	Provided engineering and geological services for water supply wells for numerous water providers.	▪ Studies ▪ Site Investigations ▪ Planning ▪ Preliminary Design Concepts ▪ Contract Document Development
91st Avenue Support System Upgrades, *City of Phoenix, AZ* Andy Brown; 602-495-7683	Provided engineering services required for upgrading specific areas to meet current Federal and City Code requirements.	▪ Studies ▪ Site Investigations ▪ Planning ▪ Preliminary Design Concepts ▪ Contract Document Development
Paradise Valley PRV Booster Station, *City of Phoenix, AZ* Mike Kasem; 602-256-4271	Provided planning, design, construction phase services, start-up and commissioning of 40 mgd booster station.	▪ Studies ▪ Site Investigations ▪ Planning ▪ Preliminary Design Concepts ▪ Contract Document Development
Buckeye Water and Wastewater Master Plans, *Town of Buckeye, AZ* Damon Duquenne; 623-349-6814	Integrated water resources master plan including water and wastewater infrastructures.	▪ Studies ▪ Site Investigations ▪ Planning
Pond Lining Project, *Arizona City Sanitary District* Rick Autry; 520-705-5726	Provide design, construction management and start-up training for a new pond liner for the 1.5 mgd WWTP.	▪ Site Investigations ▪ Planning ▪ Preliminary Design Concepts ▪ Contract Document Development

General Description and Legal Organization

Contact:
Larry Ayers, PE, DBIA
Vice President
Brown and Caldwell
201 East Washington Street
Suite 500
Phoenix, AZ 85004
602-567-4000

Since 1947, BC has provided water and wastewater planning, design, and construction management services to municipal, private and government agencies across the United States. **BC is a California corporation, incorporated in 1958.**

Our professionals began supporting Arizona clients in 1978. Currently, our Arizona staff is 110 strong, and is supported by a national company of nearly 1,400 professionals.

Principal Office Location

A major benefit of choosing BC is that all of the work associated with this project effort will be managed and completed through BC's local office at 201 East Washington Street, Suite 500, in downtown Phoenix, Arizona. In addition, all proposed team members are located at BC's Phoenix office.

3. Personnel Qualifications and Pertinent Experience

Firm's Qualifications Per Consultant Selection List Categories

Each sub-section below briefly describes our firm's capabilities per category, including a table of relevant project experience for each category. Following the relevant experience is a table summarizing key personnel's registrations and/or certifications, professional memberships, and capabilities for each of the proposed categories.

Water Distribution Systems

BC has a strong reputation for delivering reliable water treatment, production, transmission and distribution systems that serve critical community needs. Many of our projects include conventional and advanced water treatment such as membrane technologies, and pilot and full-scale testing and design of treatment systems to address specific contaminants. BC's in-house experts are experienced in all phases of development including permitting, investigation, evaluation, design, installation, and operation of potable water wells, well-head treatment, storage tanks, and distribution systems. Below is a sampling of BC's water distribution system experience.

Project Name, Client, Location	Brief Description	Relevance to Discipline Specialty
Clearwater Farms Booster Station, Arizona American Water, *Waddell, AZ*	Design and construction management of a 6.5 mgd booster station and operations building, 1.25 mg partially buried reinforced concrete reservoir, gas chlorination system, surge tanks and generator.	▪ Wells ▪ Pump Station ▪ Storage Facilities
Cave Creek Road Water Facilities Project, *City of Phoenix, AZ*	Three-month fast-tracked design of four potable water in-line booster stations and one reclaimed water booster station.	▪ Pump Station
Paradise Valley PRV and Booster Station, *City of Phoenix, AZ*	Design and construction management of a 45 mgd booster station, and two PRV stations (40 mgd and 16 mgd) within the 24th Street WTP site.	▪ Pump Station
Various Well Projects, *City of Goodyear, AZ*	Evaluated over 12 existing wells for equipment salvage and/or reuse; conversion from agricultural to potable use; future production/ transmission infrastructure within the water supply plan. Completed work of three well equipping projects via design/build.	▪ Feasibility Study ▪ Wells ▪ Distribution Systems
Various Well Projects, *City of Chandler, AZ*	On-call annual contract designing six potable production wells including hydrogeological investigation, drilling coordination, well equipping design and construction management. Projects included tablet chlorination systems at each well and over 6,500 l.f. of 12-inch water pipeline.	▪ Wells ▪ Distribution Systems
Ashton Ranch Water Supply Facility Expansion (Booster Station), *City of Surprise, AZ*	Design and construction management of a 23 mgd booster station expansion, a 2 million gallon steel storage reservoir, 75 ppd on-site chlorine generation system and 650 feet of 30-inch, 24-inch, and 16-inch potable water piping.	▪ Distribution Systems ▪ Pump Station ▪ Storage Facilities

Project Name, Client, Location	Brief Description	Relevance to Discipline Specialty
Disinfection Alternative Study/Design Modifications, ***City of Mesa, AZ***	Study of disinfection methods for remote water facility site to evaluate tablet chlorinators, bulk sodium hypochlorite solution, on-site sodium hypochlorite generation systems, and the continued use of gas chlorination with modifications. Recommendations based on O&M, vulnerability, and 20-year cost cycle were made and plans and specifications developed to address the design modifications.	▪ Feasibility Study
Reverse Osmosis (RO) Evaluation & Design-Build, ***City of Goodyear, AZ***	Rehabilitated a 2.5 mgd temporary RO facility using design build, designed and built three raw water production wells with a total capacity of 5 mgd, and utilized design build for the production of a 5 mgd RO facility.	▪ Feasibility Study ▪ Storage Facilities ▪ Treatment Plant
24th Street WTP Solids Handling Facility, ***City of Phoenix, AZ***	Designed and constructed a facility to process solids and residual streams, including construction management, distribution control system programming, and facility commissioning.	▪ Feasibility Study ▪ Pump Station ▪ Treatment Plant

Wastewater Systems

One of BC's greatest strengths is in serving the needs of wastewater system owners and operators by delivering a level of technical skill and long-term perspective rarely found in our industry. As a leader in wastewater technology, we offer a full range of engineering services to solve complex treatment issues and increasing demands on collection facilities. We have the necessary expertise to successfully complete projects using conventional Design-Bid-Build delivery, as well as alternative delivery methods, such as Construction Manager at Risk and Design-Build.

BC's approach to involving engineering and operations staff as active participants in the design process is unique in our industry and ensures any facility we design is reliable and easy to operate. We also have over 25 years of experience in manhole and sewer investigation, pipeline and lift station rehabilitation design and condition assessments in Arizona, including projects for the Cities of Scottsdale, Phoenix, Tempe, Mesa, and Winslow. In all cases, BC has applied the best-proven technologies to meet the needs of the owner. The table below shows a sampling of our wastewater systems projects.

Project Name, Client, Location	Brief Description	Relevance to Discipline Specialty
Miller Road Sewer Phase III, ***Scottsdale, AZ***	Design of 14,000 l.f. of a new relief sewer ranging in diameter from 24" to 39", including determination of a Non-notifying Nationwide Permit 12 to allow open-cut construction of the pipeline in the Indian Bend Wash. An extensive scour analysis was performed and concrete encasement of 200 l.f. of pipe was required to prevent pipeline from being exposed in case of a 100-year, two-hour storm event.	▪ Collection and Disposal System Designs
CCTV Inspection Services, ***Pima County Regional Wastewater Reclamation Department (PCRWRD), AZ***	Performed CCTV inspection services of the collection system to include 250,000 linear feet of less than 15-inch diameter sewers for the initial year, renewable for up to four additional one year periods.	▪ Collection and Disposal System Designs

Wastewater Systems (continued)

Project Name, Client, Location	Brief Description	Relevance to Discipline Specialty
Unlined Concrete Sewer Condition Assessment and Rehabilitation Program, ***City of Phoenix, AZ***	Evaluated the condition of 200,000 feet of unlined concrete sewers from 24- to 90-inch diameter. Investigation and design services for the rehabilitation of seven critical sewer pipeline projects, including over 21,000 linear feet of unlined concrete pipelines with sizes ranging from 27- to 72-inches in diameter.	▪ Studies ▪ Collection and Disposal System Designs
Hilltop Wastewater Treatment Plant (WWTP) Upgrade and Expansion, ***City of Kingman, AZ***	Design of a plant upgrade and expansion, including evaluation of existing wetlands for incorporation into upgraded plant, population and wastewater flow projections, and water reclamation recommendations.	▪ Studies ▪ Collection and Disposal System Designs ▪ Treatment Plants
Roger Road WWTP, ***PCRWRD, AZ***	Developed a plan, including contingency plans, for improving solids thickening and digestion. Designed the conversion of a sludge storage tank to a high rate digester to add capacity to allow digester maintenance to commence.	▪ Studies ▪ Treatment Plants
Neely Road Water Reclamation Facility (WRF), ***Town of Gilbert, AZ***	Expansion and addition of process systems to increase the capacity of the existing oxidation ditch biological nutrient reduction (BNR) plant from 8.5 mgd to 11 mgd average daily flow, with peak hourly flow of 27.5 mgd.	▪ Studies ▪ Collection and Disposal System Designs ▪ Treatment Plants ▪ Lift Stations
91st Avenue WWTP Solids Thickening Facility, ***City of Phoenix, AZ***	Designed and constructed a new centrifuge thickening facility for primary and waste activated sludge; and building and support systems to accommodate four centrifuges for ultimate plant build-out. This project won the 2004 Grand Award from the Arizona Chapter of the American Council of Engineering Companies.	▪ Studies ▪ Design ▪ Treatment Plants
Southeast WRP Expansion, ***City of Mesa, AZ***	Designed a 4 mgd addition and conversion to a biological nutrient reduction process to meet changing effluent quality requirements. Ask Nancy	▪ Studies ▪ Collection and Disposal System Designs ▪ Treatment Plants ▪ Lift Stations
Tolleson WWTP, ***City of Tolleson, AZ***	Over the past 27 years, improvements have included two plant expansions, process upgrades, trickling filter media replacement, effluent quality upgrade, odor control and solids handling facility improvements.	▪ Studies ▪ Treatment Plants

Hydrogeological Engineering

BC has provided focused hydrogeologic engineering services to both private and public sector clients throughout Arizona for more than 25 years. Over this period of time we have partnered with many communities in Arizona to solve complex water quality and supply challenges.

BC is intimately familiar with the methods and technology required to delineate stratified water quality zones within aquifers of variable productivity to generate a well design that will provide the best possible water quality from aquifers like those of the West Salt River Valley.

Our team has developed a set of specialized procedures that allow us to gather accurate aquifer zone specific data that can be used to support successful well design or well modification. We developed these procedures to ensure that truly representative formation water samples can be collected for specific aquifer zones to assist our clients in developing the highest possible water quality from their available water sources.

We have used these procedures on projects involving groundwater exploration, new well design, and well modification to control contaminants such as arsenic, nitrate, fluoride, and total dissolved solids. Many of these projects have resulted in reduced treatment costs for our clients and enhanced water supply sustainability.

The current BC hydrogeology team has implemented our specialized zonal characterization procedures in the design and installation of more than 50 production wells in Arizona. Many of these wells were designed specifically to exclude poor water quality zones existing in the aquifer.

The table on the right shows a sampling of our hydrogeological engineering projects.

Project Name and Owner	Aquifer Impact and Well Feasibility Studies	Well Design and Construction Inspection	Well Abandonment (Existing Well)
Replacement Wells			
Well 6-13, *Maricopa Water District, AZ*	●	●	●
Roosevelt Well, *City of Chandler, AZ*	●	●	●
Pecos Plaza Well, *City of Chandler, AZ*	●	●	●
Cooper Chandler Well, *City of Chandler, AZ*	●	●	●
Gilbert Road Well, *City of Chandler, AZ*	●	●	●
Well 27B, *City of Scottsdale, AZ*		●	●
Well 41, *City of Scottsdale, AZ*		●	●
Mountain Vista Ranch Well, *City of Surprise, AZ*		●	●
Well 4C, *Confidential Client*		●	●
New Well Installations			
Alamosa Well No. 4, *City of Chandler, AZ*		●	●
Layton Lakes Well, *City of Chandler, AZ*		●	●
Quincy Data Center Well Microsoft, *Quincy, OR*	●	●	●
Festival Ranch Well, *Lyle Anderson Dev. Co., AZ*	●	●	●
Golden Lane Well, *City of Chandler, AZ*	●	●	●
Lindsay Road Well, *City of Chandler, AZ*	●	●	●
Wells 287, 288, 289, *City of Phoenix, AZ*		●	●
Well 296, *City of Phoenix, AZ*	●	●	●
Well 115, *City of Scottsdale, AZ*		●	●
Wells 123 and 141, *City of Scottsdale, AZ*	●	●	●

Electrical Design and SCADA Programming

Power distribution, lighting, fire alarm systems, emergency and standby power systems, and power reliability studies are some of the areas of expertise BC possesses in the field of electrical engineering. Over the past seven years, our electrical engineers have provided reliable, safe, and cost-effective electrical designs at over 50 water treatment and distribution facilities, and wastewater treatment plants. Within the Phoenix office, we also have extensive SCADA design, implementation, and programming capabilities for both standard PLC and distributed control systems. In each of these facilities our team of control systems engineers has successfully addressed the need for instrumentation and control integration of SCADA and distributed control systems. Our Phoenix office has also been providing Arc Flash Hazard Analysis services to both private and public customers throughout Arizona and the United States for the last several years. A sampling of our electrical design, Arc Flash and SCADA experience is shown in the table below.

Project Name, Client, Location	Brief Description	Relevance to Discipline Specialty
Water Reclamation Facility Solids Handling Controls, ***City of Avondale, AZ***	Provided programming for PLC upgrades to the plant solids handling facility centrifuge dewatering control system. BC programmed the plant control system PLC to accommodate upgrades performed concurrently by the centrifuge manufacturer. BC was also responsible for coordinating all data communications between the plant control system and the centrifuge vendor's PLC. This project required BC to act on the City of Avondale's behalf to engage with the centrifuge vendor to define and organize the required status and control signals allowing the centrifuge to work in concert with the rest of the plant's equipment and to support the overall plant's control process.	▪ SCADA Programming and Design ▪ PLC Programming and Telemetry
North East Booster Station, ***City of Avondale, AZ***	Provided start-up assistance for the new RTU to monitor and control the new booster station. Provided programming to relay site information between the central control station or human machine interface (HMI), on-site Operator Interface Terminal (OIT) and on-site SRP RTU. Developed HMI and OIT screen descriptions, programmed the Modicon 386 PLC and Magelis OIT.	▪ SCADA Programming and Design ▪ PLC Programming and Telemetry
Arc Flash Hazard Analysis and Engineering Services, ***City of Tempe, AZ***	Provided coordination, electrical engineering and field services at 43 remote sites and 3 plants. Updated existing electrical single-line diagrams (SLD) to match current installation of the power distribution system; updated electrical equipment with identification labeling to meet arc flash requirements and equipment tagging; updated Maintenance Program; trained staff for safe switching operating procedures.	▪ Design & Inspection for Electric Power Supply
Instrumentation and Control Inspection and Testing Service, ***City of Phoenix, AZ***	Performed arc flash investigation and study for several collection and distribution remote facilities. Facilitated City workshop meetings to develop direction, scope and budget for the overall arc flash project. Enforced City I&C standards on projects.	▪ Design & Inspection for Electric Power Supply ▪ Control System and Equipment Specs

Electrical Design and SCADA Programming (continued)

Project Name, Client, Location	Brief Description	Relevance to Discipline Specialty
SCADA Security Upgrades, *City of Peoria, AZ*	Performed design-build to upgrade instrumentation for improved security at 35 remote water facilities. Developed security monitoring (door alarms, chlorine residual analyzers, flow metering), electrical and SCADA equipment upgrades.	▪ Design & Inspection for Electric Power Supply ▪ SCADA Programming and Design ▪ PLC Programming and Telemetry
91st Avenue Wastewater Treatment Plant Support System Upgrades and Upgrade and Expansion, *City of Phoenix, AZ*	Designed I&C expansion hardware and integrated the field devices, analyzers, and instruments of these processes as an extension to the existing Plant Distributed Control System (DCS). Developed, programmed, and configured application control logic and configured graphic displays for the appropriate level of operator monitoring and control consistent with the City's control standards. Oversaw acceptance testing of this equipment, performed commissioning services, managed vendor training, provided system training and updated the City's Information Access System (IAS) for these upgrades. Replaced headworks local control panel with DCS compatible panel.	▪ Control System and Equipment Specs
Cave Creek Road Water Facilities, *City of Phoenix, AZ*	Generated the application program for Reclaimed Water Booster Pump Station No. 7 RTU to communicate with the Cave Creek WTP via single mode fiber optic cable for data logging and display and for supervisory control download. Validated the application control functions of the potable and reclaimed water system control strategy.	▪ PLC Programming and Telemetry
Master Plan/SCADA Standards Development, *City of Goodyear, AZ*	BC is assisting the City of Goodyear, Arizona to improve the reliability, operational security, dependability, and reduce demand on the operations and maintenance staff at their water and wastewater facilities through a SCADA Master Plan and Standards development project.	▪ Control System and Equipment Specs ▪ SCADA Programming and Design ▪ PLC Programming and Telemetry

Construction Management

BC's construction capabilities include constructability review, bid assistance, construction oversight, facility inspection, training, start-up and commissioning, and contractor management for a wide variety of municipal and private construction projects.

BC takes a proactive approach by utilizing team members that have been in the construction trades. This approach has enabled us to foresee areas of concern prior to a contractor starting construction.

In order to answer the needs of the various project delivery methods, we have structured our Construction Services Team to oversee and manage all construction delivery methods including typical design-bid-build, design-build, construction manager at risk (CMAR), and job order contracting (JOC). We have built our organization with the goal of providing comprehensive services to our clients during the entire process. We have the organization, people, and systems to provide the construction management services required for our clients' individual needs. Our team approach is extremely effective in leveraging each team member's expertise for maximum productivity. The table below includes a sampling of BC's construction management experience.

Project Name and Owner	Construction Cost ($)	CMAR and Design-Build Process Management	Construction Administration & Inspection	Estimating	Bid Document Preparation	QA/QC Services	Shop Drawing Review	Post Design Services
Pond Lining Project, ***Arizona City Sanitary District, AZ***	410K		●	●	●	●	●	●
Well No. 12, ***City of Tempe, AZ***	450K		●	●	●	●	●	●
Agua Fria Wells 4.3 and 4.4, ***Confidential Client, AZ***	750K		●	●	●	●	●	●
Expansion Reservoir and Booster Pumps, ***Carefree Partners, Arizona Traditions, AZ***	1M		●				●	●
Williams and Jomax Booster Stations, ***City of Peoria, AZ***	2.2M		●	●	●	●	●	●
24th Street PRV Modifications, ***City of Phoenix, AZ***	680K	●	●	●	●	●	●	●
Paradise Valley Booster Station, ***City of Phoenix, AZ***	6.6M	●	●	●	●	●	●	●
Tolleson WWTP Effluent Quality Upgrades, ***City of Tolleson, AZ***	5M	●	●	●	●	●	●	●
24th Street WTP Chemical Modifications, ***City of Phoenix, AZ***	6.4M		●	●	●	●	●	●
91st Avenue WWTP Solids Thickening, ***City of Phoenix, AZ***	23M		●	●	●	●	●	●
Southeast Water Reclamation Plant, ***City of Mesa, AZ***	24M		●	●	●	●	●	●
Cave Creek Road Water Facilities, ***City of Phoenix, AZ***	34M		●	●	●	●	●	●
Unlined Concrete Sewer Rehabilitation/Replacement, SROG/ ***City of Phoenix, AZ***	50M		●	●	●	●	●	●
Developer Project Oversight, ***City of Phoenix, AZ***	12.5M		●			●		●

Team Qualifications

BC provides a local, full service team of experienced professional and technical people that offer a complete range of in-house services from the initial water resource planning through construction and start-up services. This complete, full-service project team will provide "one stop" shopping for services which greatly reduces the coordination efforts and overall project time. Our team is comprised of seasoned experts specializing in the fields of water distribution and wastewater systems, hydrogeological engineering, electrical design and SCADA, and construction management.

Key Personnel and Title	Registration/Certification	Professional Affiliations	Water Distribution Systems	Wastewater Systems	Hydrogeological Engineering	Electrical Design & SCADA	Construction Management
Larry Ayers, PE, DBIA *Principal-in-Charge*	PE, AZ #28881 PE, CO #41838 PE, NM #18271 PE, UT #6957373-2202	▪ Designated Design Build Professional, Design Build Institute of America, 2008	●	●			●
Randy Tirpak *Project Manager*							●
Tracy Moraca, PE *Supervising Engineer*	PE, AZ #35199 PE, AZ #48993	▪ American Society of Civil Engineers ▪ AZ Water Association ▪ Tau Beta Pi ▪ Order of the Engineer	●	●			
Steve Davidson, PE *Supervising Engineer*	PE, AZ #81508	▪ American Society of Heating, Refrigerating and Air Conditioning Engineers ▪ Water Environment Federation	●	●			
Neil Waterman, PE, BCEE, *Chief Engineer*	PE, AZ #15297 PE, CA #68047 PE, LA #32910 Board Certified Environmental Engineer, Water Supply and Wastewater, American Academy of Environmental Engineers	▪ American Water Works Association ▪ Water Environment Federation ▪ American Academy of Environmental Engineers ▪ Arizona Water Association	●	●			
Gary Newman, PE *VP Wastewater*	PE, AZ #37552	▪ Water Environment Federation	●	●			

Key Personnel and Title	Registration/Certification	Professional Affiliations	Water Distribution Systems	Wastewater Systems	Hydrogeological Engineering	Electrical Design & SCADA	Construction Management
Jeff Littell, RG ***Supervising Hydrogeologist***	Registered Geologist, AZ #49658				●		
Mark Nicholls, RG, PG, CHG, ***Principal Hydrogeologist***	Registered Geologist, AZ #39869 Professional Geologist, CA #7530 Certified Hydrogeologist, CA #835				●		
Chris Gardner, RG ***Geologist/Hydrogeologist***	Registered Geologist, AZ #38733				●		
Brent Cain ***Principal Hydrologist***					●		
Jarrell Southall ***Supervising Scientist***		▪ Arizona Chamber of Commerce Environmental Committee ▪ Arizona Association of Industries Science and Environmental Committee			●		
Laura Chavez ***Permitting***					●		
Brandon Erndt ***Electrical Instrumentation and Control Manager***		▪ Institute for Electrical and Electronics Engineers ▪ Instrumentation, Systems and Automation Society ▪ Chandler-Gilbert Community College Automated Manufacturing System Technical Advisory Council				●	●

Key Personnel and Title	Registration/Certification	Professional Affiliations	Water Distribution Systems	Wastewater Systems	Hydrogeological Engineering	Electrical Design & SCADA	Construction Management
Paul Conrow ***Programming Manager***	Wonderware IAS Server 1.5 CSI Wonderware InTouch 7.11 CSE Modicon 984 PLC Level II Programming FIX 32 Fundamentals 104 Fix Dynamics Fundamentals 154					●	
Hugh Pace, PE ***Chief Electrical Engineer***	PE, AZ #20244 IBEW Licensed Journeyman Electrician & Electrical Supervisory Control System Engineer, OR #10060	▪ Industrial Computing Society ▪ Institute of Electrical and Electronic Engineers ▪ Instrument Society of America ▪ International Association of Electrical Inspectors ▪ IBEW Local 191				●	
Ken Chandler, PE ***Managing Electrical Engineer***	PE, AZ #36697 CSE, AZ #35940	▪ Instrument Society of America ▪ International Association of Electrical Inspectors				●	
Randy Mills ***EI&C Inspector III***	Journeyman Wireman, IBEW Local 640 Apprenticeship Training Program, Phoenix, AZ Grade 1 Water Treatment Plant Operator, AZ Residential Wireman, 1983-1985 IBEW Local 640 Apprenticeship Training Program, AZ	▪ Instrumentation, Systems and Automation Society ▪ International Brotherhood of Electrical Workers Local 640				●	●
Craig Tweed ***Construction Services Manager***							●

VI. VENDOR INFORMATION FORM

By sending a Statement of Qualifications, the submitting firm certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

Brown and Caldwell	**94-1446346**
FIRM SUBMITTING SOQ	FEDERAL TAX ID NUMBER
Larry Ayers, PE, DBIA, Vice President	
PRINTED NAME AND TITLE	AUTHORIZED SIGNATURE
201 East Washington Street, Suite 500	**602-567-4000** **602-567-4001**
ADDRESS	TELEPHONE FAX #
Phoenix **Arizona** **85004**	**April 15, 2010**
CITY STATE ZIP	DATE
WEB SITE: **BrownandCaldwell.com**	EMAIL ADDRESS: **LAyers@BrwnCald.com**

MINORITY/WOMEN-OWNED SMALL BUSINESSES (check appropriate item):

_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)
_____ Minority Business Enterprise (MBE)
_____ Small Business Enterprise (SBE)

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

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

CITY OF AVONDALE
ACKNOWLEDGMENT OF ADDENDA RECEIVED
REQUEST FOR QUALIFICATIONS

FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

EN10-057

Addendum No. 1

Brown and Caldwell, affirms that ADDENDUM No. 1 has
(Name of Vendor/Designee)
been received and that the information contained in ADDENDUM No. 1 has been incorporated in formulating the Vendor's Offer.

Signed, April 15 2010
Date

Larry Ayers, PE, DBIA
Print Name

Vice President
Title

Brown and Caldwell
Company Name

201 East Washington Street, Suite 500
Address

Phoenix, AZ 85004
City, State, Zip Code

END OF ADDENDUM No. 1

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

[Scope of Work]

See following pages.

201 E. Washington St., Ste .500
Phoenix, Arizona 85004
Tel: 602-567-4000
Fax: 602-567-4001
www.brownandcaldwell.com

October 4, 2011

EXHIBIT A

Brown AND Caldwell

Mr. Todd Carpenter
Water Reclamation Superintendent
City of Avondale
4800 South Dysart Road
Avondale, Arizona 85322

15-061121.003

Subject: Variable Frequency Drive Evaluation and Design

Dear Mr. Carpenter:

The following is a proposed scope of work relating to the proposed upgrade to the Variable Frequency Drives currently installed at six of your water production sites.

Scope of Work

Project Overview

This scope is to provide electrical engineering services to the City of Avondale (City) for an evaluation of the variable frequency drives (VFD) at various water production facilities and provide a design for replacing the equipment. The evaluation includes identifying equipment that needs to be replaced, providing recommendations for new equipment, and providing a cost estimate for construction. Brown and Caldwell (BC) will provide these services at the sites identified in Table 1.

Table 1 Project Locations

Number	Site	Description
1	Rancho Santa Fe Booster Station	Booster
2	Coldwater Booster Station	Booster
3	North Side Well 6 and Booster Station	Well and Booster
4	Well 10	Well

Requirements From City

BC will require the following items/tasks from the City to assist in the scope of this project:

- Provide a single point of contact for BC to interface with during the extent of the project to verify the proper coordination of the work performed.
- Provide time to escort BC employees as necessary.
- Provide available single line diagrams.

Assumptions and Exclusions

- BC will have access to the facilities when scheduled.
- This proposal is limited to a replacement design for the VFDs only. (The intent is to move to newer VFD technology from the existing obsolete systems currently in use.)
- Programmable Logic Controller systems are assumed to be addressed by others.

Phases and Tasks

Phase 100 Project Management

BC will perform overall project management, project tracking, report progress of the project, and provide monthly invoicing through the use of a computer based project management system, which includes all major activities of the scope of services. BC will update the design schedule monthly and include the updated schedule in the monthly invoicing.

Phase 200 Preliminary Design Report

Task 201 Evaluation and Cost Estimation

Objectives:

- Evaluate VFDs installed at each site and provide cost estimates for upgrade.

Activities:

- BC will visit each site listed in Table 1 to evaluate existing VFD.
- BC will research existing VFD technology and provide recommendations for replacement or upgrade. This evaluation will take into account existing available footprint, electrical interconnection and compliance with NEC electrical standards.
- BC will provide a preliminary cost for construction.
- For Well 10 only, BC will prepare a cost estimate for replacing the existing electrical distribution system.
- BC will hold two, 2-hour workshops with the City:
  - Workshop one will discuss VFD technologies and assist City with VFD selection.
  - Workshop two will discuss final recommendations prior to design.

Deliverables:

- BC will provide three copies of a draft Preliminary Design Report (PDR) outlining findings for review and comment.
- The report will provide a separate recommendation and cost estimate for each site listed in Table 1.
- BC will conduct a review meeting to discuss and review comments.
- BC will incorporate the city's comments and provide three copies of the final report.

Phase 300 Design

Task 301 Design and Bid Documents

Objectives:

- Complete the design and develop bid documents based on PDR.

Activities:

- BC will develop bid documents for each site, inclusive of back panel/panel layouts, electrical interconnection drawings and one line diagrams identifying work required to demo and replace equipment as identified in the PDR.

- The bid package shall include:
  - Division 1 Specifications
  - Division 11 Specifications
  - Panel Drawings
  - Specification for VFD Upgrade.
- One bid package for each site will be provided that includes each site listed in Table 1.
- Front-end (Contract) Documents will be provided by the City.
- BC will conduct a review meeting to discuss and review comments on the draft Bid Documents.
- After the design is completed, BC will provide a final construction cost estimate that will be used to compare against bids.

Deliverables:

- Three full-size hard copies and one PDF copy of the Draft Bid Documents (plans and technical specifications) for review and comment by the City.
- Three full-size hard copies and one PDF copy of the Final Bid Documents (plans and technical specifications) will be provided to the City.
- Construction cost estimate.

Phase 400 Construction Administration

Objectives:

- Assist with bid selection and monitor construction progress.
- This function will be scoped and estimated at a later time. Additional funding will be provided as a change order to the original estimate.

Compensation

Brown and Caldwell will perform the services described above on a time-and-materials basis, and will invoice the City in accordance with BC's Schedule of Fees attached as Exhibit B. The estimated fee to complete the Scope of Work is $82,126.

Schedule

BC will provide a detailed project schedule 1 week after receiving a Notice to Proceed.

Very truly yours,

Brown and Caldwell, Inc.

Ronald L. Ablin, PE
Vice President

Peter Parr
Proposal Manager

RLA:PP:sjw

Attachment: Exhibit B

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

[Fee Proposal]

See following page.

EXHIBIT B SCHEDULE OF FEES

Avondale, City of (AZ) -- VFD Upgrade Design

Phase	Phase Description	Parr, Peter M	Qualls, Shawntel	Erndt, Brandon F	Resop, Christopher J	Mills, Randy J	Lozano, Erick	Pace, Hugh W	Wollert, Sandra J	Bucasas, Rhonda R	Total Labor Hours	Total Labor Effort	Lodging and Food	Other Travel	Total ODCs	Total Expense Cost	Total Expense Effort	Total Effort
		PM	PA															
		$202.00	$113.00	$174.00	$94.00	$153.00	$153.00	$202.00	$113.00	$94.00								
100	**Project Management**	40	4	4	0	0	0	0	2	4	**54**	**9,830**	0	0	**0**	**0**	**0**	**9,830**
200	**Prelim Design Report**	48	0	1	0	48	16	2	4	0	**119**	**20,518**	100	150	**250**	**250**	**250**	**20,768**
300	**Design**	48	0	4	160	64	96	8	0	0	**380**	**51,528**	0	0	**0**	**0**	**0**	**51,528**
400	**Construction Admin**	0	0	0	0	0	0	0	0	0	**0**	**0**	0	0	**0**	**0**	**0**	**0**
	GRAND TOTAL	**136**	**4**	**9**	**160**	**112**	**112**	**10**	**6**	**4**	**553**	**81,876**	**100**	**150**	**250**	**250**	**250**	**82,126**

CITY COUNCIL REPORT

SUBJECT:
Resolution 3014-1111 – First Amendment to Intergovernmental Agreement with the State of Arizona and Maricopa County

MEETING DATE:
November 21, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution authorizing the First Amendment to an Intergovernmental Agreement (IGA) with Arizona Department of Transportation and Maricopa County for the 115th Avenue Bridge over the Gila River at PIR for the purpose of defining the responsibilities of the County and the City during the Bridge annexation process, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

On September 11, 1997, the City of Avondale, Arizona Department of Transportation (State) and Maricopa County entered into an IGA to design and construct the 115th Avenue (Avondale Boulevard) Bridge over the Gila River at the entrance to Phoenix International Raceway (PIR). The approximate half mile long five (5) lane new reinforced concrete bridge was accepted in August 1999. The IGA stated that 12 years after acceptance the City would initiate annexation of the bridge and County right-of-way.

At the September 6, 2011 meeting, the City Council adopted a resolution to adopt the First Amendment to the IGA. However, when the amendment was presented to the County Board of Supervisors for their approval, two revisions were requested. The two revisions requested relate to the bridge operations and maintenance costs and liability for the bridge.

DISCUSSION:

Staff has studied the bridge annexation and has determined that the annexation will require further time to implement. This is due to fragmented parcels, including state land, which must be combined with the right-of-way to complete the annexation, in addition to concerns with providing adequate public safety in the river and the Meridian Wildlife Area surrounding the bridge. Staff approached the County and requested an amendment to the IGA to allow further time to complete the annexation. This amendment needs only to be between the City and County because the State has completed their obligations of the IGA. The amendment to the IGA will allow for an additional five (5) years to complete the annexation process. The original amendment stated that the County would continue to operate and maintain the bridge over the next 5 years with the City being responsible to reimburse the County for 50% of the maintenance costs. The amendment has been revised placing all responsibility for liability, operation, and maintenance on the City.

BUDGETARY IMPACT:

Maintenance costs for the bridge are estimated to be $3,000 per year. Funding for the maintenance of the bridge is available in the existing street and pavement maintenance budget.

RECOMMENDATION:

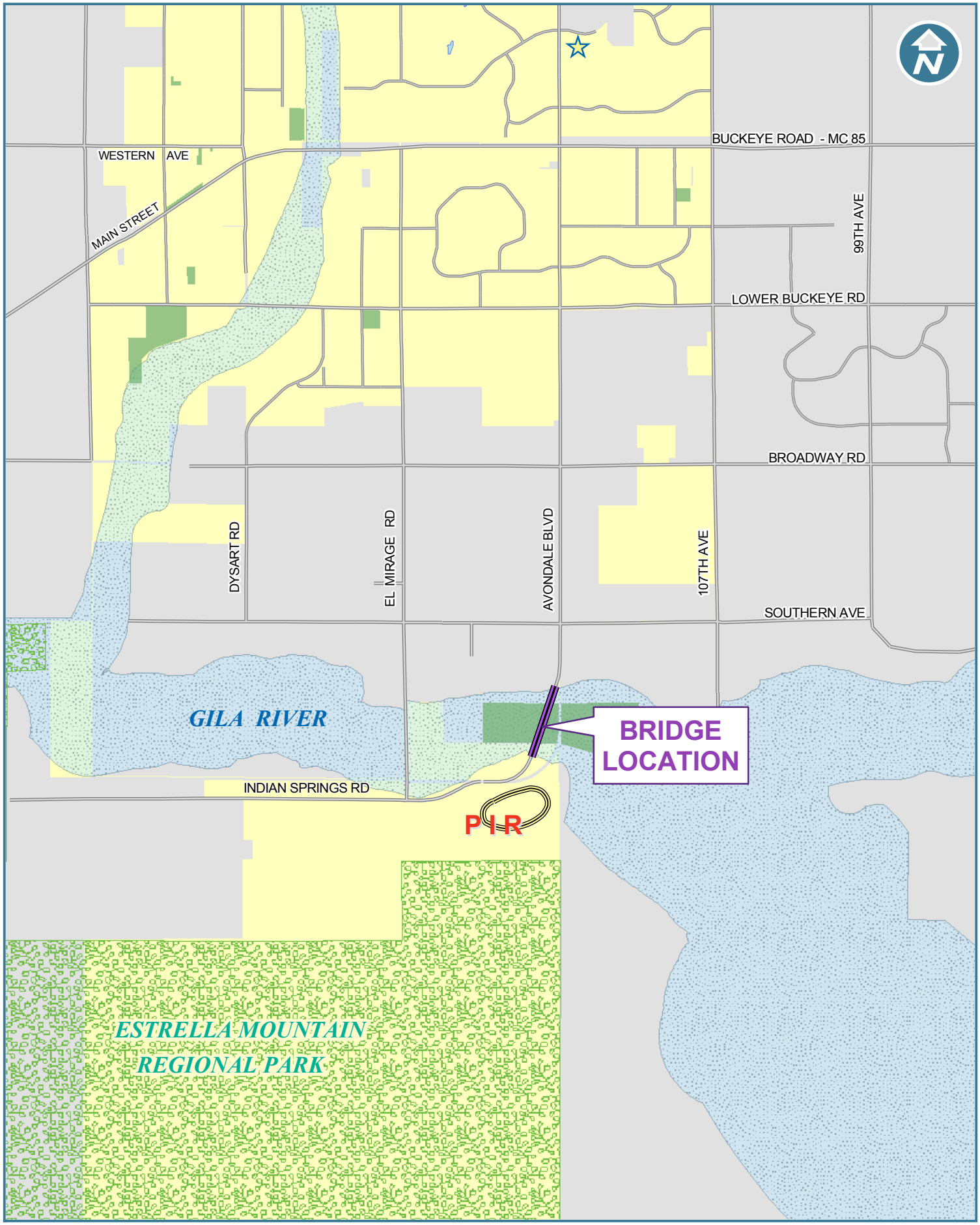
Staff recommends that the City Council adopt a resolution authorizing the First Amendment to an Intergovernmental Agreement (IGA) with Arizona Department of Transportation and Maricopa County regarding the Avondale Boulevard Bridge over the Gila River at Phoenix International Raceway, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- Vicinity Map
- Resolution 3014-1111

VICINITY MAP



AVONDALE BOULEVARD (115TH AVE)
GILA RIVER BRIDGE AT PIR

RESOLUTION NO. 3014-1111

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION, MARICOPA COUNTY AND THE CITY OF AVONDALE REGARDING THE AVONDALE BOULEVARD BRIDGE OVER THE GILA RIVER AT THE PHOENIX INTERNATIONAL RACEWAY.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The First Amendment to the Intergovernmental Agreement (No. C-64-98-060-2-0 & JPA 97-33) between the Arizona Department of Transportation, Maricopa County and the City of Avondale (the "City") regarding the Avondale Boulevard (f/k/a 115th Avenue) Bridge over the Gila River at the Phoenix International Raceway (the "First Amendment") is hereby approved substantially in 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 cause the execution of the First Amendment 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, November 21, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3014-1111

[First Amendment to the Intergovernmental Agreement]

See following pages.

1st AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT

BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION MARICOPA COUNTY AND THE CITY OF AVONDALE

FOR THE 115TH AVENUE BRIDGE OVER THE GILA RIVER AT THE PHOENIX INTERNATIONAL RACEWAY

(C-64-98-060-2-0 & JPA 97-33)
(Work Order # 68832)

This First Amendment (the "**First Amendment**") Amends the original Intergovernmental Agreement (the "**Agreement**"), entered into on the 11th day of September, 1997 pursuant to Arizona Revised Statutes ("A.R.S.") 11-951 and recorded by the Secretary of State on the 11th day of September, 1997 (No. 21883) between the State of Arizona, acting by and through the Arizona Department of Transportation (the "**State**"), Maricopa County, a political subdivision of the State of Arizona (the "**County**"), and the City of Avondale, an Arizona municipal corporation (the "**City**").

This First Amendment shall become effective as of the date it is approved by the Maricopa County Board of Supervisors.

STATUTORY AUTHORIZATION

1. A.R.S. §11-251 and §28-6701 *et seq*. authorize the County to layout, maintain, control and manage public roads within the County.

2. A.R.S. §11-951 *et seq*. authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

BACKGROUND

3. The Agreement related to the design and construction of the 115th Avenue (now Avondale Boulevard) Bridge (hereinafter referred to as the "**Bridge**") over the Gila River accessing, among other things, Phoenix International Raceway. The State has met all of its contractual obligations under the Agreement and, therefore, it is the opinion of the Arizona Attorney General's Office that this First Amendment may be executed only between the County and the City.

4. The Agreement required the County to own, maintain and be responsible for the Bridge for a period of 12 years after the Bridge project was completed, approved and accepted (the "**County Maintenance Period**"), which 12-year period extended through August 10, 2011. Upon completion of the County Maintenance Period, the City was required to initiate annexation of the Bridge into its corporate limits. The City has begun the preliminary work necessary to annex the Bridge.

5. The City and the County agree and understand that the annexation process for the Bridge involves fragmented parcels and State land, which may cause challenges to completing the annexation.

PURPOSE OF THE AMENDMENT

6. The purpose of this First Amendment is to identify and define the responsibilities of the County and the City during the Bridge annexation process.

TERMS OF THE AMENDMENT

7. The County and City hereby agree as follows:

   7.1 Remove stipulation 3.d of the original Agreement (attached) and replace it with "The City will be responsible for the operation and maintenance of the bridge, plus accept the liability of the structure, and have the necessary bridge inspections completed when due until such time as they are able to complete the annexation process. The City will initiate annexation of the bridge and County right-of-way and shall diligently pursue such annexation to completion. Completion of the annexation process shall not be later than August 10, 2016 (The **"Annexation Completion Deadline"**)".

8. All other terms and conditions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

MARICOPA COUNTY

Recommended by:

_____

John B. Hauskins, P.E. Date
Transportation Director

Approved and Accepted by:

_____

Andrew Kunasek, Chairman Date
Board of Supervisors

Attest by:

_____

Clerk of the Board Date

CITY OF AVONDALE

Approved and Accepted by:

_____

Charles P. McClendon Date
City Manager

Attest by:

_____

City Clerk Date

APPROVAL OF ATTORNEY FOR BOS AND CITY ATTORNEY

In accordance with the requirements of A.R.S. §11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

_____

Attorney for BOS Date

_____

City Attorney Date

CITY COUNCIL REPORT

SUBJECT:
Ordinance 1475-1111- Amendment Chapter 23, Traffic of the Avondale Municipal Code

MEETING DATE:
November 21, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt an ordinance amending Chapter 23 of the City Code, Traffic, relating to penalties for code violations.

BACKGROUND:

Section 23-64.1 of the Avondale Code relates to parking and the operation of vehicles on unpaved areas in accordance with regional efforts to reduce PM-10 emissions in the Maricopa County nonattainment area. All violations under this section of the code are class 3 misdemeanors.

DISCUSSION:

Section 9-500.27(D) of the Arizona Revised Statutes establishes the required punishment for a class 3 misdemeanor for off-road vehicle activity but has left open the punishment for the other dust control provisions. The proposed Code amendment will impose the civil penalty process for the other code provisions relating to parking on a vacant lot or unpaved surface.

BUDGETARY IMPACT:

There is no budgetary impact.

RECOMMENDATION:

Staff recommends that City Council adopt an ordinance amending Chapter 23 of the City Code, Traffic, relating to penalties for violating the dust control and abatement sections.

ATTACHMENTS:

Click to download

- Ordinance 1475-1111

ORDINANCE NO. 1475-1111

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE AVONDALE CITY CODE, CHAPTER 23, TRAFFIC, RELATING TO PENALTIES FOR VIOLATING THE DUST CONTROL AND ABATEMENT SECTIONS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Avondale City Code, Chapter 23, Traffic, Article III, Stopping, Standing or Parking, is hereby amended as follows:

Section 23-64.1 – Unpaved Areas.

. . . .

(h) A person who violates ~~this~~ SUBsection (D) OF THIS SECTION is guilty of a class 3 misdemeanor. In addition to or in lieu of a fine pursuant to A VIOLATION OF SUBsection (D), a judge may order a person to (1) perform at least eight (8) but not more than twenty-four (24) hours of a community restitution course or (2) complete an approved safety course related to the off-highway operation of motor vehicles, or both. UNLESS SPECIFIED OTHERWISE, ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO THE CIVIL PENALTY PROCESS SET FORTH IN SUBSECTION 1-9(D) OF THIS CODE.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason to be held unconstitutional or otherwise unenforceable by a court of competent jurisdiction, such decision shall be deemed separate, distinct and independent of the remaining provisions of this Ordinance and shall be severed therefrom without affecting the validity of the remaining portions of this Ordinance.

SECTION 3. The Mayor, the City Manager, the City Clerk, the City Attorney and the City Prosecutor are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, November 21, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

CITY COUNCIL REPORT

SUBJECT:
Avondale 2011 Digital Cities of America Award

MEETING DATE:
November 21, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff will update the City Council regarding the Center for Digital Government, which named the City of Avondale as one of the Digital Cities of America for 2011.

BACKGROUND:

At the National League of Cities (NLC) conference on November 11, 2011, the Center for Digital Government named its Digital Cities of America honorees. Avondale was named one of the top-ten in its population category. The award was received by Councilmember Vierhout on behalf of the Mayor and Council in front of all NLC attendees.

The Digital Cities of America honor is a prestigious one. The evaluation process reviews the entire information and communications technology (ICT) program of organizations to determine honorees, requiring submittal of an intensive survey with supporting materials. The Center for Digital Government identified our City as a national leader in local government technology based on Avondale's online engagement with the community, its internal technology governance, innovative programs, and the partnerships between departments and IT to enable superior services in spite of declining resources.

Avondale is the only local government from Arizona to be honored in any population category this year. Pier Simeri, Community Relations Director, Janeen Gaskins, Grants Administrator, and IT staff completed the City's application.

DISCUSSION:

This is an informational item with no discussion required.

BUDGETARY IMPACT:

For information only.

RECOMMENDATION:

This is an informational item with no action required.

ATTACHMENTS:

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- Center for Digital Government Press Release
- Award Icon

Top Digital Cities in U.S. Recognized by Center for Digital Government

SACRAMENTO, Calif. Nov. 3, 2011 – e.Republic's Center for Digital Government and Digital Communities Program today announced the top-ranked digital city governments in the 10th anniversary Digital Cities Survey. The survey focused on results achieved by cities, via the use of technology, in operating efficiencies and realizing strategic objectives despite current fiscal constraints.

"Cities that are investing in technology are capturing cost savings that are critical to continuity of operations and their ability to meet higher demand for services," said Todd Sander, director of Digital Communities. "The highest-ranking cities in the survey showed great strides in consolidating, enabling shared services, government transparency and communications interoperability. We applaud these innovators as they work in the spirit of collaboration to provide extraordinary value to constituents despite budget setbacks."

The survey was open to all U.S. cities with a population of 30,000 or more.

The first-place winners in each of the four population classifications are:

- City and County of Honolulu, Hawaii (250,000 or more population)
- City of Olathe, Kan. (125,000 – 249,999 population)
- City of Roseville, Calif. (75,000 – 124,999 population)
- City of Eden Prairie, Minn. (30,000 – 74,999 population)

This year's survey was underwritten by AT&T; CDW-G; Hyland Software, developers of OnBase; and Symantec.

Winners will be honored at a special awards ceremony concurrent with the National League of Cities annual conference in Phoenix, Arizona on November 11th.

Congratulations to the 2011 Digital Cities Survey Winners:

250,000 or more population:
1st City and County of Honolulu, Hawaii
2nd City of Seattle, Wash.
3rd Metropolitan Gov't of Nashville & Davidson County, Tenn.
4th City of Aurora, Colo.
4th City of Chicago, Ill.
5th City of Corpus Christi, Texas
6th El Paso City and County, Texas
7th City of Riverside, Calif.
8th City of Boston, Mass.
9th City of Baltimore, Md.

9th City of Long Beach, Calif.
9th City of Virginia Beach, Va.
10th City of Fort Worth, Texas
10th Louisville Metro Government, Ky.
10th City of San Antonio, Texas

125,000 – 249,99 population:
1st City of Olathe, Kan.
2nd City of Winston-Salem, N.C.
2nd Salt Lake City, Utah
3rd City of Alexandria, Va.
3rd City of Hollywood, Fla.
4th City of Irving, Texas
5th City of Augusta, Ga.
6th City of Hampton, Va.
7th City of Chesapeake, Va.
8th City of Chula Vista, Calif.
9th City of Madison, Wis.
10th City of Modesto, Calif.

75,000 – 124,999 population:
1st City of Roseville, Calif.
2nd City of Lynchburg, Va.
3rd City of Pueblo, Colo.
4th City of Arvada, Colo.
5th City of Ann Arbor, Mich.
5th City of Simi Valley, Calif.
6th City of Thornton, Colo.
7th City of Avondale, Ariz.
8th City of Roanoke, Va.
8th City of Westminster, Colo.
9th City of West Palm Beach, Fla.
10th City of High Point, N.C.
10th City of Independence, Mo.
10th City of Santa Monica, Calif.

30,000 – 74,999 population:
1st City of Eden Prairie, Minn.
2nd Carson City Consolidated Municipality, Nev.
3rd City of North Port, Fla.
4th City of Danville, Va.
5th Town of Jupiter, Fla.
6th Village of Schaumburg, Ill.
7th City of Fayetteville, Ark.
8th Town of Manchester, Conn.
9th City of New Berlin, Wis.
10th Town of Flower Mound, Texas

The Center for Digital Government is a national research and advisory institute on information technology policies and best practices in state and local government.

The Center is a division of eRepublic, a national publishing, event and research company focused on smart media for public sector innovation.

Contact:
Janet Grenslitt
Director of Surveys and Awards
jgrenslitt@erepublic.om

DIGITAL CITIES SURVEY 2011 Winner

CITY COUNCIL REPORT

SUBJECT:
Athletic Field Operations

MEETING DATE:
November 21, 2011

TO: Mayor and Council

FROM: Christopher Reams, Director of Parks, Recreation & LIbraries (623) 333-2412

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is seeking direction from the City Council on a proposal for future growth and development of City Parks as an economic driver for the City of Avondale

BACKGROUND:

The City of Avondale owns and maintains a variety of parks and sports facilities. Historically, the City develops and manages a variety of recreation and sports oriented programs for our residents and coordinates the use of fields by outside organizations. The level of use is intense resulting in significant maintenance costs and the inability to maintain our fields in a manner necessary for tournament use. Increasing programming and maintenance costs prompted significant policy decisions affecting the city's recreational programs.

Users
There are over 300,000 visitors to City Parks annually. Sports field users are individuals, families, sports organizations, nonprofit organizations, for profit organizations, businesses, and schools. The user groups seek the use of fields for practices, family gatherings, tournaments and miscellaneous activities. The majority of the requests are for sports related activities, with about 30% by coaches seeking practice space, and 10 - 20% for individuals for family or corporate gatherings. The ratios of organizations compared to walk in use is about 60% - 40% on softball fields and 50% - 50% for soccer fields.

Allocation Process
Staff currently receives allocation requests from over twenty different sports organizations for tournaments, practices, and leagues. Field allocation requests are accepted for Friendship Park, Festival Fields, Donnie Hale Park, and Las Ligas Park for six month time periods. However, the six month allocation process is limiting for major tournament organizers. Tournament organizers would benefit from from field allocations reaching further into the future and the City would benefit from increased regional and national tournaments. The field allocation process is done by City Staff. There are enough field allocation requests to keep the fields occupied on a daily basis.

Income
Field maintenance for all sports fields costs approximately $300,000 annually. The fields generate approximately $280,000 in income from various sports activities. The majority of use comes from practices and non-sports related uses, while the majority of the income is generated by tournaments and leagues. A daily rental of a sports field costs between $10 - $35 per hour, depending on the resident or nonresident rate and the use of lights. Daily rental for a tournament costs between $10 - $65 per hour depending on for profit vs. nonprofit rate, field preparation needs, and use of lights.

Over the past few years the City Council implemented policies whereby recreational activities must recover their costs. We have found the public accepting of this policy and we now substantially

recover the cost of City provided recreational programming and sports field maintenance. An extension of this policy was the City's partnership with American Sports Center. The success of this project prompts an exploration of a similar concept for Friendship Park and Festival Fields that would attract major tournament play and increased economic development for the City. According to the Phoenix Regional Sports Commission 25 sports related events in the greater Phoenix area have generated over $103 million dollars, 222 event days, over 132,000 visitors, and over $9 million in sales taxes.

DISCUSSION:

Proposed Future Uses of City Parks

Staff recommends changing the way City parks are managed and operated to provide residents with enhanced amenities and generate more of an economic impact through expanded regional and national tournaments. Proposed amenity enhancements include: more ramadas, additional green space for family gatherings, expanded play areas, and enhanced concessions. Sports fields generate more income, attract regional and national tournaments, and reduce maintenance costs when daily usage is reduced. Avondale fields are currently used on a daily basis which causes extensive wear and tear on the fields. Avondale fields are not considered of a high quality for major tournaments that attract out of area participants. In addition, the City does not have staff dedicated to seeking out tournament organizers to bring in the high level of sports field clientele. Staff recommends a partnership with a sports management company that will work with the maintenance schedule to bring expanded tournament play to some City venues with an emphasis on regional and national uses. The partnership could also include a maintenance provision. Currently most valley cities have in-house parks maintenance staff. The City of Avondale has contracted out all sports field management services. The proposed partnerships could include:

- A Sports Allocation Company
- A sports field maintenance contract
- An organized amateur sports organization
- Any combination of functions into one contract

The Parks would require renovations to accommodate current user groups and provide an opportunity for expanded regional and national partnerships. Some of the changes required would include:

Friendship Park:
Friendship Park would have to be renovated to include more parking; permanent, lockable fencing around the fields, enhanced neighborhood amenities, lights on fields 2, 9, and 10; and an expanded concession operation.

Festival Fields Phase Two:
Festival Fields was originally designed to add a baseball field and ramadas. Funds for the completion of Festival Phase Two are in the city's CIP budget. The project can be altered to include more softball fields, a concession area, and increased neighborhood amenities.

Donnie Hale and Las Ligas would not require any major renovations but may experience more practice requests.

Currently the Avondale sports fields are not fenced off. It is difficult to keep people off of the fields during field maintenance and renovations. Continued use of the fields during renovation periods can nullify any maintenance previously performed on the fields, especially seeding and fertilizing.

Open Space: As part of the Parks Master Plan Process residents also requested more open space amenities. Staff proposes that part of Friendship Park and Festival Fields be converted to open space family amenities. To include more ramadas and open play areas.

Sport Complex Users
City staff currently manages the user groups at City sports complexes. There are currently over 20 sports organizations that seek field allocations. Some of the groups also manage and conduct tournaments. However, there are organizations that are specifically geared toward tournament generation. Staff proposes that the City enter into an agreement with an organization designed to bring tournaments to the City. The Sports Organization Firm would solicit users groups and coaches would continue to work with the City of Avondale to book practice time on the noncompetitive fields. Current user organizations would have fewer fields open to allocations, but the field quality would be improved.

Staff conducted a focus group of current sports field users and the majority of the focus group participants stated that they would support an enhanced rest cycle and fewer allocations for improved field quality. Staff would also continue to participate in tournament networking groups, sports coalitions, and work with existing user groups to develop additional tournaments.

Allocation Process
The City sports fields would no longer include all sports at all parks. Friendship Park would become a soccer and little league complex. Festival Fields would accommodate softball and multipurpose field uses which would include football. Donnie Hale Park and Las Ligas Park would continue to offer softball. Tournament organizers would not be subject to a six month allocation window and tournaments would be booked on multi-year basis.

The change to the allocation process would affect user priorities. Portions of Friendship Park and Festival Fields would no longer be open to continual use and the rest cycles would be longer between uses. The longer rest cycles would enhance the playing surfaces as required to attract more regional and national play. Donnie Hale Park and Las Ligas would continue to be open to practices, noncompetitive play, and family activities. Friendship Park Fields 2 and 3, on the eastern end of the park, would also remain open to practices, noncompetitive play and family activities as would the Kaizu garden area which is the site of the Farmers Market.

All football would be moved to Festival Fields and the current football field at Friendship Park would become expanded parking. Friendship Park currently has 850 parking spaces. The current parking would have to be expanded to accommodate expanded uses.

Income
Avondale sports fields currently generate approximately $280,000 per year in revenue. However, the fields are used extensively and maintenance costs are high because much of the maintenance effort is spent on renovating over used fields. Staff recommends a reduction of daily use for practices and casual uses and the addition of more tournament and league play on a portion of our facilities. Less field use will improve the quality of the fields, which is necessary to attract regional and national tournaments. More importantly, increased tournaments will bring more players and their families to the City of Avondale for longer periods of time.

The majority of our current users come, play, and leave. Tournament users require hotel stays for weekend tournaments, meals, and other associated shopping in the community. A family of four will spend an average of $530 over the weekend while attending a sporting event for their child, not including the participation fee. Tournament agreements can also include specified hotel stays which would add additional income into the City economy. In 1997 the City of Tucson held the senior Olympics. Over 2000 athletes and their families attended. The City of Glendale recently hosted a softball tournament with 28 teams. Both tournaments provided additional income well above the cost of a sports activity alone.

The City of Phoenix has a similar parks maintenance and management model. Phoenix manages neighborhood parks open to all residents, and Phoenix also manages a series of sports complexes

that are open to leagues and tournaments. The sports complexes are maintained at a higher level than neighborhood parks and the field space is booked through agreements that include hourly rates and a percentage of net revenue from tournament organizers. The City of Phoenix staff performs all of the maintenance on all fields.

The American Sports Center in Avondale is a model of a sports management concept. The City of Avondale constructed the facility and the American Sports Center Group manages the operations. The City of Avondale does not manage or maintain the facility and shares in the revenue from local, regional and national operations.

Benefits and Challenges
Changing the way we manage parks and sports complexes would have the following benefits and challenges:

Benefits:
Enhanced amenities at public parks
Economic impact of tournaments
Enhanced field conditions
Increased presence in youth amateur sports market

Challenges:
Some of the current user groups would lose allocations
Renovations would require funding

On Wednesday, November 9, 2011 staff presented this proposal to the Parks and Recreation Advisory Board. The Board unanimously approved the proposal.

Recommendation:
Staff seeks direction on the following initiatives:
- Solicit a partnership with a sports management firm
- Change parks allocation process to accommodate both community parks and sports complexes
- Re-consider current long term CIP parks projects to include provisions for enhanced community uses and managed sports fields

BUDGETARY IMPACT:

This is a discussion item only. There is no budgetary impact at this time.

RECOMMENDATION:

Staff seeks direction on the following initiatives:

- Solicit a partnership with a sports management firm
- Change parks allocation process to accommodate both community parks and sports complexes
- Re-consider current long term CIP parks projects to include provisions for enhanced community uses and managed sports fields

ATTACHMENTS:

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Park Field Operations - CIP Projects

CITY OF AVONDALE
CIP-PARKLAND - FUND 310
FISCAL YEARS 2013-2022

			Current year							
	2001-2002	**2002-2003**	**2011-2012**	**2012-2013**	**2013-2014**	**2014-2015**	**2015-2016**	**2016-2017**	**2018-2022**	**Ten Year**
CURRENT										-
Projects										-
PK1026 Future Park Development									6,500,000	6,500,000
PK1029 West Valley Corridor/Multi-Modal Trail							750,000	1,000,000	1,000,000	2,750,000
PK1032 Coldwater Park Improvements			150,000							-
PK1094 Agua Fria Restoration- Grant Funding								6,300,000		6,300,000
PK1096 Park Development Pendergast School Site									600,000	600,000
PK1105 Festival Fields					1,500,000					1,500,000
PK1119 American Sports Center			1,446,580							-
PK1291 City Center Retail										-
PK1200 El Rio Nature Area									**4,000,000**	4,000,000
Total Projects	985,000	-	1,596,580	-	1,500,000	-	750,000	7,300,000	12,100,000	21,650,000
PROPOSED										
Projects										-
PK1026 Future Park Development									6,500,000	6,500,000
PK1029 West Valley Corridor/Multi-Modal Trail							750,000	1,000,000	1,000,000	2,750,000
PK1032 Coldwater Park Improvements			150,000							-
PK1094 Agua Fria Restoration- Grant Funding								6,300,000		6,300,000
PK1096 Park Development Pendergast School Site										-
PK1105 Festival Fields					1,500,000					1,500,000
PK1119 American Sports Center			1,446,580							-
FRIENDSHIP PARK ENHANCEMENTS					600,000					600,000
PK1200 El Rio Nature Area									**4,000,000**	4,000,000
Total Projects	985,000	-	1,596,580	-	2,100,000	-	750,000	7,300,000	11,500,000	21,650,000
Friendship Park Enhancements: Permanent Fencing, Additional Ramadas,Additional Parking, Removal of Football Fields, Enhanced play area										
Festival Fields Phase II: Erosion control, Additional Ball Fields, Additional Ramadas, Football Goals, Enhanced play area										

CITY COUNCIL REPORT

SUBJECT:
EXECUTIVE SESSION

MEETING DATE:
November 21, 2011

TO: Mayor and Council

FROM: Andrew McGuire, City Attorney (602) 257-7664

THROUGH: Charlie McClendon, City Manager

PURPOSE:

The Council may hold an executive session pursuant to ARIZ. REV. STAT. § 38-431.03 (A)(4) for discussion or consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding (i) negotiations for a potential Economic Development Agreement; and (ii) a potential Intergovernmental Agreement with the City of Litchfield Park regarding a potential annexation.

ATTACHMENTS:

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No Attachments Available