

CITY COUNCIL AGENDA

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

SPECIAL MEETING
July 16, 2012
6:00 PM

CALL TO ORDER BY MAYOR ROGERS

1 ROLL CALL

2 EXECUTIVE SESSION

- a. The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(7) for discussion or consultation with City representatives in order to consider its position and instruct its representatives regarding negotiations for the acquisition of real property.

3 ADJOURNMENT

Respectfully submitted,

A handwritten signature in cursive script that reads "Carmen Martinez".

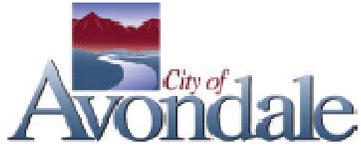
Carmen Martinez
City Clerk

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 pueden 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:
EXECUTIVE SESSION

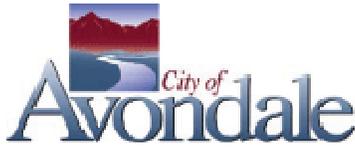
MEETING DATE:
July 16, 2012

TO: Mayor and Council
FROM: Carmen Martinez
THROUGH: Charlie McClendon, City Manager

ATTACHMENTS:

[Click to download](#)

No Attachments Available



CITY COUNCIL AGENDA

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

REGULAR MEETING
July 16, 2012
7:00 PM

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

1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2 UNSCHEDULED PUBLIC APPEARANCES

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

3 CONSENT AGENDA

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

a. APPROVAL OF MINUTES

1. Special Meeting of June 18, 2012 - Revised
2. Work Session of July 2, 2012
3. Regular Meeting of July 2, 2012

b. RESCHEDULING OF CITY COUNCIL MEETINGS

City Council will consider a request to reschedule the regularly scheduled council meetings of August 20th to August 13th and September 3rd to September 10th to allow for a summer break and in observance of the Labor Day holiday. The Council will take appropriate action.

c. COOPERATIVE PURCHASING AGREEMENT - RICOH AMERICAS CORP.

City Council will consider a request to approve a cooperative purchasing agreement with Ricoh Americas Corporation, for multifunction copiers, software, and services in an maximum aggregate amount of \$435,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

d. CONSTRUCTION CONTRACT AWARD - GREEN LANDSCAPING AND IRRIGATION, INC. FOR DYSART ROAD SIDEWALK AND LANDSCAPE IMPROVEMENT PROJECT

City Council will consider a request to award a contract to Green Landscaping and Irrigation, Inc. for construction services for the Dysart Road Sidewalk and Landscape Improvement project in the amount of \$95,562.70 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. COOPERATIVE PURCHASING AGREEMENT - BANNER OCCUPATIONAL HEALTH-ARIZONA, LLC

City Council will consider a request to approve a Cooperative Purchasing Agreement with Banner Occupational Health-Arizona, LLC to provide medical and drug testing services in a maximum aggregate amount of \$102,500.00 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 - FRIEDMAN RECYCLING COMPANY, CORP.**
City Council will consider a request to approve a Professional Services Agreement with Friedman Recycling Company, Corp. for recyclable materials processing services utilizing a fixed revenue structure and authorizing the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.
- g. **PROFESSIONAL SERVICES AGREEMENTS - CIBER, INC. AND RPI CONSULTANTS, LLC FOR LAWSON FUNCTIONAL SUPPORT**
City Council will consider a request to approve two Professional Services Agreements with Ciber, Inc. and RPI Consultants, LLC to support the City's Lawson human resources management system in an annual amount not to exceed \$40,000 for each consultant and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.
- h. **PROFESSIONAL SERVICES AGREEMENT - ANDRITZ SEPARATION INC.**
City Council will consider a request to approve a Professional Services Agreement with Andritz Separation Inc., to perform Centrifuge Repairs in order to meet the biosolids removal permit requirements, for a price not to exceed \$98,000.00 and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.
- i. **SECOND AMENDMENT TO THE AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT - TIGHTLINE SERVICES, INC.**
City Council will consider a request to approve the second amendment to the Amended and Restated Professional Services Agreement with Tightline Systems, Inc. (d.b.a. Goosebump) for a one-time increase of \$5,250 and authorize the Mayor or the City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.
- j. **RESOLUTION 3056-712 - INTERGOVERNMENTAL AGREEMENT - JOINT REPRESENTATION IN SETTLEMENT EFFORTS**
City Council will consider a Resolution approving an Intergovernmental Agreement among the cities of Avondale, Chandler, Glendale and Scottsdale for joint legal representation in proceedings related to claims made by the White Mountain Apache Tribe for surface water to be diverted from the Salt River Watershed and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.
- k. **RESOLUTION NO. 3057-712 – CONTRACT FOR LEGAL SERVICES WITH ENGELMAN BERGER, P.C..**
City Council will consider a resolution approving a contract for legal services among the cities of Avondale, Chandler, Glendale and Scottsdale and Engelman Berger, PC to provide joint representation in the settlement efforts related to the water rights claims of the White Mountain Apache Tribe and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.
- l. **RESOLUTION 3061-712 - AUTHORIZING GRANT ACCEPTANCE FROM GOHS FOR DUI ENFORCEMENT**
City Council will consider a resolution authorizing the acceptance of a grant from the Governor's Office of Highway Safety for overtime pay related to DUI enforcement and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.
- m. **RESOLUTION 3062-712 - THIRD AMENDMENT TO INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY**
City Council will consider a resolution approving the third amendment to the Intergovernmental Agreement with Maricopa County relating to the provision of financial and crisis case management services and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

n. ORDINANCE 1498-712 - AUTHORIZATION FOR THE ACQUISITION OF REAL PROPERTY FOR PUBLIC USE

City Council will consider an ordinance authorizing the City of Avondale to participate in the bank auction related to 125 South Avondale Boulevard and to acquire the property if the City is the successful bidder and authorize the Mayor or City Manager, City Attorney, City Budget and Finance Director and City Clerk to execute all the necessary documents and to take all the steps necessary to carry out the purpose and intent of the Ordinance. The Council will take appropriate action.

4 RESOLUTION 3060-712 - INTERGOVERNMENTAL AGREEMENT FOR THE SOUTHWEST FAMILY ADVOCACY CENTER

City Council will consider a resolution approving an intergovernmental agreement with the the Town of Buckeye, the City of Goodyear and County of Maricopa for the design, construction and operation of the Southwest Family Advocacy Center and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

5 UPDATE ON THE STATE OF ARIZONA WATER RESOURCES FUND.

City Council will receive an update on the elimination of the State of Arizona Water Resource fee and seek direction for an effective date to remove the water resource fee. For information, discussion and direction.

6 ADJOURNMENT

Respectfully submitted,



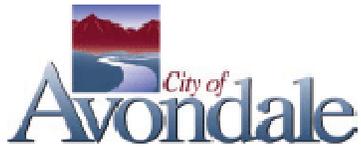
Carmen Martinez
City Clerk

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CITY COUNCIL REPORT

SUBJECT:
APPROVAL OF MINUTES

MEETING DATE:
July 16, 2012

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

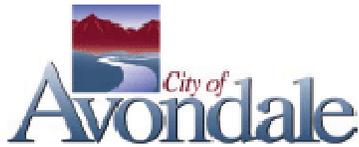
PURPOSE:

1. Work Session of July 2, 2012
2. Regular Meeting of July 2, 2012

ATTACHMENTS:

[Click to download](#)

No Attachments Available



CITY COUNCIL REPORT

SUBJECT:

Rescheduling of City Council Meetings

MEETING DATE:

July 16, 2012

TO: Mayor and Council

FROM: Carmen Martinez, City Clerk (623) 333-1214

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is recommending Council approval of a request to reschedule the regularly scheduled council meeting of August 20th to August 13th and September 3rd to September 10th to allow for a summer break and in observance of the Labor Day holiday.

BACKGROUND:

The City Council Rules of Procedure read that when the day of a regularly scheduled City Council meeting falls on a legal holiday, no meeting shall be held on such holiday, but said meeting may be held at the same time and the same location on the next succeeding business day thereafter that is not a holiday or at such other time as designated by the City Council.

DISCUSSION:

Unlike Councils in other cities, the Avondale City Council does not recess during the summer and instead has opted to reschedule meetings periodically to allow for longer recesses between meetings. Rescheduling the meeting of August 20th to August 13th and the September 3rd meeting to September 10, 2012 would allow for a summer break as well as the observance of the Labor Day holiday.

The City Charter requires that any change in the regular meeting day, time or place be published in a newspaper of general circulation. In order to comply with this requirement and to notify the citizens of the meeting change, city staff will publish notices in the West Valley View the week prior to the rescheduled meetings.

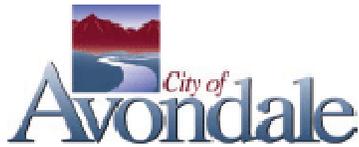
RECOMMENDATION:

Staff is recommending Council approval of a request to reschedule the regularly scheduled council meetings of August 20th and September 3rd to allow for a summer break and in observance of the Labor Day holiday.

ATTACHMENTS:

[Click to download](#)

No Attachments Available



CITY COUNCIL REPORT

SUBJECT:

Cooperative Purchasing Agreement - Ricoh Americas Corp.

MEETING DATE:

July 16, 2012

TO: Mayor and Council
FROM: Rob Lloyd, CIO/IT Director (623) 333-5011
THROUGH: Charlie McClendon, City Manager

PURPOSE:

The purpose of this item is to obtain City Council approval of a purchase agreement with Ricoh Americas Corporation, under a State of Arizona contract, for multifunction copiers, software, and services.

BACKGROUND:

The State of Arizona entered into contract number ADSPO12-015669 with Ricoh Americas Corporation (Ricoh), on December 16, 2011. The contract functions under a Participating Addendum with the Western States Contracting Alliance, Master Price Agreement 1715, which was extended in June 2012 for the 2012-2013 fiscal year. The State of Nevada served as the lead agency for the competitive procurement resulting in the contract award.

The Participating Addendum for the State of Arizona provides political subdivisions the ability to purchase copiers, related software, and services from the vendor at rates based on the formal procurement, Exhibit A, Section 4.

The Information Technology Department (IT) coordinates and authorizes purchases for the City's multifunction copiers, software, and services. Related purchases are made based on the Copier Replacement and Servicing Plan, which is incorporated into the Printer/Copier Service Fund of the City's Annual Budget and Financial Plan.

DISCUSSION:

Information Technology Department staff coordinates the servicing, replacements, purchase of consumable supplies, and management software for the City's multifunction copiers and printers. IT has standardized on Ricoh in recent years because of (1) very aggressive pricing by the vendor for both copier purchases and maintenance costs; (2) standardization of software and security settings; and (3) improved ability to manage vendors and issues. Savings realized from the standardization allowed early replacement of machines and lower maintenance rates. Feedback from City departments has also been very positive.

Consolidating purchases of these products and services under the State of Arizona/WSCA contract allows the City of Avondale to minimize repeat work. Purchase orders would be created at the start of the year for monthly maintenance charges. Equipment replacements would occur on schedule, or as promotional pricing provides incentives are offered.

The language of the Purchasing Agreement that City Council is considering provides that the Agreement will only be extended if deemed in the best interests of the City, is subject to availability and appropriation of funds each year by City Council, and is dependent on the State and WSCA

extending the Contract with Ricoh Americas Corporation. Further, the City does not guarantee any amount of expenditure. The agreement provides only an up-to amount that City may expend at its discretion based on approval by City Council via the City budget or other action.

BUDGETARY IMPACT:

For each fiscal year the contract is maintained, annual expenditures may not exceed an aggregate of \$145,000 across all City departments. The total may not exceed \$435,000 for the full term of the State/WSCA contract with extensions. Expenditures will depend on allocation of funds by Council in the City's budget process and on supporting revenues existing to make purchases.

RECOMMENDATION:

Staff recommends that City Council approve the purchasing agreement with Ricoh Americas Corporation, under the State of Arizona/Western States Contracting Alliance contract, for purchase of multifunction copiers, software, and services, and authorize the Mayor or City Manager and City Clerk to execute the agreement.

ATTACHMENTS:

Click to download

[CPA](#)

[Ricoh Promotional Pricing](#)

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
RICOH AMERICAS CORPORATION**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of July 16, 2012, between the City of Avondale, an Arizona municipal corporation (the "City") and Ricoh Americas Corporation, a Delaware corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the State of Arizona ("State"), entered into Contract No. ADSP012-015669, dated December 29, 2011, as amended, (collectively, the "State Contract") for the Contractor to provide copier and printer equipment and related maintenance services. A copy of the State 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 materials and services under the State Contract, at its discretion and with the agreement of the awarded Contractor, and the State 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 State Contract, (ii) establishing the terms and conditions by which the Contractor may provide the City with copier and printer equipment and related maintenance services, as more particularly set forth in Section 2 below on an "as-required" basis (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 June 30, 2013 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement or the State Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year term (each, a "Renewal Term") if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the State Contract has been extended, (iii) at least 30 days prior to the end of the then-current term of the Agreement, the Contractor requests, in writing, to extend the Agreement for an additional one-year term and (iv) the City approves the additional

one-year term in writing (including any price adjustments approved as part of the State Contract), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. This is an indefinite quantity and indefinite delivery Agreement for Materials and Services under the terms and conditions of the State Contract. The City does not guarantee any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Contractor shall provide the Materials and Services 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 acknowledgment between the parties describing the equipment and maintenance services to be provided (each, a "Work Order"). Each Work Order approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and the State Contract and (ii) be attached hereto as Exhibit B and incorporated herein by reference. Work Orders submitted without referencing this Agreement and the State Contract will be subject to rejection. By signing this Agreement, Contractor acknowledges and agrees that Work Order(s) containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement or the State Contract, other than City's project-specific requirements, are hereby expressly declared void and shall be of no force and effect.

3. Compensation. The City shall pay Contractor for the Initial Term and for each subsequent Renewal Term, if any, an annual aggregate amount not to exceed \$145,000.00 for Materials and Services at the unit rates as set forth in the State Contract. The maximum aggregate amount for this Agreement shall not exceed \$435,000.00.

4. Payments. The City shall pay the Contractor 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 State 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 State Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, 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 (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, any City-approved Work Orders, invoices and the State 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 State 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 Work Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the State Contract shall not alter or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. Indemnification; Insurance. To the extent provided under the State Contract, the City shall be afforded all of the rights, privileges, insurance coverage and indemnifications afforded to the State, 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 services 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 _____, 2012,
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]

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
RICOH AMERICAS CORPORATION

[State Contract]

See following pages.

The documents listed on the following pages comprise the State Contract and are incorporated herein by reference.



Master Blanket Purchase Order ADSP012-015669

Header Information

Purchase Order Number:	ADSP012-015669	Release Number:	0	Short Description:	WSCA Copiers (multifunction) & Related Software
Status:	3PS - Sent	Purchaser:	Charlotte Righetti, CPPB	Receipt Method:	Quantity
Fiscal Year:	2012	PO Type:	Blanket	Minor Status:	
Organization:	State Procurement Office	Location:	STRGC - SPO Strategic	Type Code:	Statewide
Department:	ADSP0 - State Procurement Office	Entered Date:	12/16/2011 04:08:50 PM	Control Code:	
Alternate ID:		Retainage %:	0.00%	Discount %:	0.00%
Print Dest Detail:	If Different	Release Type:	Direct Release	Pcard Enabled:	Yes
Catalog ID:		Tax Rate:		Actual Cost:	\$0.00
Contact Instructions:					
Master Blanket/Contract End Date (Maximum):					
Project No.:					
Building Code:					
Cost Code:					
Special Purchase Types:					
PIJ NUMBER:					
Attachments:	PO Terms & Conditions , State of AZ Participating Addendum , Ricoh Distribution Network , Ricoh Website , Ricoh Price Sheets , Solicitation , A1 Legacy Maintenance , Legacy Maintenance Pricing , Promotional Pricing , Promotional Pricing , Contract Amendment No 2 062612 Extension and Leasing.pdf				

Primary Vendor Information & PO Terms

Vendor:	00001741 - RICOH AMERICAS CORPORATION Roy Nebeker 1231 Warner Ave. Tustin, CA 92780 US	Payment Terms:	Net 30	Shipping Method:	Best Way
----------------	--	-----------------------	--------	-------------------------	----------

Email:
roy.nebeker@ricoh-
usa.com
Phone: (303)955-9718
FAX: (800)694-1302

**Shipping
Terms:**

**Freight
Terms:**

**PO
Acknowledgements:**

Document	Notifications	Acknowledged Date/Time
Purchase Order	Emailed to christopher.hunt@ricoh-usa.com at 12/29/2011 04:57:12 PM	
Change Order 1	Emailed to christopher.hunt@ricoh-usa.com at 01/10/2012 02:33:06 PM	
Change Order 3	Emailed to roy.nebeker@ricoh-usa.com at 02/03/2012 04:34:00 PM	02/28/2012 12:59:54 PM
Change Order 2	Emailed to christopher.hunt@ricoh-usa.com at 01/23/2012 10:20:45 AM	
Change Order 5	Emailed to roy.nebeker@ricoh-usa.com at 04/11/2012 09:12:59 AM	
Change Order 4	Emailed to roy.nebeker@ricoh-usa.com at 04/04/2012 01:16:17 PM	
Change Order 6	Emailed to roy.nebeker@ricoh-usa.com at 04/27/2012 02:22:51 PM	05/14/2012 11:00:23 AM
Change Order 7	Emailed to roy.nebeker@ricoh-usa.com at 06/29/2012 09:21:00 AM	

Master Blanket/Contract Vendor Distributor List

Vendor ID	Alternative ID	Vendor Name	Preferred Delivery Method	Vendor Distributor Status
<u>000001741</u>	12227835210	RICOH AMERICAS CORPORATION	Email	Active

Master Blanket/Contract Controls

Master Blanket/Contract Begin Date: 12/29/2011 **Master Blanket/Contract End Date:** 06/30/2013
Cooperative Purchasing Allowed: Yes

Organization	Department	Dollar Limit	Dollars Spent to Date	Minimum Order Amount
ALL ORG - Organization Umbrella Master Control	AGY - Agency Umbrella Master Control	\$0.00	\$598,371.68	\$0.00

Item Information

Print Sequence # 1.0, Item # 1: Utilization of this Contract requires input of Unit Cost Only. Quantity shall always remain as one (1). Please utilize Line Two (2) for all input for any Contract Release Orders. 3PS - Sent

Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
This item is narrative								

Print Sequence # 2.0, Item # 2: Ricoh Copiers, and Multifunction Devices and Related Software 3PS - Sent

NIGP Code: 600-72
Multi-Function Office Machines (Combination of Fax-Copier-Scanner-Printer, etc.)

Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
Dollars	1.0	\$0.00	EA - Each	0.00	\$0.00		\$0.00	\$0.00

Manufacturer: Brand: Model:
 Make: Packaging:
 Project No.:
 Building Code:
 Cost Code:

Print Sequence # 3.0, Item # 3: Legacy Maintenance - all Models, as offered. Please see attachment "Legacy Maintenance Pricing". 3PS - Sent

NIGP Code: 939-60
 Office Machines and Mechanical Aids, Small, Maintenance and Repair

Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
Dollars	1.0	\$0.00	EA - Each	0.00	\$0.00		\$0.00	\$0.00

Manufacturer: Brand: Model:
 Make: Packaging:
 Project No.:
 Building Code:
 Cost Code:

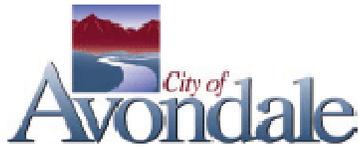
Exit

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EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
RICOH AMERICAS CORPORATION

[Work Orders]

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



CITY COUNCIL REPORT

SUBJECT:

Construction Contract Award - Green Landscaping and Irrigation, Inc. for Dysart Road Sidewalk and Landscape Improvement Project

MEETING DATE:

July 16, 2012

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 approve a construction contract with Green Landscaping and Irrigation, Inc. to provide construction services for the Dysart Road Sidewalk & Landscape Improvement project in the amount of \$ 95,562.70 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

The prior year's Capital Improvement Program includes a project to install landscaping, landscape irrigation and hardscape improvements along the west side of Dysart Road from approximately Main Street/MC 85 to Harrison Drive. This project will install landscaping, landscape irrigation, and a 1-inch service connection.

DISCUSSION:

The scope of work for this project will include:

- Clearing, grubbing, and protecting existing facilities
- Planting accent shrub, groundcover, seven (7) 24-inch box trees and twelve (12) 36-inch box trees
- Installing a landscape irrigation system
- Installing a new one (1)-inch line water service connection
- Installing continuous sidewalk from Main Street/MC85 to Harrison Drive

Requests-for-Bid notices were published in the West Valley View on June 1 and 5, 2012 and the Arizona Business Gazette on May 31, 2012. The Development Services and Engineering Department held a mandatory pre-bid meeting on June 13, 2012. On June 28, 2012, seven (7) bids were received and opened. Each bid package was reviewed and four (4) bidders met the bidding requirements. The following is a list of responsive bids received:

BIDDER	BID AMOUNT	DBE
Green Landscaping & Irrigation, Inc	\$95,562.70	No
Land-Tech Landscape	\$102,288.83	No
Standard Construction	\$138,735.86	No
Ricor, Inc	\$164,307.22	No

See the attached bid tabulation sheet for a detailed, bid item breakdown of each submitted bid.

Green Landscaping & Irrigation, Inc. with a bid of \$ 95,562.70 was determined to have submitted the lowest, responsible and qualified bid. Staff contacted references and believes Green Landscaping & Irrigation, Inc. to be competent and qualified for this project. Green Landscaping & Irrigation, Inc. has successfully completed similar work for other local government agencies. Staff contacted the Registrar of Contractors and found no claims on file against this contractor.

The contract is on file with the City Clerk.

SCHEDULE:

A tentative construction schedule is as follows:

PROJECT MILESTONES	TARGET DATES
Issue Notice of Award	07/17/12
Pre-Construction Conference	07/24/12
Issue Notice-to-Proceed	08/06/12
Begin Construction	08/06/12
Completion	09/15/12

BUDGETARY IMPACT:

Funding for this project in the amount of \$95,562.70 will come from the CIP Street Fund Line Item No. 304-1001-00-8420, Developer Reimbursement.

RECOMMENDATION:

Staff recommends that the City Council approve a construction contract with Green Landscaping and Irrigation, Inc. to provide construction services for the Dysart Road Sidewalk & Landscape Improvement project in the amount of \$ 95,562.70 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- [Project Vicinity Map](#)
- [Bid Tab Sheet](#)

VICINITY MAP



Main St

Dysart Rd.



Harrison Drive

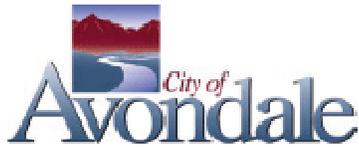
Whyman Haciendas

SA FERIA PARK

CITY OF AVONDALE

**CITY OF AVONDALE
 BID TABULATION
 EN12-053 Dysart Road Sidewalk Landscape Improvements
 BID DATE: June 28, 2012**

Item #	Description of Material and/or Services	Qty	Unit	Green Landscaping		Land-Tech Landscape		Standard Construction		Ricor, Inc.	
				Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
105.80100	Construction Staking, Survey and Layout	1	LS	\$299.96	\$299.96	\$1,110.00	\$1,110.00	\$2,200.00	\$2,200.00	\$5,300.00	\$5,300.00
105.80200	As-Built Documentation	1	LS	\$99.89	\$99.89	\$277.00	\$277.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
107.02000	NPDES/AZPDES; SWPPP	1	LS	\$1,058.70	\$1,058.70	\$2,200.00	\$2,200.00	\$1,800.00	\$1,800.00	\$2,000.00	\$2,000.00
107.04000	Miscellaneous Reimbursables (Allowance)	1	ALLOW	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
107.15000	Community Relations (Allowance)	1	ALLOW	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
109.09010	Mobilization/Demobilization	1	LS	\$665.91	\$665.91	\$9,920.00	\$9,920.00	\$12,000.00	\$12,000.00	\$31,000.00	\$31,000.00
201.00000	Clearing, Grubbing, Protection of Existing Facilities, Removals and Salvages	1	LS	\$409.25	\$409.25	\$587.00	\$587.00	\$500.00	\$500.00	\$1,400.00	\$1,400.00
215.01000	Retention Excavation and Grading/Fine Grading (Per Plans)	1	LS	\$1,666.48	\$1,666.48	\$877.00	\$877.00	\$20,000.00	\$20,000.00	\$11,000.00	\$11,000.00
340.01210	4" Thick Sidewalk Per MAG Standard Detail 230 (5-ft Wide)	9,460	SF	\$2.59	\$24,501.40	\$2.60	\$24,596.00	\$3.00	\$28,380.00	\$3.50	\$33,110.00
401.01000	Traffic Control	1	LS	\$1,198.63	\$1,198.63	\$3,590.00	\$3,590.00	\$6,500.00	\$6,500.00	\$7,000.00	\$7,000.00
430.01001	Shrub, Groundcover, Accent Planting (1 Gallon)	287	EA	\$6.67	\$1,914.29	\$4.80	\$1,377.60	\$7.00	\$2,009.00	\$6.50	\$1,865.50
430.01005	Shrub, Groundcover, Accent Planting (5 Gallon)	171	EA	\$15.03	\$2,570.13	\$10.20	\$1,744.20	\$15.00	\$2,565.00	\$14.50	\$2,479.50
430.01024	Trees, 24-inch Box	7	EA	\$169.47	\$1,186.29	\$120.00	\$840.00	\$200.00	\$1,400.00	\$200.00	\$1,400.00
430.01036	Trees, 36-inch Box	12	EA	\$438.61	\$5,263.32	\$320.00	\$3,840.00	\$400.00	\$4,800.00	\$400.00	\$4,800.00
430.03000	Pre-Emergent Weed Control	44,746	SF	\$0.01	\$492.21	\$0.01	\$447.46	\$0.02	\$894.92	\$0.01	\$447.46
430.30000	2-Inch Thick Decomposed Granite (3/4-Inch Walker Gold)	35,286	SF	\$0.40	\$14,114.40	\$0.28	\$9,880.08	\$0.45	\$15,878.70	\$0.40	\$14,114.40
440.01300	Irrigation System (PVC Drip) (Per Plans)	1	LS	\$14,138.98	\$14,138.98	\$11,045.00	\$11,045.00	\$10,000.00	\$10,000.00	\$11,750.00	\$11,750.00
440.04000	Landscape Establishment	1	LS	\$2,023.76	\$2,023.76	\$860.00	\$860.00	\$2,000.00	\$2,000.00	\$3,000.00	\$3,000.00
610.10541	1" Water Service Line: Service Saddle, Corp Stop, 1" Copper Type "K" Line, Curb Stop, Meter Coupling, Meter Box And Cover Per City of Avondale Standard Detail A1300 (Service Line to be Bored)	1	EA	\$3,236.30	\$3,236.30	\$8,385.00	\$8,385.00	\$3,500.00	\$3,500.00	\$7,800.00	\$7,800.00
Subtotal					\$89,839.90		\$96,576.34		\$130,427.62		\$154,466.86
Taxes as Applicable					\$5,722.80		\$5,712.49		\$8,308.24		\$9,840.36
Total					\$95,562.70		\$102,288.83		\$138,735.86		\$164,307.22
Total Submitted by Bidder					\$95,562.70		\$102,288.83		\$138,735.86		\$164,307.22
Is the Contract Complete & Signed?					Yes		Yes		Yes		Yes
Bid Bond Attached?					Yes		Yes		Yes		Yes
Licenses Attached?					Yes		Yes		Yes		Yes
References Attached & Complete?					Yes		Yes		Yes		Yes
Addendum 1 Acknowledged?					Yes		Yes		Yes		Yes



CITY COUNCIL REPORT

SUBJECT:

Cooperative Purchasing Agreement - Banner Occupational Health-Arizona, LLC

MEETING DATE:

July 16, 2012

TO: Mayor and Council

FROM: Cherlene Penilla, Human Resources Director

THROUGH: Charlie McClendon, City Manager

PURPOSE:

To Approve A Cooperative Purchasing Agreement between The City of Avondale and Banner Occupational Health-Arizona, LLC to provide medical and drug testing services.

BACKGROUND:

After a competitive procurement process, the City of Peoria, Arizona entered into Contract No. ACON 26912 dated May 10, 2012, for the Contractor (Banner Occupational Health-Arizona, LLC) to provide medical and drug testing services.

DISCUSSION:

The City of Avondale has utilized Banner Occupational Health-Arizona, LLC for medical and drug testing services since July 1, 2009. We were able to piggyback on the City of Peoria contract for medical and testing services services, in accordance to Section 25-24 of the City Code, to purchase such services under the Peoria Contract, which permits cooperative use by other public entities.

The City of Avondale has utilized Banner Occupational Health-Arizona, LLC for the following services, not all inclusive:

- Physical Exam - Police
- Physical Exam - DOT
- Respirator Physical
- Drug Screen - CDL
- Drug Screen - Sworn Police Officer and Recruits
- Random Testing (Drugs)
- OSHA Related Immunizations

The two (2) Departments that utilize medical and drug testing services are Human Resources and Risk Management. For our new Police Recruits, an Arizona POST Medical exam and drug test is administered. Also, OSHA related immunizations are administered. Post-accident drug testing is administered, as well as commercial driver's license exams.

The City of Peoria contract agreement with Banner Occupational Health-Arizona, LLC may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

BUDGETARY IMPACT:

For the initial term of the contract, the City shall pay Banner Occupational Health-Arizona, LLC, an aggregate amount not to exceed \$20,500.00 for the services and the units amounts set forth in the Peoria contract. Thereafter, for each subsequent renewal term, if any, the City shall pay Banner

Occupational Health-Arizona, LLC, an annual aggregate amount not to exceed \$20,500.00 for the services at the unit rates set forth in the Peoria Contract. The maximum aggregate amount for the term, and together with any renewal terms shall not exceed \$102,500.00.

RECOMMENDATION:

Staff recommends that City Council approve the Cooperative Purchasing Agreement between the City of Avondale and Banner Occupational Health-Arizona, LLC. for medical and drug testing services in a total maximum aggregate amount of \$102,500.00 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

[Cooperative Purchasing Agreement - Banner Occupational Health-Arizona, LLC](#)

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BANNER OCCUPATIONAL HEALTH-ARIZONA, LLC**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of July 16, 2012, between the City of Avondale, an Arizona municipal corporation (the "City") and Banner Occupational Health-Arizona, LLC, an Arizona limited liability company (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Peoria, Arizona ("Peoria"), entered into Contract No. ACON 26912 dated May 10, 2012, (the "Peoria Contract") for the Contractor to provide medical and drug testing 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 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 medical and drug testing services, as more particularly set forth in Section 2 below on an "as-required" basis (the "Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to 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 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 June 30, 2013 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement or the Peoria Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a "Renewal Term") if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Peoria Contract remains in effect or has been extended, (iii) at least 30 days prior to the end of the then-current term of the Agreement, the Contractor requests, in writing, to extend the Agreement for an additional one-year term and (iv) the City approves the additional one-year term in writing (including any price adjustments approved as

part of the Peoria Contract), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. This is an indefinite quantity and indefinite delivery Agreement for Services under the terms and conditions of the Peoria Contract. The City does not guarantee any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Contractor shall provide the Services 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 work to be completed (each, a "Work Order"). Each Work Order approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and the Peoria Contract and (ii) be attached hereto as Exhibit B and incorporated herein by reference. Work Orders submitted without referencing this Agreement and the Peoria Contract will be subject to rejection. By signing this Agreement, Contractor acknowledges and agrees that Work Order(s) containing unauthorized 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.

3. Compensation. For the Initial Term, the City shall pay Contractor an aggregate amount not to exceed \$20,500.00 for the Services at the unit rates as set forth in the Peoria Contract. Thereafter, for each subsequent Renewal Term, if any, the City shall pay the Contractor an annual aggregate amount not to exceed \$20,500.00 for the Services at the unit rates as set forth in the Peoria Contract. The maximum aggregate amount for the Term, and together with any Renewal Terms, of this Agreement shall not exceed \$102,500.00.

4. Payments. The City shall pay the Contractor monthly, based upon 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 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. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractor's books and papers directly related to the provision of Services by Contractor and its subcontractors hereunder (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, any City-approved Work Orders, invoices and the Peoria 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 Work Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the Peoria Contract shall not alter or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the 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 services 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 _____, 2012,
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"

BANNER OCCUPATIONAL HEALTH-ARIZONA,
LLC, an Arizona limited liability company

By: James J Brannon

Name: James Brannon

Title: CEO

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on June 29, 2012,
by James Brannon, as CEO of BANNER OCCUPATIONAL HEALTH-
ARIZONA, LLC, an Arizona limited liability company, on behalf of the company.

Periann K Johnson
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
BANNER OCCUPATIONAL HEALTH-ARIZONA, LLC

[Peoria Contract]

See following pages.



City of Peoria, Arizona Notice of Request for Proposal



Request for Proposal No: **F12-0028** Proposal Due Date: **January 25, 2012**
 Materials and/or Services: **Occupational Medical and Drug Testing Services** Proposal Time: **5:00 P.M. AZ Time**
 Project No: **NA** Contact: **Lisa Houg, CPPB**
 Phone: **(623) 773-7115**

Mailing Address: **City of Peoria, Materials Management
9875 N. 85th Avenue, 2nd Floor, Peoria, AZ 85345**

In accordance with City of Peoria Procurement Code competitive sealed proposals for the material or services specified will be received by the City of Peoria Materials Management at the specified location until the date and time cited above. Proposals shall be in the actual possession of the City of Peoria Materials Management on or prior to the exact date and time indicated above. Late proposals will not be considered, except as provided in the City of Peoria Procurement Code. *Proposals shall be submitted in a sealed envelope with the Request for Proposal number and the offeror's name and address clearly indicated on the front of the envelope.* All proposals shall be completed in ink or typewritten. Offerors are strongly encouraged to carefully read the entire Request for Proposal Package.

OFFER

To the City of Peoria: The undersigned on behalf of the entity, firm, company, partnership, or other legal entity listed below offers on its behalf to the City a proposal that contains all terms, conditions, specifications and amendments in the Notice of Request for Proposal issued by the City. Any exception to the terms contained in the Notice of Request for Proposal must be specifically indicated in writing and are subject to the approval of the City prior to acceptance. The signature below certifies your understanding and compliance with Paragraph 1 of the City of Peoria Standard Terms and Conditions (form COP 202) contained in the Request for Proposal package issued by the City.

For clarification of this offer contact:

Name: Kathryn Crippen
Banner Occupational Health
 Company Name
525 W Brown Rd.
 Address
Mesa AZ 85201
 City State Zip Code

Telephone: 480-684-7214 Fax: 480-684-7218
 Email: Kathryn.Crippen@Bannerhealth.com
[Signature]
 Authorized Signature for Offer
Donald A. Sanada
 Printed Name
VP, Banner Medical Group
 Title

ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Peoria Use Only)

Your offer is accepted by the City, subject to approval of each written exception that your proposal contained. The contract consists of the following documents: 1.) Request for Proposal Issued by the City; 2.) Your offer in Response to the City's Request for Proposal; 3.) This written acceptance and contract award.

As the contractor, you are now legally bound to sell the materials and/or services listed by the attached award notice, based on the solicitation of proposals, including all terms, conditions, specifications, amendments and your offer as now accepted by the City. The Contractor shall not commence any billable work or provide any material, service or construction under this contract until the Contractor receives an executed Purchase Order or written Notice to Proceed.

Attested by:
[Signature]
 Wanda Nelson, City Clerk

City of Peoria, Arizona. Effective Date: 5/10/2012

Approved as to form:
[Signature]
 Stephen M. Kemp, City Attorney

CC: _____

Contract Number:
AC0226912

Contract Awarded Date May 9, 2012
[Signature]
 Dan Zenko, Materials Management Supervisor





REQUEST FOR PROPOSAL

INSTRUCTIONS TO OFFEROR

Materials Management Procurement

9875 N. 85th Ave., 2nd Fl.
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

1. **PREPARATION OF PROPOSAL:**
 - a. All proposals shall be on the forms provided in this *Request For Proposal* package. It is permissible to copy these forms if required. Telegraphic (facsimile) or mailgram proposals will not be considered.
 - b. The Offer and Contract Award document (COP Form 203) shall be submitted with an original ink signature by a person authorized to sign the offer.
 - c. Erasures, interlineations, or other modifications in the proposal shall be initialed in original ink by the authorized person signing the Vendor Offer.
 - d. If price is a consideration and in case of error in the extension of prices in the proposal, the unit price shall govern. No proposal shall be altered, amended, or withdrawn after the specified proposal due date and time.
 - e. Periods of time, stated as a number of days, shall be calendar days.
 - f. It is the responsibility of all Offerors to examine the entire *Request For Proposal* package and seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a Proposal confers no right of withdrawal after proposal due date and time.
2. **INQUIRIES:** Any question related to the *Request For Proposal* shall be directed to the Buyer whose name appears on the front. The Offeror shall not contact or ask questions of the department for which the requirement is being procured. Questions should be submitted in writing when time permits. The Buyer may require any and all questions be submitted in writing at the Buyer's sole discretion. Any correspondence related to a *Request For Proposal* should refer to the appropriate *Request For Proposal* number, page, and paragraph number. However, the Offeror shall not place the *Request For Proposal* number on the outside of any envelope containing questions since such an envelope may be identified as a sealed proposal and may not be opened until after the official *Request For Proposal* due date and time.
3. **PROSPECTIVE OFFERORS CONFERENCE:** A prospective offerors conference may be held. If scheduled, the date and time of this conference will be indicated within this document. The purpose of this conference will be to clarify the contents of this *Request For Proposal* in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this *Request For Proposal* 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 to the *Request for Proposal*. Oral statements or instructions will not constitute an amendment to this *Request for Proposal*.
4. **LATE PROPOSALS:** Late Proposals will not be considered, except as provided by the City of Peoria Procurement Code. A vendor submitting a late proposal shall be so notified.
5. **WITHDRAWAL OF PROPOSAL:** At any time prior to the specified proposal due date and time, a Vendor (or designated representative) may withdraw the proposal. Telegraphic (facsimile) or mailgram proposal withdrawals will not be considered.
6. **AMENDMENT OF PROPOSAL:** Receipt of a Solicitation Amendment (COP Form 207) shall be acknowledged by signing and returning the document prior to the specified proposal due date and time.
7. **PAYMENT:** The City will make every effort to process payment for the purchase of goods or services within thirty (30) calendar days after receipt of goods or services and a correct notice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. Any proposal that requires payment in less than thirty (30) calendar days shall not be considered.
8. **NEW:** All items shall be new, unless otherwise stated in the specifications.
9. **DISCOUNTS:** Payment discount periods will be computed from the date of receipt of material/service or correct invoice, whichever is later, to the date Buyer's payment is mailed. Unless freight and other charges are itemized, any discount provided will be taken on full amount of invoice. Payment discounts of thirty (30) calendar days or more will be deducted from the proposal price in determining the low bid. However, the Buyer shall be entitled to take advantage of any payment discount offered by the Vendor provided payment is made within the discount period.
10. **TAXES:** The City of Peoria is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.
11. **VENDOR REGISTRATION:** After the award of a contract, the successful Vendor shall have a completed Vendor Registration Form (COP Form 200) on file with the City of Peoria Materials Management Division.
12. **AWARD OF CONTRACT:**
 - a. Unless the Offeror states otherwise, or unless provided within this *Request For Proposal*, 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.
 - b. Notwithstanding any other provision of this *Request For Proposal*, The City expressly reserves the right to:
 - (1) Waive any immaterial defect or informality; or
 - (2) Reject any or all proposals, or portions thereof, or
 - (3) Reissue a *Request For Proposal*.
 - c. A response to a *Request For Proposal* is an offer to contract with the City based upon the terms, conditions and specifications contained in the City's *Request For Proposal* and the written amendments thereto, if any. Proposals do not become contracts unless and until they are accepted by the City Council. A contract is formed when written notice of award(s) is provided to the successful Offeror(s). The contract has its inception in the award document, eliminating a formal signing of a separate contract. For that reason, all of the terms and conditions of the procurement contract are contained in the *Request For Proposal*; unless modified by a Solicitation Amendment (COP Form 207) or a Contract Amendment (COP Form 217).



STANDARD TERMS AND CONDITIONS

Materials Management Procurement

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THE FOLLOWING TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE SOLICITATION AND ANY RESULTANT CONTRACT.

1. **CERTIFICATION:** By signature in the Offer section of the Offer and Contract Award page (COP Form 203), the Vendor certifies:
 - a. The submission of the offer did not involve collusion or other anti-competitive practices.
 - b. The Vendor shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.
 - c. The Vendor 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.
2. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event this contract is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible city government customers shall not be prohibited by this paragraph.
3. **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).

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 it has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.



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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.

4. **LEGAL REMEDIES:** All claims and controversies shall be subject to resolution according to the terms of the City of Peoria Procurement Code.
5. **CONTRACT:** The contract between the City and the Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of work, attachments, and any amendments thereto, and (2) the offer submitted by the Vendor 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 City reserves the right to clarify, in writing, any contractual terms with the concurrence of the 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.
6. **CONTRACT AMENDMENTS:** This contract may be modified only by a written Contract Amendment (COP Form 217) signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.
7. **CONTRACT APPLICABILITY:** The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this specific Solicitation. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the City are not applicable to this Solicitation or any resultant contract.
8. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract will forthwith be physically amended to make such insertion or correction.
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.
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 Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.
11. **INTERPRETATION-PAROL EVIDENCE:** This contract represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this contract are hereby revoked and superseded by this contract. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this contract. This contract may not be changed, modified or rescinded except as provided for herein, absent a written agreement signed by both Parties. Any attempt at oral modification of this contract shall be void and of no effect.
12. **NO DELEGATION OR ASSIGNMENT:** Contractor shall not delegate any duty under this Contract, and no right or interest in this Contract shall be assigned by Contractor to any successor entity or third party, including but not limited to an affiliated successor or purchaser of Contractor or its assets, without prior written permission of the City. The City, at its



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option, may cancel this Contract in the event Contractor undertakes a delegation or assignment without first obtaining the City's written approval. Contractor agrees and acknowledges that it would not be unreasonable for the City to decline to approve a delegation or assignment that results in a material change to the services provided under this Contract or an increased cost to the City.

13. **SUBCONTRACTS:** No subcontract shall be entered into by the contractor with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the City. The prime contractor shall itemize all sub-contractors which shall be utilized on the project. Any substitution of sub-contractors by the prime contractor shall be approved by the City and any cost savings will be reduced from the prime contractor's bid amount. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract and if the Subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not Subcontractors are used.
14. **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 City 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 City 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 City's acceptance of and payment for materials or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
15. **INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, 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 Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, 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, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the 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.
16. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill the Contract.
17. **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. 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; acts of terror, hate crimes affecting public order; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; events or obstacles resulting from a governmental authority's response to the foregoing; 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.

Force majeure shall not include the following occurrences:



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- a. 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.
- b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition.

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.

18. **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.
19. **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 3 above.
20. **RIGHT TO INSPECT PLANT:** The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or Subcontractor which is related to the performance of any contract as awarded or to be awarded.
21. **WARRANTIES:** Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Contractor's response, the City 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 City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.
22. **INSPECTION:** All material and/or services are subject to final inspection and acceptance by the City. Materials and/or services failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. The City may elect to do any or all:
 - a. Waive the non-conformance.
 - b. Stop the work immediately.
 - c. Bring material into compliance.This shall be accomplished by a written determination for the City.
23. **TITLE AND RISK OF LOSS:** The title and risk of loss of material and/or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.
24. **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.
25. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment of lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.



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26. **SHIPMENT UNDER RESERVATION PROHIBITED:** 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.
27. **LIENS:** All materials, service or construction shall be free of all liens, and if the City requests, a formal release of all liens shall be delivered to the City.
28. **LICENSES:** 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 as applicable to this Contract.
29. **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 City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.
30. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL:** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.
31. **COST OF BID/PROPOSAL PREPARATION:** The City 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.
32. **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 19 above for the purpose of determining compliance by Contractor or a Subcontractor with the Contractor Immigration Warranty mandated by Paragraph 3 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.
33. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.
34. **DELIVERY ORDERS:** The City 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 (COP Form 203).
35. **FUNDING:** Any contract entered into by the City of Peoria is subject to funding availability. Fiscal years for the City of Peoria are July 1 to June 30. The City Council approves all budget requests. If a specific funding request is not approved, the contract shall be terminated.
36. **PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or services and correct invoice.
37. **PROHIBITED LOBBYING ACTIVITIES:** The Offeror, his/her agent or representative shall not contact, orally or in any written form any City elected official or any City employee other than the Materials Management Division, the procuring department, City Manager, Deputy City Manager or City Attorney's office (for legal issues only) regarding the contents of this solicitation or the solicitation process commencing from receipt of a copy of this request for proposals and ending upon submission of a staff report for placement on a City Council agenda. The Materials Manager shall disqualify an Offeror's proposal for violation of this provision. This provision shall not prohibit an Offeror from petitioning an elected official after submission of a staff report for placement on a City Council agenda or engaging in any other protected first amendment activity after submission of a staff report for placement on a City Council agenda.
38. **PROHIBITED POLITICAL CONTRIBUTIONS:** Consultant during the term of this Agreement shall not make a contribution reportable under Title 16, Chapter 6, Article 1, Arizona Revised Statutes to a candidate or candidate committee for any city elective office during the term of this Agreement. The City reserves the right to terminate the Agreement without penalty for any violation of this provision.



SPECIAL TERMS AND CONDITIONS

Solicitation Number: P12-0028

Materials Management
Procurement
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1. **Purpose:** Pursuant to provisions of the City Procurement Code, the City of Peoria, Materials Management Division intends to establish a contract for **Occupational Medical and Drug Testing Services**.
2. **Authority:** This Solicitation as well as any resultant contract is issued under the authority of the City. No alteration of any resultant contract may be made without the express written approval of the City Materials Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.
3. **Offer Acceptance Period:** In order to allow for an adequate evaluation, the City requires an offer in response to this Solicitation to be valid and irrevocable for ninety (90) days after the opening time and date.
4. **Cooperative Purchasing:** Any contract resulting from this solicitation shall be for the use of the City of Peoria. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate at their discretion. In order to participate in any resultant contract, a political subdivision or nonprofit educational or public health institution must have been invited to participate in this specific solicitation and the contractor must be in agreement with the cooperative transaction. In addition to cooperative purchasing, any eligible agency may elect to participate (piggyback) on any resultant contract; the specific eligible political subdivision, nonprofit educational or public health institution and the contractor must be in agreement.

Any orders placed to the successful contractor will be placed by the specific agencies participating in this purchase. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others.
5. **Contract Type:** Fixed Price
6. **Term of Contract:** The term of any resultant contract shall commence on the first day of the month following the date of award and shall continue for a period of one (1) year thereafter, unless terminated, cancelled or extended as otherwise provided herein.
7. **Contract Extension:** By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.
8. **Affirmative Action Report:** It is the policy of the City of Peoria that suppliers of goods or services to the City adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, and promote regardless of race, color, religion, gender, national origin, age or disability. The City of Peoria encourages diverse suppliers to respond to solicitations for products or services.
9. **Proposal Format:** Proposals shall be submitted in one (1) original and seven (7) copies on the forms and in the format as contained in the Request for Proposal. Proposals shall be on 8 1/2" & 11" paper with the text on one side only. All submittal information must contain data for only the local office(s) which will be performing the work. **DO NOT BIND ORIGINAL COPY.**
10. **Interview Guidelines:** During any requested interview, which would be scheduled in the future, be prepared to discuss your firm's proposal, staff assignments, project approach and other pertinent information. The presentation shall be approximately 30 minutes, allowing 15 minutes for a question and answer session.
11. **Evaluation:** In accordance with the City of Peoria Procurement Code, awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.
 - a. Program Methodology.
 - b. Experience and Capabilities.
 - c. Cost Considerations.
 - d. Conformance to Request for Proposal.

The City reserves the right to consider historic information and facts, whether gained from the Offeror's proposal, questions



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and answer conferences, references, or other source and the views of the evaluator(s) with prior Contract or service delivery experience with any of the Offerors, while conducting the proposal evaluations.

- 12. **Price Adjustment:** The City of Peoria Purchasing Office will review fully documented requests for price increases after any contract has been in effect for one (1) year. Any price increase adjustment will only be made at the time of contract extension and will be a factor in the extension review process. The City of Peoria Materials Management Division will determine whether the requested price increase or an alternate option, is in the best interest of the City. Any price adjustment will be effective upon the effective date of the contract extension.
- 13. **Price Reduction:** A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice.
- 14. **Discussions:** In accordance with the City of Peoria Procurement Code, after the initial receipt of proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award.
- 15. **Proposal Opening:** Proposals shall be submitted at the time and place designated in the request for proposals. All information contained in the proposals shall be deemed as exempt from public disclosure based on the City's need to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall not be open for public inspection until after contract award. PRICES SHALL NOT BE READ. After contract award, the successful proposal and the evaluation documentation shall be open for public inspection.
- 16. **Permits and Approvals:** Contractor agrees and undertakes to obtain necessary permits and approvals from all local, state and federal authorities for the project.
- 17. **Inspection:** All work shall be subject to inspection, surveillance, and test by the City at reasonable times during the performance. The Contractor shall provide and maintain an inspection system which is acceptable to the City.
- 18. **Investigation of Conditions:** The Contractor warrants and agrees familiarity of the work that is required, is satisfied as to the conditions under which is performed and enters into this contract based upon the Contractor's own investigation.
- 19. **Acceptance:** Determination of the acceptability of work shall be completed in a responsive and professional manner and in accordance with the specifications, schedules, or plans which are incorporated in the Scope of Work.
- 20. **Payments:** The City shall pay the Contractor monthly, based upon work performed and completion to date, and upon submission 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.
- 21. **Insurance Requirements:** The Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-, or approved unlicensed in the State of Arizona with policies and forms satisfactory to the City.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the City, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by the City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Contractor shall be solely responsible for the deductible and/or self-insured retention and the City, at its option, may require

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the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The City reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

22. Required Insurance Coverage:

a. Commercial General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011207 or any replacements thereof. The coverage shall not exclude X, C, U.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20370704, and shall include coverage for Contractor's operations and products and completed operations.

Any Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

b. Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00010306, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

c. Workers' Compensation

The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

d. Professional Liability



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The Contractor retained by the City to provide the work or service required by this Contract will maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by the Contractor, or any person employed by the Contractor, with a limit of not less than \$1,000,000 each claim.

- 23. **Certificates of Insurance:** Prior to commencing work or services under this Contract, Contractor shall furnish the City with Certificates of Insurance, and formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy(ies) required by this contract is(are) written on a "Claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. A \$25.00 administrative fee will be assessed for all certificates received without the appropriate bid serial number and title.

- 24. **Cancellation and Expiration Notice:** Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

25. **Independent Contractor:**

a. **General**

- i. The Contractor acknowledges that all services provided under this Agreement are being provided by him as an independent contractor, not as an employee or agent of the City Manager or the City of Peoria.
- ii. Both parties agree that this Agreement is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing his profession elsewhere.

b. **Liability**

- i. The City of Peoria shall not be liable for any acts of Contractor outside the scope of authority granted under this Agreement or as the result of Contractor's acts, errors, misconduct, negligence, omissions and intentional acts.
- ii. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, 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 Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, 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, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the 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.

c. **Other Benefits**

The Contractor is an independent contractor, therefore, the City Manager will not provide the Contractor with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Further, Contractor acknowledges that he is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Contractor.



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26. **Key Personnel:** It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.
- The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City.
 - If key personnel are not available for work under this contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.
27. **Estimated Quantities:** The City anticipates considerable activity resulting from contracts that will be awarded as a result of this solicitation; however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by each potential contractor.
28. **Confidential Information:**
- If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld, a statement advising the Materials Supervisor of this fact shall accompany the submission and the information shall be identified.
 - The information identified by the person as confidential shall not be disclosed until the Materials Supervisor makes a written determination.
 - The Materials Supervisor shall review the statement and information and shall determine in writing whether the information shall be withheld.
 - If the Materials Supervisor determines to disclose the information, the Materials Supervisor shall inform the bidder in writing of such determination.
29. **Confidentiality of Records:** The contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that information contained in its records or obtained from the City or from others in carrying out its functions under the contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the 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 the contract.
30. **Multiple Awards:** In order to assure that any ensuing contracts will allow the City to fulfill current and future requirements, the City reserves the right to award contracts to multiple companies. The actual utilization of any contract will be at the sole discretion of the City. The fact that the City may make multiple awards should be taken into consideration by each potential contractor.
31. **Identity Theft Prevention:** The Contractor shall establish and maintain Identity Theft policies, procedures and controls for the purpose of assuring that "personal identifying information," as defined by A.R.S. § 13-2001(10), as amended, contained in its records or obtained from the City or from others in carrying out its responsibilities under the Contract, is protected at all times and shall not be used by or disclosed to unauthorized persons. Persons requesting such information should be referred to the City. Contractor also agrees that any "personal identifying information" shall not be disclosed other than to employees or officers of Contractor as needed for the performance of duties under the Contract. Contractor agrees to maintain reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft. Contractor is required under this contract to review the City of Peoria's Identity Theft Program and to report to the Program Administrator any Red Flags as defined within that program. At a minimum, the contractor will have the following Identity Theft procedures in place:
- Solicit and retain only the "personal identifying information" minimally necessary for business purposes related to performance of the Contract.



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- b. Ensure that any website used in the performance of the contract is secure. If a website that is not secure is to be used, the City shall be notified in advance before any information is posted. The City reserves the right to restrict the use of any non-secure websites under this contract.
- c. Ensure complete and secure destruction of any and all paper documents and computer files at the end of the contracts retention requirements.
- d. Ensure that office computers are password protected and that computer screens lock after a set period of time.
- e. Ensure that offices and workspaces containing customer information are secure.
- f. Ensure that computer virus protection is up to date

32. **Ordering Process:** Upon award of a contract by the City of Peoria, Materials Management Division may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate contractor. The award of a contract shall be in accordance with the City of Peoria Procurement Code and all transactions and procedures required by the Code for public bidding have been complied with. A purchase order for the awarded material and/or service that cites the correct contract number is the only document required for the department to order and the contractor to delivery the material and/or service.

Any attempt to represent any material and/or service not specifically awarded as being under contract with the City of Peoria is a violation of the contract and the City of Peoria Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

33. **Billing:** All billing notices to the City shall identify the specific item(s) being billed and the purchase order number. Items are to be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the requesting agency shall refer to the contract number resulting from this solicitation.

34. **Licenses:** 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.

35. **Cancellation:** The City reserves the right to cancel the whole or any part of this contract due to failure by the contractor to carry out any obligation, term or condition of the contract. The City will issue written notice to the contractor for acting or failing to act as in any of the following:

- a. The contractor provides material that does not meet the specifications of the contract;
- b. The contractor fails to adequately perform the services set forth in the specifications of the contract;
- c. The contractor fails to complete the work required or to furnish the materials required within the time stipulated in the contract;
- d. The contractor fails to make progress in the performance of the contract and/or gives the City reason to believe that the contractor will not or cannot perform to the requirements of the contract.

Upon receipt of the written notice of concern, the contractor shall have ten (10) days to provide a satisfactory response to the City. Failure on the part of the contractor to adequately address all issues of concern may result in the City resorting to any single or combination of the following remedies:

- a. Cancel any contract;
- b. Reserve all rights or claims to damage for breach of any covenants of the contract;
- c. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliant with the specifications, the actual expense of testing shall be borne by the contractor;
- d. In case of default, the City reserves the right to purchase materials, or to complete the required work in accordance with the City Procurement Code. The City may recover any actual excess costs from the contractor by:



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- i. Deduction from an unpaid balance;
- ii. Any combination of the above or any other remedies as provided by law.

36. **Project Travel Reimbursable Expenses:** If travel expenses are allowed as part of the contract the reimbursable expenses will be as follows. All expenses will be billed to the City at cost without markup. Copies of bills for expenses are to be submitted with the invoice. Travel time to and from job site is excluded from this contract. There will be no allowances for parking or personal car mileage. No incidentals for travel of any kind are allowed under this contract.

The following is a list of allowable travel expenses under this contract agreement:

- a. **Transportation:**
 - i. Air Transportation – coach class fares, minimum 14 days advanced purchase, unless otherwise agreed upon.
 - ii. Car Rental – mid size car, gas for rental car (City assumes no liability regarding additional insurance costs).
- b. **Lodging and Meals:**
 - i. Meals – three meals per day, at the current federal per diem rate for Maricopa County.
 - ii. Lodging – not to exceed the current federal rate for Maricopa County. Vendors are encouraged to stay in hotels located within the City of Peoria when practical. A listing of accommodations within Peoria can be found on the following website: <http://vjsitpeoriaaz.com/accommodations.php>



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1. Introduction

The City of Peoria, Arizona is soliciting proposals from qualified medical facilities to provide occupational medical and drug testing services.

2. Background

The City of Peoria is located in the Northwest Phoenix metropolitan area and is one of Arizona's fastest growing communities. Since 1980 the City has grown from a small town of around 12,000 to a dynamic community of over 150,000, geographically covering 185 square miles. The City of Peoria currently employs approximately 1,100 people.

3. General Requirements

- A. The Physician must be licensed to practice medicine in the State of Arizona.
- B. The Contractor must be able to provide services in compliance with the City of Peoria Police Department, Policy 3.16, Controlled Substance Screening (Attachment A).
- C. The Contractor and any sub-contractors shall be required to abide by Department of Transportation and Federal Transit Authority Drug Screening Procedures for all drug tests and related services administered for the City.
- D. The Contractor must be knowledgeable of the duties and responsibilities as well as the physical and mental stresses of the position for which the services are being performed.
- E. The Contractor must remain current on testing and medical standards for all services to be performed as a result of this contract.
- F. The Contractor must maintain current knowledge on laboratory services, reporting procedures and the related laws and practices.
- G. The Contractor shall be required to provide all necessary qualified personnel, equipment, facilities, supplies and services to perform all necessary medical services.
- H. The Contractor shall have a facility within a thirty (30) minute drive from the City of Peoria, City Hall located at 8401 W. Monroe Street, Peoria, AZ 85345.

4. Medical Services Requirements

- A. Physical Exam – Pre-Employment



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The Contractor shall provide all pre-employment physical examinations as required. The physical examinations may include, but are not limited to, the following areas:

- 1) Vision
- 2) Hearing
- 3) Cardio-vascular system
 - Blood Pressure
 - Pulse Rate
 - Sounds
 - Rhythm
- 4) Abdomen
- 5) Musculo-skeletal
 - Spine
 - Upper Extremities
 - Lower Extremities
- 6) Skin
- 7) Urinalysis
- 8) Serology
- 9) Back

B. Physical Exam – Police

The Contractor shall provide services in compliance with AAC R13-4-107, Medical Requirements for Police Officers (Attachment B).

C. Physical Exam – DOT

The Contractor shall provide services in compliance with Department of Transportation, 49 CFR 391.41.

D. Additional Services

The Contractor shall provide the following services when required by the City:

- 1) Chest X-Rays (indicate if services are provided directly by Contractor or referred out)
- 2) Treadmill Test
- 3) Hepatitis A Vaccine (series of 2 shots)
- 4) Hepatitis B Vaccine (series of 3 shots)
- 5) TB Skin Test
- 6) Complete Chemistry Panel (Police)
- 7) Complete Blood Count (Police)
- 8) Blood Type and Cross Match (Police)
- 9) Post Exposure Program

E. Respirator Physical

- 1) The Respirator Physical Exam shall include the questionnaire, exam and pulmonary function test.



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- 2) The Contractor shall conduct a medical evaluation that will determine the employee's medical status to assess their ability to use a respirator. The evaluation will be conducted in accordance with OSHA standards as outlined in 29 CFR 1910.134.
- 3) The Contractor shall provide any and all follow-up tests as required for the medical screening as allowed by law.
- 4) The Contractor must develop a filing system by which the medical questionnaires and any other records associated with the medical evaluation are kept separate from any other city employee medical records. The Contractor must also ensure that these records are maintained in a confidential manner from the employer.
- 5) The Contractor shall maintain the records for the term of the contract. At the end of the contract term, the Contractor will cooperate with the City to ensure that the records are packaged for transportation in a manner so as to maintain the confidentiality from the employer.

F. Lead Blood Level Testing

- 1) The Contractor shall provide services in compliance with OSHA Standards as outlined in 29 CFR 1910.1025 App B.
- 2) The City's range staff shall have lead blood level tested every 6 months. The test shall include a blood level (PbB) and zinc protoporphyrin (ZPP).
- 3) If range staff PbB exceeds 40 ug/100g, testing frequency must be increased from every 6 months to every 2 months.
- 4) If range staff PbB exceeds 80 ug/100g, they will be temporarily removed from range and armory duties.

G. The Contractor shall make a justifiable recommendation as to the ability of the applicant and/or current employee, as applicable, to perform the duties required of the position, and assess current medical status relative to possible future problems. The City will provide job descriptions prior to each exam.

H. The Contractor shall perform and address services for industrial injuries. In addition, the Contractor shall provide return to work examinations, provide injury care, and handle all necessary paperwork for Worker's Compensation, including but not limited to notification to designated Third Party Administrator and City HR designee.

5. Drug Testing Requirements

A. Drug Screen - CDL

The Contractor shall perform drug testing services as outlined in the Department of Transportation, 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

The drug test shall determine whether the specimens are negative for these five (5) drugs or classes of drugs:

- 1) Marijuana metabolites



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- 2) Cocaine metabolites
- 3) Amphetamines
- 4) Opiate metabolites
- 5) Phencyclidine (PCP)

B. Drug Screen – Sworn Police Officers and Recruits

Screening for Officers and Recruits shall comply with the City of Peoria Police Department, Policy 3.16, Controlled Substance Screening (Attachment A).

C. Drug Screen – Applicants

Pre-employment screening as requested by the City of Peoria designee.

D. Random Testing

The Contractor shall be responsible for randomly selecting employees, for random drug and alcohol testing, from the groups of employees established by the City. The City will establish three (3) separate groups of employees, one consisting of Police sworn officers, one consisting of safety sensitive City employees, and one consisting of non-safety sensitive employees (majority of these tests will be for CDL).

The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as random number table or a computer-based random number generator that is matched with employee ID numbers, payroll ID numbers or other comparable identifying numbers.

The testing will be spread throughout the calendar year and will be available during the City's operating days and hours and will be scheduled on a regular basis or as requested by the City. The list of employees who have been selected to test will be given to the City via email, fax or other acceptable format.

E. Additional Services

The Contractor shall provide the following services when required by the City:

- 1) Insta-Check Drug Screens
- 2) Mobile Drug Screening (services on-site)
- 3) Breath Alcohol Test

F. The Contractor shall perform Drug Screening Services utilizing a Substance Abuse Mental Health Services Administration (SAMHSA) certified laboratory and provide a Medical Review Officer in accordance with Federal Department of Transportation CFR, Part 40. The collection of urine samples will be performed by certified staff in accordance with DOT and SAMHSA standards.

G. The Contractor shall provide all required laboratory, records and certification forms required for drug screening.

H. The Contractor shall perform a two-step drug testing process of all drug screening.



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I. The City shall not incur any charges for unacceptable samples obtained.

J. Quality Control

- 1) The Contractor shall provide evidence of active participation in at least one (1) proficiency testing program which includes "blind: toxicology and/or substance abuse screening."
- 2) The Contractor must possess capability for collection of urine samples and conduct breath alcohol tests in response to critical time frames for post accident and reasonable suspicion testing situations.

K. Expert Testimony

The Contractor shall furnish, upon request, qualified personnel to provide expert testimony for judicial and administrative proceedings. The personnel which may be required to give testimony may include technical witnesses as well as M.D. level witnesses. These personnel must be able to testify to the following:

- 1) Performance characteristics of each testing method used
- 2) Detection limit for each methodology
- 3) Quality control programs for each method selected
- 4) The policies and procedures of the systems which are utilized by the firm for error detection
- 5) Procedures for transporting and storage of specimens
- 6) Chain of custody evidence
- 7) Qualifications of the firm and its personnel

L. Operation

- 1) The Contractor shall detect the presence of drugs based upon the analysis of a urine specimen.
- 2) A response time of negative tests shall be no greater than 48 hours and response time for positive tests must be no greater than seven (7) calendar days.
- 3) In addition to the reporting of test results, the selected collection facility shall provide quarterly summary reports which shall contain the following minimum information:
 - Number of test performed
 - Purpose of tests performed, i.e., pre-employment, etc.
 - Number of positive tests reported
- 4) Due to the sensitive nature of the information, the notification of results must only be released to the City designee.



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6. Billing

The Contractor shall provide the City with an itemized billing, by employee and department on a monthly basis.

7. Submittal Requirements

A. Proposal Format

Proposals shall be submitted in one (1) original and seven (7) copies on the forms and in the format as contained in the Request for Proposal. Proposals shall be on 8 1/2" & 11" paper with the text on one side only. All submittal information must contain data for only the office(s) which will be performing the work. DO NOT BIND THE ORIGINAL COPY.

B. Proposal Content

The following items shall be addressed in the proposal submission:

1) Program Methodology.

- a) Provide plan for performing the required services as defined herein. The plan should include but is not limited to the following:
 - Methodology for collection of specimens/samples and how specimens/samples will be handled to retain integrity of the specimen/sample. Include procedures and guidelines for collection of specimens and change of custody. All requirements of 49 CFR, Parts 29, 40, 219, 653, 654 and 655 shall be strictly met for a laboratory to be considered.
 - Response time (estimated waiting time) beginning at time of arrival at facility to conduct pre-employment test, random drug screening, and industrial examinations. Include capabilities of facility to provide/log arrival and release time.
 - Methodology and timeline to provide test results for pre-employment tests, random drug screening and industrial injury examinations.
 - Methodology and timeline for review of industrial cases.
 - Methodology and timeline for mobile on-site drug testing services.
- b) Provide copy of Quality Assurance Procedures indicating how service delivery problems will be identified and corrected.



SCOPE OF WORK

Solicitation Number: P12-0028

Materials Management Procurement

9875 N. 85th Avenue
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

- c) Provide copy of Quality Control procedures indicating how quality control is performed and maintained throughout the testing and reporting process, to include problem reporting and corrective action.
- 2) Experience and Capabilities.
- a) Demonstrate ability to fully perform services as defined herein as reflected by experience, qualifications, technical training and education of personnel proposed to be assigned to perform the services. Include a list of key personnel and identify any bilingual staff.
- b) Indicate if physician(s) are Board trained as defined in A.A.C. R13-4-101 of the Arizona Peace Officer Standards and Training (AZPOST) rules. If not certified, provide plan for obtaining certification.
- 3) Additional Data Support.
- a) Detailed resumes, certifications, licenses (if applicable).
- b) Provide a minimum of three (3) references.
- c) Provide list of each facility location and hours of operation for each location.
- d) Provide the staffing at each location and include the hours the Physician(s) are available at each location.
- e) Provide copy of the license of the facility involved with the testing process.
- 4) Price Sheet and Pricing Schedule.
- a) The Contractor shall complete Price Sheet and provide an itemized list of any applicable fees for the services listed in the solicitation and for each additional type of physical, x-ray, and laboratory work available.
- b) Provide separate pricing schedule for the Post Exposure Program.

C. Evaluation Criteria

In accordance with the City of Peoria Procurement Code, awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.

- Program Methodology.
- Experience and Capabilities.
- Cost Considerations.
- Conformance to Request for Proposal.

D. Proposal Submittal and Contact Information

Proposals will be submitted in one (1) original and seven (7) copies and shall be delivered to:



SCOPE OF WORK

Solicitation Number: **P12-0028**

Materials Management Procurement

9875 N. 85th Avenue
Peoria, Arizona 85345-8560
Phone: (623) 773-7115
Fax: (623) 773-7118

City of Peoria, Materials Management
9875 N. 85th Avenue, Peoria, AZ 85345

The proposal shall be due no later than **5:00 p.m. on January 25, 2012.**

All questions regarding the proposal should be directed to Lisa Houg at Lisa.Houg@peoriaaz.gov



QUESTIONNAIRE

Solicitation Number: P12-0028

**Materials Management
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	DESCRIPTION	Estimated Quantities	Unit	Unit Price	Extended Price
	MEDICAL SERVICES				
1.	Physical Exam – Pre-Employment	50	EA	\$ 50	\$ 2500
2.	Physical Exam- Police (Post Exam)	25	EA	\$ 250	\$ 6250
3.	Physical Exam – DOT	55	EA	\$ 55	\$ 3025
4.	Chest X-Ray	15	EA	\$ 60	\$ 900
5.	Treadmill Test	25	EA	\$ 200	\$ 5000
6.	Hepatitis A Vaccine (series of 2)	20	EA	\$ 85	\$ 1700
7.	Hepatitis B Vaccine (series of 3)	20	EA	\$ 75	\$ 1500
8.	TB Skin Test	10	EA	\$ 25	\$ 250
9.	Complete Chemistry Panel	55	EA	\$ 25	\$ 1375
10.	Complete Blood Count	55	EA	\$ 25	\$ 1375
11.	Blood Type and Cross Match	55	EA	\$ 35	\$ 1925
12.	Respirator Clearance Exam (Upper Respiratory & PFT)	25	EA	\$ 85	\$ 2125
13.	Respirator Questionnaire Review	25	EA	\$ 25	\$ 625
14.	Lead Blood Level Testing	5	EA	\$ 80	\$ 400
15.	Mask Fit	10	EA	\$ 50	\$ 500
16.	Twinrix – Hep A/Hep B Combo (series of 3)	50	EA	\$ 130	\$ 6500
17.	Rabies Vaccination for Animal Control employees (3 required)	5	EA	\$ 225	\$ 1125
18.	Titer Test – Rabies	5	EA	\$ 100	\$ 500
19.	Titer Test - HEP	5	EA	\$ 50	\$ 250
	DRUG TESTING				
1.	Drug Screen – CDL (DOT – 5 Panel)	55	EA	\$ 50	\$ 2750
2.	Drug Screen – Police (Non-DOT – 5 Panel)	80	EA	\$ 36	\$ 2880
3.	Drug Screen – Applicants (Pre-Employment)	50	EA	\$ 36	\$ 1800
4.	Random Drug Screening	60	EA	\$ 36	\$ 2160
5.	Insta-Check Drug Screens (5 Panel Rapid Drug Screen)	25	EA	\$ 36	\$ 900
6.	Mobile On-Site Drug Screening (5 Panel) <i>see next page</i>	25	EA	\$ 36	\$ 900
7.	Breath Alcohol Test	50	EA	\$ 30	\$ 1500
8.	Anabolic Steroids Test using the Sports I Expanded Panel-Police	10	EA	\$ 220	\$ 2200

Additional Pricing Information

Mobile On-site pricing:

Banner Occupational Health has an entire mobile team that can come on site to deliver medical services such as physical exams, vaccinations, drug testing, wellness classes and any services provided at our clinics.

The cost of on-site drug testing is the fee of test plus \$50 per nurse per hour. Minimums apply.

PPE and DOT Physical Exams:

DOT pricing includes the DOT standard of Snellen eye exam and whisper hearing test. If you request a higher level of testing to include the audiogram and titmus vision, add \$20.

POST Exam Pricing:

Banner Occupational Health performs hundreds of POST physical exams every year. Our medical director is on the medical advisory board and assists in clarifying POST standards. Under our medical director's guidance and the recommendation by AZ POST, it is advised that each exam includes an EKG, labwork and a pulmonary function test. By the POST standards, these are recommended tests. In consideration of the importance of the health of the police officer in a highly stressful and demanding job, and the importance of recruiting healthy candidates, our physicians highly recommend these additional tests. The price for these tests is included in the price of the exam.



**Banner Occupational
Health Services**

**Banner Occupational Health Services
Post Exposure Pricing Schedule**

<u>Type of Contacts/Visits</u>	<u>Fee</u>
1. Triage Call.	\$ 75.00
2. Licensed Practitioner Intervention	\$175.00
3. Initial Visit*	\$100.00
4. Results Visit	\$ 50.00
5. Follow-up Visit (1 week, if on meds only)	\$ 75.00
6. Follow-up Visit (2 weeks, if on meds only)	\$ 75.00
7. Follow-up visit (3 weeks, if on meds only)	\$ 75.00
8. Follow-up Visit (4 weeks, if on meds only)	\$ 75.00
9. Follow up Visit (6 weeks)*	\$ 75.00
10. Follow up Visit (3 months)*	\$ 75.00
11. Follow-up Visit (6 months)*	\$ 75.00
12. Follow-up Visit (12 months)*	\$ 75.00
13. Follow-up Visit (18 months)*	\$ 75.00

• *If required

Medications

Medication prices vary by market pricing. Weekly prices can range from \$200-\$400 a week depending on the medications given. Maximum term of medications is 4 weeks.

Hazardous Body Fluid Exposure Program

Patient Testing:

ALT Liver Function	\$25
Blood Chem/CBC/UA (if on meds)	\$40
Hepatitis B Titer (if needed)	\$55
Hepatitis B Vaccine	\$ 88
Hepatitis C	\$ 85
HIV Testing	\$ 85
HBig (if needed)	Current Price
Tetanus (if needed)	\$40
Hep C RNA (if source tests positive)	\$350

Source Testing:

HIV Testing	\$ 85
Hepatitis C	\$ 85
Hepatitis B Antigen	\$ 55

Effective 1/1/12



QUESTIONNAIRE

Materials Management
 Procurement
 9875 N. 85th Ave., 2nd Fl.
 Peoria, Arizona 85345-6560
 Phone: (623) 773-7115
 Fax: (623) 773-7118

Solicitation Number: P12-0028

Please list a minimum of three (3) owner references whom the Materials Management Division may contact:

1. Company: City of Mesa
 Contact: Lisa Angiano Phone: 480-644-4414
 Address: 20 E. Main St. Mesa, AZ 85211
 Description of Work: Worker injury care, POST Exams, Firefighter exams, post exposure program, physical exams
 Annual Value: \$300,000

2. Company: City of Avondale
 Contact: Jackie Ruggles Phone: 623-333-1102
 Address: 11465 W. Civic Center Dr, Avondale, AZ 85323
 Description of Work: Injury care, post exams, immunizations, drug screening, post exposure program, DOT exams
 Annual Value: \$20,000

3. Company: City of Chandler
 Contact: Connie Reynolds Phone: 480-782-2384
 Address: Po Box 4008 Chandler, AZ 85244
 Description of Work: Injury care, post exposure program, DOT exams, POST Exams, drug collections
 Annual Value: \$60,000



QUESTIONNAIRE

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Offerors are to indicate below any exceptions they have taken to the Terms, Conditions, or Scope of Work: *none*

City of Peoria Business License: Vendors will be required to obtain a City of Peoria Business License at the time of contract award.

If you already have a City of Peoria business license, please attach it to your proposal.

Peoria City Code requires that all persons conducting business in Peoria must first obtain a license. This includes businesses within the Peoria city limits, or those outside the limits who conduct business or perform services within Peoria. For business license questions or to obtain a license, please contact the City of Peoria Sales Tax & License Division at (623) 773-7160 or via email at salestax@peoriaAZ.gov.

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

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

General Requirements

A. All physicians and providers at Banner Occupational Health Services are licensed in the State of Arizona. A chart containing the license numbers and certifications is included in this RFP in the Additional Data Section.

B. Banner Occupational Health Services will provide services in compliance with the City of Peoria Police Department, Policy 3.16, Controlled Substance Screening.

C. Banner Occupational Health Services will abide by Department of Transportation and Federal Transit Authority Drug Screening Procedures for all drug tests and related services administered for the City.

D. Banner Occupational Health Services will be knowledgeable of the duties and responsibilities as well as the physical and mental stresses of the position for which the services are being performed. This requires the City to provide BOHS with job descriptions of positions for which exams are being provided.

E. Banner Occupational Health Services will remain current on testing and medical standards for all services to be performed as a result of this contract.

F. Banner Occupational Health Services will maintain current knowledge on laboratory services, reporting procedures and related laws and practices.

G. Banner Occupational Health Services will provide all necessary qualified personnel, equipment, facilities, supplies and services to perform all necessary medical services.

H. Banner Occupational Health Services has three (3) facilities within a thirty (30) minute drive from the City of Peoria, City Hall located at 8401 W. Monroe Street, Peoria, AZ 85345. Maps are included in this proposal in the Additional Data Section.



ATTACHMENT A

Solicitation Number: **P12-0028**

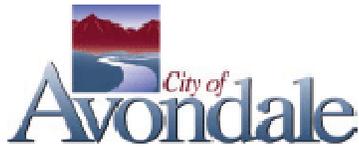
**Materials Management
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Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

**Policy 3.16 – Controlled Substance Screening
Peoria Police Department Policy and Procedure Manual
(see attached)**

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BANNER OCCUPATIONAL HEALTH-ARIZONA, LLC

[Work Orders]

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



CITY COUNCIL REPORT

SUBJECT:
Professional Services Agreement - Friedman
Recycling Company, Corp.

MEETING DATE:
July 16, 2012

TO: Mayor and Council
FROM: Wayne Janis, P.E., Public Works Director, 623-333-4444
THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the Mayor and City Council approve a Professional Services Agreement with Friedman Recycling Companies for recyclable materials processing services.

BACKGROUND:

The contract between the City of Avondale and the current recycling processor, Hudson Baylor expired June 30, 2012. In order to ensure the City is operating under the most advantageous contract, it was decided to issue a request for proposals (RFP) for the recyclable materials processing services. A request for proposals was released on March 6, 2012. Three proposals were submitted by the April 5, 2012 deadline. A five member panel, consisting of personnel from various city departments, reviewed the proposals. Two of the proposers were selected for oral interviews which were held June 5, 2012. The panel recommended that Friedman Recycling be selected.

DISCUSSION:

Friedman Recycling is a family owned and operated business which has been serving Phoenix and the surrounding communities for over 34 years. It was founded as a local neighborhood buy-back center in southwest Phoenix. They have consistently grown to become one of the largest private recycling companies in the Southwestern United States. Friedman provides comprehensive single stream recycling, solid waste hauling and certified security shredding services. They now operate facilities in Phoenix, Tucson, El Paso, Las Cruces and Albuquerque. Friedman specializes in single stream recycling processing. They have been processing single stream recyclables for over 15 years. They currently process recyclables for both public and private entities.

After review and evaluation of the proposals and oral interviews, Friedman's proposal was selected as the most advantageous to the City. The following are examples where Friedman's proposal excelled:

- Their proposal was customer service oriented; they focused on how they could partner with the City "in the development and support of a world-class single stream recycling program"
- They offered a number of services to improve our program such as: collection containers, capital assistance, public awareness and promotion campaigns, recycling training and promotional events.
- Avondale will benefit from their knowledge and experience in the industry, allowing us to improve our program and increase our diversion rate.

Friedman's proposal offered the City two different pricing options:

- Option 1 is structured similar to our current contract. It has a fixed base price per ton of \$31

and an additional revenue share based on commodity market prices.

- Option 2 has a pricing structure that is based solely on a fixed price per ton of \$41. This structure does not have a market share component, which removes the volatility in the revenue stream.

It should be noted that Friedman's proposed pricing structures are not dependent on monthly composition audits, so the pricing will not fluctuate with resident/contamination levels.

BUDGETARY IMPACT:

The fiscal year 2012/13 revenue projections for the sale of recyclable materials is \$183,770.

Under option 1- The agreement is expected to generate \$155,000 from the base payment of \$31/ton. Although this is less than the projected revenue, it is likely the City would receive additional revenue generated from the market share.

Due to the volatility in the commodities market over the last year, it is difficult to project with any confidence, the amount of additional revenue that would be generated. As an example, during the last six month period, the market share under this option would have paid as high as \$21.30 per ton and as low as \$10.65 per ton. Under current market conditions, staff estimates an additional \$85,000 in revenue from the market share for a total of \$240,000 in revenue for the fiscal year. If market conditions hold, this would exceed the budgeted revenue by \$56,230.

Under option 2- The agreement is expected to generate \$205,000 in revenue to the City, exceeding the budgeted revenue by \$21,230.

Under both options presented, the City will realize an increase in revenues. During the evaluation process the committee agreed that revenue option 2 provides the City with two important elements. The first is a high fixed rate of \$41 per ton, and the second is a stable revenue source. Staff believes the proposal is a fair and balanced pricing structure that eliminates the volatility in the revenue stream.

Staff recommends Council approve a contract under revenue option 2. The initial term of the contract is for one year with the option of four one year renewals.

RECOMMENDATION:

Staff recommends that the Mayor and City Council approve a Professional Services Agreement with Friedman Recycling Companies for recyclable materials processing services, utilizing the fixed revenue structure proposed in option 2 of \$41 per ton.

ATTACHMENTS:

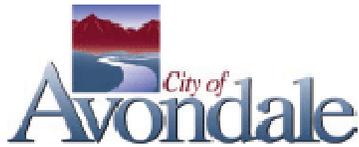
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CITY COUNCIL REPORT

SUBJECT:

Professional Services Agreements - Ciber, Inc. and RPI Consultants, LLC for Lawson Functional Support

MEETING DATE:

July 16, 2012

TO: Mayor and Council

FROM: Cherlene Penilla, Human Resources Director (623) 333-2218

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting City Council approval for two professional services agreements to support the City's Lawson human resources management system. The Agreements would be with Ciber and RPI.

BACKGROUND:

The City of Avondale implemented Lawson in 2009 and went live April 10, 2009. The Human Resources Department (HR) uses services to perform expert functional analysis and changes to Lawson on an as-needed basis. These changes normally stem from new legal requirements; modifications required with new versions of Lawson and interfaced software; and from additional features the City wishes to activate.

The City issued a Request for Proposals on April 24, 2012 for functional support services. Three submittals were deemed responsive and evaluated by staff from the HR, Finance and Budget, and Information Technology departments. Two vendors scored satisfactorily and have relevant public sector experience.

DISCUSSION:

The HR staff performs daily activities utilizing the Lawson HR and payroll functions. However, when the needs arise for new functions, complex configurations, or modifications related to new compliance or version requirements, HR staff must turn to outside experts who have a deeper knowledge of Lawson software, updates, and upgrades.

If approved by City Council, this action would award professional services agreements to two companies, Ciber and RPI. Based on the City's experience, vendors with expertise in Lawson occasionally experience staff turnover and even go out of business. Vendors also have differing levels of expertise in Lawson modules and public sector knowledge. A multiple award allows the City to tap one resource or the other based on our needs, staff familiarity with the City, the expertise of vendor staff, staff experience with public sector uniqueness, and vendor performance.

Because the work is not project-based with known deliverables and due dates, the awarded professional services agreements are structured on task-orders issued by HR when needs arise.

BUDGETARY IMPACT:

For Fiscal Year 2013, HR has approximately \$39,260 in the Annual City Budget for Lawson functional support located in the [101-5700-00-6325] budget line.

RECOMMENDATION:

Staff recommends City Council approve the two professional services agreements with Ciber, Inc. and RPI Consultants LLC for Lawson Functional Support. Staff further recommends City Council authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

[PSA - RPI Consultants LLC](#)

[PSA - Ciber Inc.](#)

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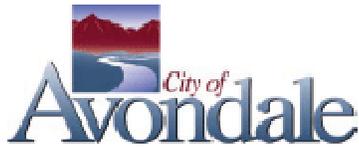
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<http://www.avondale.org/DocumentCenter/View/29767>



CITY COUNCIL REPORT

SUBJECT:

Professional Services Agreement - Andritz Separation Inc.

MEETING DATE:

July 16, 2012

TO: Mayor and Council

FROM: Wayne Janis, P.E., Public Works Director (623) 333-4444

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that City Council approve a Professional Services Agreement between the City of Avondale and Andritz Separation Inc., to provide Centrifuge repairs in order to meet the biosolids removal permit requirements, for a price not to exceed \$98,000.00 and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

In the Activated Sludge process taking place at the Water Reclamation Facility, a volume of the treatment stream is removed daily to ensure that the bacteria remain viable in order to treat the incoming sewage to meet or exceed permit requirements. This waste activated sludge is sent through a thickening process, and then through the anaerobic digesters. Once the digestion process is complete, the solids remaining must be dewatered by centrifuge prior to disposal at the landfill. The facility has two centrifuges, originally manufactured by a company named Bird, to perform this dewatering function which removes water, leaving biosolids, which are 18%-20% solids. These biosolids also pass a paint filter test meeting permit requirement before they are hauled off to the landfill by an outside vendor. At times these redundant centrifuges need services and repairs beyond the expertise of the facility maintenance staff such as replacing tiles, the rotodiff, pistons, and cams in order to keep them operational.

DISCUSSION:

Staff acknowledges the importance of a maintenance service contract, and they have been developing a scope of services and working with Andritz Separation Inc. since May 2012 to formulate language, and to identify areas of service that should be incorporated into an annual maintenance contract. Recently one of the centrifuges failed, and has been determined non-serviceable by our staff. This failure cannot wait to be repaired as a preventative maintenance item by contract any longer. It is imperative that this specialized work be performed and completed as efficiently and thoroughly as possible. The factory, Andritz Separation Inc., and existing owner of Bird centrifuges, is determined to be the best guarantee of quality service for this critical piece of equipment, and to extend the current 12 year service life. Not only will Andritz Separation Inc. be able to provide the corrective repairs, fabrication, and manufacturing of replacement components, they can correctly identify those components that have reached the end of their useful life. They will also provide for us onsite inspection and testing of their repairs in Avondale, once the work has been completed. Andritz possesses the specialized industrial facilities that would be required to perform this repair, the factory tools, and in-house personnel with the expertise to refurbish our aging technology.

The loss of this Centrifuge has put us at great risk of violating Federal and State Permits for the safe production and disposal of Biosolid wastes at the water reclamation facility should we have

difficulties with our remaining operational centrifuge. The inability to repair this unit coupled with the untimely demise of the second centrifuge will create a condition of financial hardship to the city when we have to haul by tanker truck our solid waste in its liquid form at 40,000 gallons/day. This will incur the daily costs of transporting and disposing of liquid truck loads at an estimated \$38,000.00 each day.

BUDGETARY IMPACT:

The funding for the work associated under this professional services agreement are available in the Water Reclamation Facility budget, Other Professional Services, line item: 503-9230-00-6180.

RECOMMENDATION:

Staff is recommending that City Council approve a Professional Services Agreement between the City of Avondale and Andritz Separation Inc., to provide Centrifuge repairs in order to meet the biosolids removal permit requirements, for a price not to exceed \$98,000.00 and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

[Copy of Andritz Repair Quote](#)

Avondale WWTP Quote

To: Avondale, AZ WWTP
 Attention: Thomas Bolyen
 Email: tbolyen@avondale.org
 Fax: 623-333-0441
 Date: 05/20/2012

Reference: Centrifuge repair – WORSE CASE SCENERIO

Subject: This is to reference the request for the repair of the Humboldt Co 3054 rotating assembly and rotodiff to bring the existing unit back to OEM standards

The quote was written with the intent of a not to exceed costing. The costs were prepared with assuming 100 ea of the tiles being replaced, all other wear items replaced and the rotodiff having a major repair including all pistons, cams etc. Since this is an operating machine and the units does not have excessive vibrations, alarm shutdowns, torque overloads and such the actual cost of the repair should be much less than these costs.

Before any work is undertaken a full **DCI** report will be made on both the centrifuge rotating assembly as well as the rotodiff. Once this is completed a report will be sent with actual costs, and these are final costs.

Item	Qty	Part Number	Description	Price Total
1	1	CP 3054 rotating assembly	Andritz to provide a complete DCI report with exact costs for the actual repair The WORSE CASE SCENERIO cost is	\$97,761.06
2	1	Viscotherm 32-D-I-54 rotodiff	Same as above WORSE CASE SCENERIO	Included
3	1	Onsite visit during start up of vibration and thermal testing	One day visit on site – 8 hr workday	Included

Again, these are **WORSE CASE SCENERIO** costing and the actual cost is expected to be much less once a DCI repair can be made

2. Engineering and Documentation: (Includes the following)

- Complete DCI report to be made to customer before any work is undertaken
- Field report made after startup

3. On site time:

One day, one trip is proposed for installation and start up assistance with a complete field report made with Vibration and thermal data recorded.

Additional time if required will be charged per the attached Field Service Policy and Rate Sheet.

4. Scope Not Included in Andritz Price:

- Replacement of any components that fail during installation of replacement components and start-up not covered under the repair scope established
- Electrical field wiring and connections or components not serviced under the established scope of work
- Freight from Avondale to the Andritz - San Leandro Facility
- Freight back to the Avondale plant is included
- Any Federal, State or County taxes or fee's

Commercial Conditions:

This price proposal is based on the attached Andritz Separation Inc. "Standard Terms and Conditions of Sale".

The quoted price does not include any local, state or federal taxes, permits or other fees. Any taxes or fees that may apply must be added to the quoted price and paid by the buyer.

The proposed price will remain valid for 30 days.

We appreciate the opportunity to quote. Please let us know if we can provide any additional information.

Please feel free to contact me at 925-336-7515

Kind Regards,

Brian Lent

SEPARATION
Regional North America
Western Regional Aftermarket Sales Manager

ANDRITZ Separation Inc.

1010 Commercial Blvd S
Arlington, TX 76001 USA
Ph: 817-375-4495
Fax: 817-375-6495
Mobile Phone: 925-336-7515
brian.lent@andritz.com
www.andritz.com

1world.1team.

Shaping The Future Together

ANDRITZ SEPARATION INC.

STANDARD TERMS AND CONDITIONS OF SALE (AFTERMARKET)

1. TERMS APPLICABLE

The Terms and Conditions of Sale listed below are the exclusive terms and conditions applicable to quotations made and orders acknowledged by Andritz Separation Inc. ("Seller") for the sales of products, equipment and parts relating thereto ("Products"). This quotation or acknowledgment is expressly made conditional upon Buyer's assent to such terms and conditions. Any of Buyer's terms and conditions which are in addition to or different from those contained herein, which are not separately agreed to by Seller in writing, are hereby objected to and shall be of no effect. Objections to any terms and conditions contained herein shall be deemed waived if Seller does not receive written notice thereof within 20 days of the date of this quotation or acknowledgment. Buyer in any event will be deemed to have assented to the terms and conditions contained herein if delivery of any Product is accepted. The term "this Agreement" as used herein means this quotation or acknowledgment or purchase order, together with any attachment hereto, any documents expressly incorporated by reference and these Standard Terms and Conditions of Sale.

2. DELIVERY

Delivery dates are good faith estimates and do not mean that "time is of the essence". Buyer's failure to promptly make advance or interim payments, supply technical information, drawings and approvals will result in a commensurate delay in delivery. Upon and after delivery, title and risk of loss or damage to the Products shall be Buyer's. Unless otherwise agreed in writing by Seller, delivery of the Products hereunder will be made F.O.B., Seller's plant (or F.O.B., point of manufacture for any Product shipped direct to Buyer from any location other than Seller's plant).

3. WARRANTY

In the case of the purchase of NEW EQUIPMENT the Seller warrants to Buyer that the NEW EQUIPMENT manufactured by it will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the NEW EQUIPMENT to the buyer and shall expire on the earlier to occur of 12 months from initial operation of the NEW EQUIPMENT and 18 months from delivery thereof (the "Warranty Period").

In the case of PARTS or used or reconditioned machinery or equipment, and unless otherwise indicated, Seller warrants to Buyer that the PARTS or the used or reconditioned machinery or equipment manufactured by it will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the PARTS or the used or reconditioned machinery or equipment to the buyer and shall expire six (6) months from delivery thereof (the "Warranty Period").

(a) If during the Warranty Period Buyer discovers a defect in material or workmanship and gives Seller written notice thereof within 10 days of such discovery, Seller will, at its option, either deliver to Buyer, F.O.B., point of shipment, a replacement part or repair the defect in place, where applicable. Seller will have no warranty obligations under this paragraph 3(a): (i) if the Products have not been operated and maintained by competent personnel and in accordance with generally approved industry practice and with Seller's specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by someone other than Seller or have been intentionally or accidentally damaged; (v) for corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered expendable or (vi) for expenses incurred for work in connection with the removal of the defective articles and reinstallation following repair or replacement.

(b) Seller further warrants to Buyer that at delivery, the Products manufactured by it will be free of any liens or encumbrances. If there are any such liens or encumbrances, Seller will cause them to be discharged promptly after notification from Buyer of their existence.

(c) THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 3 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(d) The remedies provided in paragraphs 3(a) and 3(b) are Buyer's exclusive remedy for breach of warranty.

(e) With respect to any Product or part thereof not manufactured by Seller, Seller shall pass on to Buyer only those warranties made to Seller by the manufacturer of such Product or part which are capable of being so passed on.

4. LIMITATION OF LIABILITY

Notwithstanding any other provision in this Agreement, the following limitations of liability shall apply:

(a) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable to Buyer or any third party for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature.

(b) The aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with the Products or this Agreement or from the performance or breach thereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed the contract price. The foregoing notwithstanding, if applicable, any claims for (a) delay in delivery shall not exceed 5% and (b) breach of performance guarantees shall not exceed 20% of the order price.

(c) The limitations and exclusions of liability set forth in this paragraph 4 shall take precedence over any other provision of this Agreement and shall apply whether the claim of liability is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise. The remedies provided in this Agreement are Buyer's exclusive remedies.

(d) All liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, resulting from, arising out of or connected with the Products or this Agreement or from the performance or breach thereof shall terminate on the third anniversary of the date of this Agreement.

5. TAXES

Seller's prices do not include any sales, use, excise or other taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise or other tax applicable to the sale or use of the Products shall be billed to and paid by Buyer unless Buyer provides to Seller a tax-exemption certificate acceptable to the relevant taxing authorities.

6. SECURITY INTEREST

Seller shall retain a purchase money security interest and Buyer hereby grants Seller a lien upon and security interest in the Products until all payments hereunder have been made in full. Buyer acknowledges that Seller may file a Form UCC-1 financing statement and may take all other action it deems reasonably necessary to perfect and maintain such security interest in Seller and to protect Seller's interest in the Products.

7. SET OFF

Neither Buyer nor any of its affiliates shall have any right to set off claims against Seller or any of its affiliates for amounts owed under this Agreement or otherwise.

8. PATENTS

Unless the Products or any part thereof are designed to Buyer's specifications and provided the Product or any part thereof is not used in any manner other than as specified or approved by Seller in writing, (i) Seller shall defend against any suit or proceeding brought against Buyer to the extent based on a claim that any Product, or any part thereof, infringes any United States device patent; provided Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense of such suit or proceeding; (ii) Seller shall satisfy any judgment for damages entered against Buyer in such suit; and (iii) if such judgment enjoins Buyer from using any product or a part thereof, then Seller shall, at its option: (a) obtain for Buyer the right to continue using such Product or part; (b) eliminate the infringement by replacing or modifying all or part of the Products; or (c) take back such Product or part and refund to Buyer all payments on the purchase price which Seller has received, in which case neither Buyer nor Seller will have any claim against the other under this Agreement or arising out of the subject matter of this Agreement. The foregoing states Seller's entire liability for patent infringement by any Product or part thereof.

9. TERMINATION

Buyer may only terminate its order upon written notice to Seller and upon payment to Seller of Seller's termination charges, which shall be specified to Buyer and shall take into account among other things expenses (direct and indirect) incurred and commitments already made by Seller and an appropriate profit; provided, that in no event shall Seller's S:\T&Cs\2010 Aftermarket TCs.doc

termination charges be less than 25% of the contract price. In the event of the bankruptcy or insolvency of Buyer or in the event of any bankruptcy or insolvency proceeding brought by or against Buyer, Seller shall be entitled to terminate any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

10. CHANGES

Seller will not make changes in the Products unless Buyer and Seller have executed a written Change Order for such change. Such Change Order will include an appropriate adjustment to price and delivery terms. If the change impairs Seller's ability to satisfy any of its obligations to Buyer, the Change Order will include appropriate modifications to this Agreement. If, after the date of this quotation or acknowledgment, new or revised governmental requirements should require a change in the Products, the change will be subject to this paragraph 10.

11. CONFIDENTIALITY

Buyer acknowledges that the information which Seller submits to Buyer in connection with this quotation or acknowledgment includes Seller's confidential and proprietary information, both of a technical and commercial nature. Buyer agrees not to disclose such information to third parties without Seller's prior written consent. Seller grants to Buyer a non-exclusive, royalty-free, perpetual license to use Seller's confidential and proprietary information for purposes of this specific order and the Products that are the subject hereof only. Buyer further agrees not to permit any third party to fabricate the Products or any parts thereof from Seller's drawings or to use the drawings other than in connection with this specific order. Buyer will defend and indemnify Seller from any claim, suit or liability based on personal injury (including death) or property damage related to any Product or part thereof which is fabricated by a third party without Seller's prior written consent and from and against related costs, charges and expenses (including attorneys fees). All copies of Seller's drawings shall remain Seller's property and may be reclaimed by Seller at any time.

12. END USER

If Buyer is not the end user of the Products sold hereunder (the "End User"), then Buyer will use its best efforts to obtain the End User's written consent to be bound to Seller by the provisions of paragraphs 3, 4, 5 and 11 hereof. If Buyer does not obtain such End User's consent, Buyer shall defend and indemnify Seller and Seller's agents, employees, subcontractors and suppliers from any action, liability, cost, loss, or expense for which Seller would not have been liable or from which Seller would have been indemnified if Buyer had obtained such End User's consent.

13. FORCE MAJEURE

(a) Force Majeure Defined. For the purpose of this Agreement "Force Majeure" will mean all unforeseeable events, beyond the reasonable control of either party which affect the performance of this Agreement, including, without limitation, acts of God, acts or advisories of governmental or quasi-governmental authorities, laws or regulations, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, insurrections, riots, epidemics, pandemics, outbreaks of infectious disease or other threats to public health, lightning, earthquakes, fires, storms, severe weather, floods, sabotage, delays in transportation, rejection of main forgings and castings, lack of available shipping by land, sea or air, lack of dock lightage or loading or unloading facilities, inability to obtain labor or materials from usual sources, serious accidents involving the work of suppliers or sub-suppliers, thefts and explosions.

(b) Suspension of Obligations. If either Buyer or Seller is unable to carry out its obligations under this Agreement due to Force Majeure, other than the obligation to make payments due hereunder, and the party affected promptly notifies the other of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to account for the delay.

(c) Option to Terminate. If the period of suspension or reduction of operations will extend for more than four (4) consecutive months or periods of suspension or reduction total more than six (6) months in any twelve (12) month period, then either Buyer or Seller may terminate this Agreement.

14. INDEMNIFICATION AND INSURANCE

(a) Indemnification. Seller agrees to defend and indemnify Buyer from and against any third-party claim for bodily injury or physical property damage ("Loss") arising in connection with the goods provided by Seller hereunder or the Work performed by Seller hereunder, but only to the extent such Loss has been caused by the negligence, willful misconduct or other legal fault ("Fault") of Seller. Buyer shall promptly tender the defense of any such third-party claim to Seller. Seller shall be entitled to control the defense and resolution of such claim, provided that Buyer shall be entitled to be represented in the matter by counsel of its choosing at Buyer's sole expense. Where such Loss results from the Fault of both Seller and Buyer or a third party, then Seller's defense and indemnity obligation shall be limited to the proportion of the Loss that Seller's Fault bears to the total Fault.

(b) Insurance. Seller shall maintain commercial general liability insurance with limits of not less than \$2,000,000 per occurrence and in the aggregate covering claims for bodily injury (including death) and physical property damage arising out of the Work. Seller shall also provide workers' compensation insurance or the like as required by the laws of the jurisdiction where the Work will be performed, and owned and non-owned auto liability insurance with limits of not less than \$1,000,000 combined single limit. Buyer shall be designated as an additional insured under Seller's commercial general liability insurance and auto liability insurance coverages, and Seller will provide a Certificate of Insurance certifying the existence of such coverages upon request.

15. GENERAL

(a) Seller represents that any Products or parts thereof manufactured by Seller will be produced in compliance with all applicable Federal, State and local laws applicable to their manufacture and in accordance with Seller's engineering standards. Seller shall not be liable for failure of the Products to comply with any other specifications, standards, laws or regulations.

(b) This Agreement shall inure only to the benefit of Buyer and Seller and their respective successors and assigns. Any assignment of this Agreement or any of the rights or obligations hereunder, by either party without the written consent of the other party shall be void.

(c) This Agreement contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings between Buyer and Seller concerning the Products, and any prior course of dealings or usage of the trade not expressly incorporated herein.

(d) This Agreement (including these standard terms and conditions of sale) may be modified, supplemented or amended only by a writing signed by an authorized representative of Seller. Seller's waiver of any breach by Buyer of any terms of this Agreement must also be in writing and any waiver by Seller or failure by Seller to enforce any of the terms and conditions of this Agreement at any time, shall not affect, limit or waive Seller's right thereafter to enforce and compel strict compliance with every term and condition thereof.

(e) This Agreement and the performance thereof will be governed by and construed according to the laws of the State of Texas. The parties hereto irrevocably submit to the jurisdiction of the appropriate state and federal courts sitting in the State of Texas and waive any claims as to inconvenient forum. In the event this Agreement pertains to the sale of any goods outside the United States, the parties agree that the United Nations Convention for the International Sale of Goods shall not apply to this Agreement.

2011 FIELD SERVICE POLICY AND RATE SHEET

Installation and Start-up Assistance

All the equipment furnished by Andritz Separation Inc. shall be installed and started up by, and at the expense of the purchaser. There is available, however, upon the request of the purchaser, the service of Andritz Separation Inc. field service personnel for consultation and advice in the installation and start-up of Andritz Separation Inc. equipment. This service is provided with the understanding that Andritz Separation Inc. will function only as technical consultants and coordinators in an advisory capacity, and shall have no responsibility for the supervision or the quality of workmanship of such an installation and/or start-up. Such responsibility will be that of the purchaser.

Certain types of Andritz Separation Inc. equipment, such as that with mechanical seals, require the check out of the equipment by experienced field personnel before the equipment is put into operation. In these instances, the equipment is so tagged upon time of shipment. The failure to have proper mechanical check out by Andritz Separation Inc. field personnel will void our mechanical warranty. For the check out, power and all necessary utilities for the operation of equipment must be available.

Service Rates (Rates/Pricing are in US currency)

Service Rates are applicable for all the time the field service employee spends on the job. This includes traveling to or from either our designated plant or point of residence of the employee. Any holdover time, i.e. time where the employee is required to stay on the job site because time does not permit travel home, or for the convenience of the customer, shall be at regular rates, listed below:

Description	Standard Rates	Overtime Rates
Monday –Friday		
Service Technician	\$1,100.00/ 8 hr. day	\$206.25/ hr. up to 4 hrs
Saturday	\$1,650.00/ 8hr. day	\$206.25/ hr. up to 4 hrs
Sunday	\$2,200.00/ 8hr. day	\$275.00/ hr. up to 4 hrs
Holidays	\$2,200.00/ 8hr. day	\$275.00/ hr. up to 4 hrs
Travel Days:		
Monday - Friday	\$600.00/ day	N/A
Saturday Travel Day	\$900.00/ day	N/A
Sunday & Holiday	\$1,200/ day	N/A
Phone Modem Support	\$150.00/ 1 st hr	\$120.00/ per additional hr.

ANDRITZ SEPARATION INC.

1010 Commercial Blvd. S.
Arlington, Texas 76001
Tel. (817) 465-5611
Fax (817) 468-3961
enviro.us@andritz.com

Travel & Holiday Service

If travel and work requirements carry through weekends and holidays, the premium rates above will be charged. (For example, if a customer requires field service personnel to be on site early Monday, necessitating the need to travel Sunday or a Holiday, the Sunday/Holiday rate will be charged. If work continues through a weekend and/or holiday, the Sunday/Holiday rate will be charged.)

Cancellation Notice

In an effort to keep costs down for our customers, (once the purchase order is received), service personnel will book advanced, non-refundable tickets. This is a conscientious effort to keep costs to the customer, for air travel, as low as possible. If such expenses have been incurred in good faith, and the customer must cancel, we must invoice for those expenses to be fairly reimbursed.

Other Considerations

Because our Field Service employees are away from home for extended periods for most of the year, we feel they should be with their families over the Christmas and New Year holidays. Except for breakdowns or comparable and equally critical service requirements, our personnel are not available at these times.

When our field service personnel travel international and required on site for periods in excess of four weeks, they are allowed to return home to be with their families. The allowable time period is determined on a case-to-case basis. The cost only of transportation to the employee's home and return will be included with the service charges.

It is required that our service personnel have single rooms in first class hotel or motel accommodations where these are available. The charges for all living and travel expense will be for the account of the customer. Travel, if by public conveyance or rented automobile, will be at cost. Travel, if by employee-owned or company owned automobile will be at the rate of **US \$ 0.51** per mile plus all toll and parking charges. **A 15% administrative fee** will apply only to travel and living expenses incurred.

It is the responsibility of the purchaser to provide for all necessary permits, clearances, visas, and other pertinent information required for our personnel to travel to the job site. In the event that public facilities are not available near the job site, it is the purchaser's responsibility to provide the equivalent of first class facilities in single rooms for our personnel at the site. For overseas jobs intended to be of an extended duration in excess of thirty (30) days, special arrangements will be negotiated immediately (and prior to the requirement for personnel to be at the job site) with regard to visits home with their families.

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Service Requirement Notification

Our objective is to provide the best service possible. Experience has proven that one of the best ways to accomplish this is for our employees to arrive on the job site when they are needed - but not before. Our personnel are in short supply from time to time and personnel with the special skills you may require may not be available on short notice. We request, therefore, that for projects requiring extended service (in excess of thirty (30) days) and/or special skills, Andritz Separation Inc. be given at least sixty (60) days notice as to when field service personnel are required on site. We also ask that this be confirmed within fourteen (14) days of the start of their services. In other instances, for a shorter duration of service, we request that at least a minimum of ten (10) days notice be given prior to requirement of our service personnel. After receipt of such advance notice, while we endeavor to comply with all requested time schedules, purchaser should be aware that on rare occasions we may not be able to meet all demands immediately. Negotiations will continue until the best schedule is attained. In the event that emergencies arise, we will work to meet the customers' needs as quickly and as completely as possible.

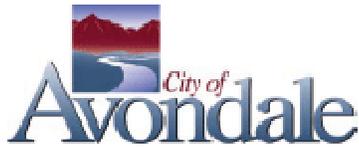
Please Note: If time is scheduled and the customer must cancel on short notice, there is no guarantee of the immediate availability of field service personnel for rescheduling.

Insurance & Warranty

Andritz Separation Inc. service personnel are fully covered by Worker's Compensation Insurance. Andritz Separation Inc. makes no warranty either express or implied or by trade usage in connection with the services of its field personnel and shall have no liability direct, indirect or for any loss, damage, injury or expense resulting from or arising out of their services other than by reason of their negligence, and in no event for consequential injury or damage or for any amount in excess of the cost of repair or replacement of specific part damaged by their negligence

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CITY COUNCIL REPORT

SUBJECT:

Second Amendment to the Amended and Restated Professional Services Agreement - Tightline Services, Inc.

MEETING DATE:

July 16, 2012

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 approve the second amendment to the Amended and Restated Professional Services Agreement with Tightline Systems, Inc. (d.b.a. Goosebump) for a one-time increase of \$5,250 and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

BACKGROUND:

On September 7, 2011 the City of Avondale entered into an agreement with Tightline Systems, Inc. (Goosebump) for services relating to event coordination for the 2012 Arizona Centennial Parade and Festival jointly hosted by the Cities of Avondale and Goodyear and a separate Avondale Birthday Celebration hosted by the City of Avondale only.

On February 13, 2012 the original agreement was amended as follows:

- Provide for additional compensation to the Contractor for additional Services related to securing sponsorships for the events
- Provide for reimbursement of certain expenses incurred in performance of the Services as necessary for successful execution of the Parade and Festival.

On June 4, 2012 the agreement was further amended as follows:

- Extend the contract for 3 years with 2 one year extensions
- Maintain the contract base service amount at \$10,000 annually
- Exclude the birthday celebration as a part of the ongoing agreement (the Birthday Celebration has been awarded to Tightline for one year)
- The sponsorship fee will change from a flat \$2000 to a onetime sponsorship fee of \$500 annually plus 15% of all sponsorships
- Goosebump will receive an administrative fee equal to 3% of all costs related to the management of the event (not to exceed \$2,000).
- Amend section VI. 4. Date Changes: contractor shall not be responsible to pay expenses or fees if the date of the event changes through no fault of the contractor

DISCUSSION:

City of Avondale staff would like Tightline to perform the duties of the event coordinator for Resident Appreciation Night and the Faith Based Group Block Party. City staff will solicit proposals for ongoing event management on June 21, 2012. However, this process will not be complete in time for event planning for events scheduled from October - December 2012. Planning time is critical for successful

event planning. This request is a stop gap measure only for events scheduled before the end of December 2012.

City Council approved a series of special events for FY 2012. The City of Avondale Out and About series is included as part of the approved events. The Out and About Entertainment Series will consist of nine (9) events held each month from September to April on the second Friday of each month. The Out and About Series will consist of three concerts, three movie nights, and three community festivals. The community festivals will include Resident Appreciation Night, A neighborhood block party co-sponsored by the Avondale Faith Based Community, and a Winter Holiday Celebration. Tightline is already under contract with the City of Avondale to coordinate the Winter Holiday Celebration.

Staff recommends that council approve the amended agreement as follows:

- Tightline Services will be responsible for event planning services for Resident Appreciation Night and the Faith Based Block Party
- Tightline Services will solicit sponsorships for each additional event

BUDGETARY IMPACT:

The additional compensation for Tightline will not exceed \$5,250. The total adjusted cost of the agreement will not exceed \$17,750 for FY 2012 only, and remain at \$12,500 for each additional year or \$67,750 over the lifetime of this agreement.

Funding for this amendment has been approved as part of the City of Avondale FY 2012-2013 Annual Budget. Funds are available through the following line item: PRLD-Recreation-Special Events: 101-8125-00-6181

RECOMMENDATION:

Staff recommends that the City Council approve the second amendment to the Amended and Restated Professional Services Agreement with Tightline Systems, Inc. (d.b.a. Goosebump) for a one-time increase of \$5,250 and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

ATTACHMENTS:

Click to download

[PSA](#)

**SECOND AMENDMENT
TO
AMENDED AND RESTATED
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
TIGHTLINE SYSTEMS, INC.**

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT (this "Second Amendment") is made as of July 16, 2012, between the City of Avondale, an Arizona municipal corporation (the "City") and Tightline Systems, Inc., an Arizona corporation d/b/a Goosebump Marketing & Events (the "Contractor").

RECITALS

A. The City and the Contractor entered into that certain Agreement dated September 7, 2011 (the "Original Agreement"), as amended and restated on February 13, 2012 (the "Amended and Restated Agreement"), as amended by that First Amendment dated June 4, 2012 (the "First Amendment"), for event coordination services for certain events (the "Services"). The Original Agreement, the Amended and Restated Agreement and the First Amendment are collectively referred to herein as the "Agreement."

B. The City has determined that additional event planning services are necessary for the City's Out & About Event Series (the "Out & About Events") (the "Additional Services").

C. The City and the Contractor desire to enter into this Second Amendment to (i) modify the Scope of Work to include the Additional Services necessary for the Out & About Events and (ii) increase the compensation to the Contractor as consideration for the Additional 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. Scope of Work. The Contractor shall provide the Additional Services in the manner set forth in the Additional Scope of Work attached to the Agreement and as set forth in the Quote, attached hereto as Exhibit 1 and incorporated herein by reference.

2. Compensation. The City shall pay Contractor an amount not to exceed \$5,000.00 as fees for the Additional Services as more particularly set forth in the Quote attached hereto as Exhibit 1, plus an administrative fee equal to three percent of all Reimbursable Expenses expended with respect to management of the Out & About Events. Additionally, in the event that the Contractor obtains sponsorships in excess of \$500.00 in cash or value of in-kind services

for the City in support of the Out & About Events, the City shall pay the Contractor (i) a single payment sponsorship acquisition fee of \$250.00 and (ii) an amount equal to fifteen percent of the sponsorships obtained by the Contractor, calculated to include both in-kind and cash sponsorships.

3. Expenses. The Contractor shall submit requests and receive reimbursement for certain Out & About Events-related expenses, including entertainment services, equipment and barricade services, as more particularly set forth in the Additional Scope of Work attached to the Agreement (the “Reimbursable Expenses”). Reimbursable Expenses must be authorized in advance and in writing by the City. Requests for payment of Reimbursable Expenses must be accompanied by substantiating data reasonably acceptable to the City.

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 Second Amendment, the Contractor affirmatively asserts that (i) the City is not currently in default, nor has been in default at any time prior to this Second Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this Second Amendment are forever waived.

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

[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 _____, 2012,
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”

TIGHTLINE SYSTEMS, INC., an Arizona corporation
d/b/a Goosebump Marketing & Events

By: _____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2012,
by _____, as _____ of TIGHTLINE SYSTEMS, INC., an Arizona
corporation, on behalf of the corporation.

Notary Public in and for the State of Arizona

(affix notary seal here)

EXHIBIT 1
TO
SECOND AMENDMENT
TO
AMENDED AND RESTATED
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
TIGHTLINE SYSTEMS, INC.

[Quote]

See following page.



Christopher Reams
City of Avondale
11465 W. Civic Center Dr. Suite 100
Avondale, AZ 85323

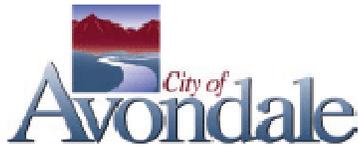
QUOTE

Quote #: 67-AVO-02
Date: 6-11-12

DESCRIPTION	AMOUNT DUE
Event Planning Services for Out & About Event Series. It is understood that both of these events will be open to the public for 2-3 hours per event. Event planning fees for these events will be as follows:	
- October Event (2-3 hour event)	\$2,500
- November Event	\$2,500
Sponsorship Sales Services provided for a \$250 Retainer Fee	\$250
Plus 15% of all cash and in-kind donations	
Note: December event planning services already under contract. Sponsorship sales service will apply to all 3 events (October, November, December).	
NOTE: Goosebump charges a 3% administrative fee for any expenses paid for by Goosebump and reimbursed at a later date by the client.	
TOTAL:	\$5,250

50% deposit due upon the signing of this agreement

Submit Payment to:
Goosebump Marketing & Events
P.O. BOX 47338
Phoenix, AZ 85068
602-418-5771
Fax: 602-926-8092



CITY COUNCIL REPORT

SUBJECT:

Resolution 3056-712 - Intergovernmental Agreement - Joint Representation in Settlement Efforts

MEETING DATE:

July 16, 2012

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

The purpose of this report is to inform the Council of activities related to claims made by the White Mountain Apache Tribe for surface water to be diverted from the Salt River Watershed and to request approval of an Intergovernmental Agreement among four cities for joint legal representation in proceedings related to these claims.

BACKGROUND:

Settlement activities are currently ongoing related to the White Mountain Apache Tribe's water rights claims. Since their claims relate to diversions of surface water from the Salt River Watershed, the outcome of these settlement activities could affect the amount of water available through the Salt River Project. Since the City of Avondale depends on water from the Salt River Project for a substantial portion of its water supply, these settlement activities are relevant to the City's interests. Settlement activities have been on-going since 2008, however, additional time and effort will be needed to conclude the settlement.

DISCUSSION:

Staff from the Cities of Avondale, Chandler, Glendale and Scottsdale, Arizona are requesting approval from their respective Councils to obtain outside legal counsel for the purpose of joint representation in the settlement activities noted above. All of the aforementioned cities receive water from the Salt River Project and intend to work together to maximize their effectiveness and minimize costs. The firm of Engelman Berger, P.C. would be retained as outside legal counsel to represent the Cities in settlement activities relating to the White Mountain Apache Tribe's water rights claims. A new Intergovernmental Agreement (IGA) has been prepared that would extend the original arrangement between the participating cities and the firm of Engelman Berger, P.C. The new IGA has an effective date of July 1, 2012 and would replace the existing IGA in its entirety.

BUDGETARY IMPACT:

The Intergovernmental Agreement (IGA) identifies the responsibilities of the Cities regarding funding for outside legal counsel. As indicated in the IGA, the total expense of joint representation by Engelman Berger, P.C. would not exceed \$80,000. The expense would be shared equally between each of the cities participating in the IGA. Avondale's share would be 25% of the total expense, which share is not expected to exceed \$20,000.

RECOMMENDATION:

Staff recommends that the City Council approve a resolution authorizing an intergovernmental agreement with the Cities of Glendale, Scottsdale and Chandler for joint legal representation related to claims made by the White Mountain Apache Tribe for surface water to be diverted from the Salt

River Watershed.

ATTACHMENTS:

Click to download

[Resolution 3056-712](#)

RESOLUTION NO. 3056-712

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT AMONG THE CITIES OF AVONDALE, CHANDLER, GLENDALE AND SCOTTSDALE PROVIDING FOR JOINT REPRESENTATION IN SETTLEMENT EFFORTS WITH RESPECT TO THE WATER RIGHTS CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE; AUTHORIZING THE CITY ATTORNEY TO EXECUTE THE INTERGOVERNMENTAL AGREEMENT.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Intergovernmental Agreement among the Cities of Avondale, Chandler, Glendale, and Scottsdale providing for joint representation in settlement efforts with respect to the water rights claims of the White Mountain Apache Tribe (the “Agreement”) is hereby approved in substantially the form attached hereto as Exhibit A.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, July 16, 2012.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3056-712

(Agreement)

See following pages.

INTERGOVERNMENTAL AGREEMENT

**AMONG THE CITIES OF AVONDALE, CHANDLER, GLENDALE, AND
SCOTTSDALE RELATING TO JOINT
REPRESENTATION IN SETTLEMENT EFFORTS RELATING TO THE WATER
RIGHTS CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE**

This Intergovernmental Agreement is made to be effective the 1st day of July, 2012, among the Cities of Avondale, Chandler, Glendale, and Scottsdale, municipal corporations, hereafter collectively referred to as the “Cities.”

Whereas, joint projects among the Cities allow the Cities to maximize their effectiveness and minimize their costs; and

Whereas, settlement activities are currently ongoing relating to the White Mountain Apache Tribe’s water rights claims, and the Cities agree that they prefer joint legal representation to assist them with these settlement efforts;

NOW, THEREFORE, for and in consideration of the terms and conditions of this Intergovernmental Agreement, the Cities agree as follows:

1. The purpose of this Intergovernmental Agreement (“IGA”) is to identify and define the responsibilities of the Cities relating to joint funding for outside legal counsel to represent the Cities in settlement activities relating to the White Mountain Apache Tribe’s water rights claims.

2. Subject to the terms of this IGA and the Contract for Legal Services (“Contract”) negotiated with outside counsel, the Cities agree to share in the costs of joint legal representation by outside counsel in settlement activities relating to the White Mountain Apache Tribe’s water rights claims. The term of this IGA shall expire upon the latest of the dates on which: 1) a settlement agreement as to the quantification of the water rights of the White Mountain Apache Tribe and the Cities of Avondale, Chandler, Glendale and Scottsdale (“Settlement Agreement”) becomes enforceable; and/or 2) the effective date of any other agreements that are exhibits to that Settlement Agreement, and to which any or all of the Cities of Avondale, Chandler, Glendale or Scottsdale are parties. Should any appeals(s) be filed challenging the adjudication court’s or courts’ orders(s), decree or decrees approving the Settlement, this IGA shall be extended until the final determination of any and all such appeals. The Cities agree to share the total cost of joint representation on a one-fourth basis. Costs shall be allocated as follows:

		<u>%</u>
Avondale		25%
Chandler	=	25%
Glendale	=	25%
<u>Scottsdale</u>	=	<u>25%</u>
All Cities	=	100%

3. Pursuant to the Contract among the Cities and the law firm of Engelman Berger, P.C., each of the Cities shall pay directly outside legal counsel its per capita share of the total costs of joint representation in response to monthly bills from outside counsel.

4. Subject to the Contract and the provisions of the Supreme Court's Rules of Professional Responsibility for Attorneys, each of the Cities agrees to cooperate in good faith with the other Cities in an effort to make the joint representation a success.

5. This IGA may be cancelled pursuant to A.R.S. § 38-511.

6. This IGA shall become effective upon approval and execution by the authorized representatives of all the Cities. The City Attorney for each City is authorized to execute the Contract for Legal Services and any renewals thereof.

7. Any property, tangible, intangible, personal, real or mixed which may be acquired under the terms of this IGA will, upon partial or complete termination of the IGA, be disposed of in equal pro-rata shares among the Cities.

8. The provisions of this IGA are severable. If any portion or portions of this Agreement are declared to be unlawful or void in a final court of competent jurisdiction, the remaining portions of this IGA which survive any such determination shall remain valid and enforceable according to their terms.

9. This IGA may be executed in counterparts, each of which may contain fewer than all signatures but all of which, together, shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement to be effective the date first written above.

[Signatures on following pages]

ATTEST:

CITY OF AVONDALE

By: _____

Its: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Avondale.

Avondale City Attorney

ATTEST:

CITY OF CHANDLER

By: _____

Its: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Chandler.

Chandler City Attorney

ATTEST:

CITY OF GLENDALE

By: _____

Its: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Glendale.

Glendale City Attorney

ATTEST:

CITY OF SCOTTSDALE

By: _____

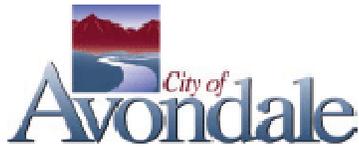
Its: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Scottsdale.

Scottsdale City Attorney



CITY COUNCIL REPORT

SUBJECT:

Resolution No. 3057-712 – Contract for Legal Services with Engelman Berger, P.C..

MEETING DATE:

July 16, 2012

TO: Mayor and Council

FROM: Wayne Janis, Water Resources Director (623) 333-4444

THROUGH: Charlie McClendon, City Manager

PURPOSE:

The purpose of this report is to inform the Council of recent activities related to claims made by the White Mountain Apache Tribe for surface water to be diverted from the Salt River Watershed and to request approval of a new Contract for Legal Services for joint legal representation in proceedings related to these claims.

BACKGROUND:

The law firm of Engelman Berger, P.C. currently represents the City of Avondale in the settlement activities relating to the White Mountain Apache Tribe's water rights claims. The existing Contract for Legal Services specifies financial accommodations and contains a Scope of Services for the firm of Engelman Berger, P.C. to serve as joint outside counsel for the Cities of Avondale, Chandler, Glendale, and Scottsdale, Arizona in settlement activities related to the water rights claims of the White Mountain Apache Tribe. Outside counsel organizes and/or attends meetings and/or conferences between the four participating cities and others, prepares appropriate documentation, and performs other related activities. Services performed under this Contract are consistent with the Intergovernmental Agreement (IGA) among the Cities of Avondale, Chandler, Glendale and Scottsdale relating to Joint Representation in Settlement Efforts Relating to the Water Rights Claims of the White Mountain Apache Tribe.

DISCUSSION:

Outside counsel has expended substantial effort in settlement activities related to this matter over several years. However, additional time and effort is needed to conclude the settlement. Most of the funds allocated in the prior contract have been expended and outside counsel has requested a new contract with an effective date of July 1, 2012. The new contract allows for an increase in hourly rate, as well as additional funds to complete any necessary activities on behalf of the City of Avondale and the other cities named in the contract. Duties of outside counsel would be the same as those provided in the prior contract and as are set forth in this new contract. The new contract would replace the existing contract in its entirety. The total expense of continued joint representation by Engelman Berger, P.C. is not expected to exceed \$80,000. The expense would be shared equally between each of the cities participating in the IGA. This contract would expire on July 1, 2013 if not renewed. Although it is not anticipated, outside legal counsel would request an amendment to renew the contract should the amount needed to complete the proceedings exceed \$80,000. The new contract may be renewed for successive one-year periods upon the approval of the City Attorney.

BUDGETARY IMPACT:

Avondale's share would be 25% of the total expense, which share is not expected to exceed \$20,000. Funding is available in the Water Resources Operating Budget (Line Item 501-9112-00-6180; Other Professional Services).

RECOMMENDATION:

Staff recommends that the City Council approve a new Contract for Legal Services with Engelman Berger, P.C.

ATTACHMENTS:

Click to download

[Resolution 3057-712](#)

RESOLUTION NO. 3057-712

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING A CONTRACT FOR LEGAL SERVICES AMONG THE CITIES OF AVONDALE, CHANDLER, GLENDALE AND SCOTTSDALE AND ENGELMAN BERGER, P.C. PROVIDING FOR JOINT REPRESENTATION IN SETTLEMENT EFFORTS WITH RESPECT TO THE WATER RIGHTS CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE; AUTHORIZING THE CITY ATTORNEY TO EXECUTE THE CONTRACT FOR LEGAL SERVICES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Contract for Legal Services among the Cities of Avondale, Chandler, Glendale, and Scottsdale providing for joint representation in settlement efforts with respect to the water rights claims of the White Mountain Apache Tribe (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, July 16, 2012.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3057-712

(Agreement)

See following pages.

CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services (“Contract”) is made to be effective this 1st day of July, 2012 (the “Effective Date”), by, between and among the Cities of Avondale, Chandler, Glendale, and Scottsdale, municipal corporations, hereafter collectively referred to as the “Cities,” and the law firm of Engelman Berger, P.C., hereinafter referred to as “Counsel”.

NOW, THEREFORE, for and in consideration of the financial accommodations and other terms and conditions of this Contract, the parties hereto agree as follows:

1. Scope of Services. Counsel agrees to represent the Cities in settlement activities relating to the water rights claims of the White Mountain Apache Tribe and the settlement of such possible claims (“Settlement Activities”). This representation shall be in accordance with the terms and conditions of this Contract and direction provided by attorneys employed by the Cities (“City Attorneys”).

- 1.1. Counsel agrees to perform services specified in this Contract. Counsel shall not be required to perform additional services under this Contract and may terminate this Contract if the amount of services and costs has reached the maximum limit as provided in Section 3 of this Contract and no mutually satisfactory arrangements have been made to increase that limit.
- 1.2. Counsel agrees to represent the Cities in Settlement Activities. For purposes of this Contract, “Settlement Activities” shall mean any of the following:
 - 1.2.1. A settlement conference conducted by the court, special master, mediator, arbitrator, or other designated persons;
 - 1.2.2. A meeting in which some or all of the parties to the Gila River General Stream Adjudication are invited to discuss settlement of the White Mountain Apache Tribe Claims;
 - 1.2.3. A document distributed to some or all of the parties to the Gila River General Stream Adjudication that sets out principles or specific provisions addressing settlement of any litigation related to or settlement of the White Mountain Apache Tribe’s water rights;
 - 1.2.4. Any proceedings or activities that relate to the process for court approval or enactment of federal or state legislation relating to the settlement of the White Mountain Apache Tribe water rights claims or allocation of Central Arizona Project water to the Tribe by the Secretary of Interior.
 - 1.2.5. Any activity required that is a condition for one or more of the Cities to receive water that is provided to such Cities under a Settlement Agreement relating to the White Mountain Apache Tribe water rights claims.
 - 1.2.6. Any other activity that relates to possible settlement of the White Mountain

Apache Tribe claims if Counsel obtains prior approval to participate in such activity from each designated City Representative.

- 1.3. Counsel shall meet with appropriate Representatives of the Cities, collectively and individually, as necessary to discuss and evaluate Settlement Activities.
- 1.4. Each City shall provide Counsel information as necessary to assist Counsel in its representation of the Cities in Settlement Activities.
- 1.5. Each City shall designate one Representative for Counsel to keep informed of Settlement Activities. No major decision regarding the resolution of Settlement Activities shall be made without the prior approval of each designated City Representative. All offers of compromise made by any party shall be promptly transmitted to each designated City Representative. Each City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to enter a counter-offer.

2. Term of Contract. Unless terminated or extended as provided herein, the term of this Contract shall expire on July 1, 2013; provided this Contract may be renewed for additional one (1) year periods upon the approval of the respective City Attorneys.

3. Case Budget; Authorized Expenditures. The Cities agree to pay Counsel for Settlement Activity services rendered pursuant to Subsection 1.2 of this Contract according to the hourly rates and expenses set forth in Exhibit A, with each City paying its allocation pursuant to the percentage divisions identified in Section 4 of this Contract. The total collective costs to the Cities for all attorneys' fees rendered under this Contract, including all expenses of any description, shall not exceed \$80,000.00.

- 3.1. The hourly rates for Counsel shall be inclusive of word processing services, clerical overtime and all other overhead expenses of Counsel which shall not be separately itemized and billed to the City; provided, that the expenses identified in Exhibit "A" shall be separately itemized and billed to the City.
- 3.2. Photocopying charges shall not exceed 15 cents per page.
- 3.3. Any expense to the Cities not expressly authorized in the text or by an exhibit to this Contract may be included in a billing of Counsel only if the expense was reasonably incurred in the performance of services under this Contract and is billed on an actual out-of-pocket cost basis to Counsel.

4. Payment for Services; Billing Format. Counsel shall prepare and distribute to the Cities a monthly billing for services rendered under this Contract.

- 4.1. The monthly billing shall consist of one, aggregate billing for all services furnished to the Cities under this Contract.
- 4.2. Counsel shall indicate clearly on each bill the allocated portion to be paid separately

by each City.

- 4.3. City allocations shall represent a one-fourth percentage division of the total bill. In order to limit total collective costs to no more than \$80,000.00 and also to divide equally the costs among the Cities, each City's percentage of costs was rounded to twenty-five (25) percent. Percentage allocations are as follows:

		<u>%</u>		<u>\$</u>
Avondale	=	25%	=	\$20,000.00
Chandler	=	25%	=	\$20,000.00
Glendale	=	25%	=	\$20,000.00
<u>Scottsdale</u>	=	<u>25%</u>	=	<u>\$20,000.00</u>
Total	=	100%	=	\$80,000.00

- 4.4. Within thirty (30) days of receipt of each monthly bill, each City shall remit to Counsel its allocated portion of the aggregate monthly billing.
- 4.5. Monthly billings shall clearly indicate time spent on tasks in increments of tenths of hours and the name or initials of the person(s) performing each task. Words in billing statements such as "analysis," "conference," "research" or "case preparation" shall only be used if supplemented by descriptions of specific topics or issues germane to the Scope of Services.
- 4.6. All billings of Counsel shall be subject to audit by the Cities. Counsel shall maintain during the term of this Contract, and for two (2) years thereafter, all books, documents, papers, accounting records and other evidence pertaining to time billed and costs incurred on behalf of the Cities pursuant to this Contract and shall make such materials available to the Cities upon request at Counsel's offices during normal business hours. The Cities shall give Counsel reasonable notice for Counsel to assemble such billing records.

5. Lead Attorney. William H. Anger shall serve as Lead Attorney to the Cities. Counsel shall not substitute another Lead Attorney to the Cities without the prior written consent of the Cities.

6. Subcontracting, Assignment, Experts. Services covered by this Contract shall not be assigned or subcontracted, in whole or in part, without the prior written consent of the City Attorneys. Technical experts shall not be retained by Counsel at the expense of the Cities without prior written consent of the City Attorneys.

7. Insurance, Indemnification. Counsel shall secure and maintain during the life of this Contract a Certificate of Insurance evidencing that Counsel carries Errors and Omissions Professional Liability Insurance with limits no less than \$1,000,000.00. Insurance evidenced by this certificate shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to the Cities.

8. Independent Contractor. The services provided by Counsel under this Contract are those of an independent contractor, not an employee.

9. Termination Under A.R.S. § 38-511. In accordance with A.R.S. § 38-511, the Cities may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Cities' departments or creating the contract on behalf of the Cities' departments agencies is, at any time while the contract or any extension of contract is in effect, an employee of any other party of the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the Cities is received by all other parties to the contract, unless the notice specifies a later time.

10. Common Interests and Conflicts of Interest. The Cities have decided upon joint representation in order to achieve economies of scale and to maximize the effectiveness of all the Cities represented by Counsel in Settlement Activities relating to White Mountain Apache Tribe's water rights claims. Counsel is directed to seek strategies and positions in Settlement Activities relating to White Mountain Apache Tribe's water rights claims that advance the common interests of the Cities. However, the Cities also recognize that from time to time issues may arise in Settlement Activities relating to the White Mountain Apache Tribe's water rights claims and as to which the Cities may have diverse, incompatible or conflicting interests. Accordingly, the Cities agree:

- 10.1. That Counsel shall fully and timely inform and explain to all Cities the factual and legal basis for each conflict of interest among the Cities which Counsel perceives as a result of the performance of its duties under this Contract respecting issues raised in Settlement Activities or litigation relating to the settlement of the White Mountain Apache Tribe's water rights claims; and
- 10.2. That the Cities shall disclose to Counsel perceived or known conflicts of interest among the Cities respecting issues raised in Settlement Activities or litigation relating to the White Mountain Apache Tribe's water rights.
- 10.3. In the event the Cities, with Counsel's assistance, are unable to resolve a conflict of interest among them, such conflicts shall be dealt with in accordance with the Supreme Court's Rules of Professional Responsibility; provided, however, this Contract shall be construed to confer upon each City and upon Counsel a direct obligation to negotiate in good faith in an attempt to resolve such concerns in order to allow Counsel to continue to represent the remaining Cities in situations where the rules would require Counsel to cease representing one or more of the Cities.
- 10.4. Each City is entitled to actively participate on issues in Settlement Activities or litigation relating to the White Mountain Apache Tribe's water rights claims and consistent with the Supreme Court's Rules of Professional Responsibility.
- 10.5. For convenience or cause other than a conflict of interest among the Cities, the Cities may withdraw from future obligations under their Contract with Counsel upon written notice to Counsel; provided, however, Counsel's Contract will remain in full force and effect as to the remaining Cities. Additionally, the percentage division and allocation of the total bill for the remaining cities as outlined in

Paragraph 4.3 shall be increased to make up for the loss of the withdrawing City. The withdrawing Cities shall pay Counsel for their proportionate share of all legal services and expenses incurred up to the date of withdrawal. If requested by the withdrawing city, Counsel shall provide the withdrawing city, within thirty (30) days a copy of Counsel's file provided that the withdrawing city shall pay Counsel for the photocopy charges incurred in copying said file. In the event the withdrawal of one or more Cities raises issues regarding use by Counsel for the remaining Cities of confidential or privileged information, such conflict shall be dealt with in accordance with the Supreme Court's Rules of Professional Responsibility; provided however this contract shall be construed to confer upon such City and upon Counsel a direct obligation to negotiate in good faith in an attempt to resolve such concerns in order to allow Counsel to continue to represent the remaining Cities in situations where the rules would require Counsel to cease representing one or more of the Cities.

10.6. That given the large number of diverse interested parties in Settlement Activities relating to the White Mountain Apache Tribe's water rights, Counsel shall generally have the right to continue to represent or to undertake to represent existing or new clients in any matter consistent with the Supreme Court's Rules of Professional Responsibility.

11. Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, Counsel hereby warrants to the City that Counsel and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Counsel Immigration Warranty").

11.1. A breach of the Counsel Immigration Warranty (Exhibit B) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the Contract.

11.2. Each City retains the legal right to inspect the papers of any Counsel or Subcontractor employee who works on this Contract to ensure that Counsel or Subcontractor is complying with the Counsel Immigration Warranty. Counsel, at the City's expense, agrees to assist the City in the conduct of any such inspections. The City's inspection rights under this Paragraph 11.2 only extend to such employee records necessary to determine whether Counsel or Counsel's Subcontractor is complying with the Counsel Immigration Warranty and not any other employment or other employee records. In conducting any inspections under this Paragraph 11.2, except as required by law, the City agrees to keep confidential and not disclose Counsel's employee's personal information such as social security numbers and other information of Counsel's employees.

11.3. Each City may, at its sole discretion, conduct random verifications of the employment records of Counsel and any of Counsel's Subcontractors who provide services under this Contract to ensure compliance with the Counsel Immigration Warranty. Counsel, at the City's expense, agrees to assist the City in performing

any such random verifications. The City's random verifications rights under this Paragraph 11.3 only extend to the right to review such employee records necessary to determine whether Counsel or Counsel's Subcontractor is complying with the Counsel Immigration Warranty and not any other employment or other employee records. In conducting any random verifications under this Paragraph 11.3, except as required by law, the City agrees to keep confidential and not disclose Counsel's employee's personal information such as social security numbers and other information of Counsel's employees.

- 11.4. The provisions of this Article must be included in any contract that Counsel enters into with any and all of its Subcontractors who provide services under this Contract or any subcontract. "Services" are 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.
- 11.5. In accordance with A.R.S. §35-397, Counsel hereby certifies that Counsel does not have scrutinized business operations in Iran.
- 11.6. In accordance with A.R.S. §35-397, Counsel hereby certifies that Counsel does not have scrutinized business operations in Sudan.

12. This Contract may be executed in counterparts, each of which may contain fewer than all signatures but all of which, together, shall constitute a single instrument.

[Signatures on following pages.]

ENGELMAN BERGER, P.C.

By: _____
Title: _____

**CITY OF AVONDALE, an
Arizona Municipal Corporation**

Andrew McGuire, City Attorney

**CITY OF CHANDLER, an
Arizona Municipal Corporation**

Mary Wade, City Attorney

**CITY OF GLENDALE, an
Arizona Municipal Corporation**

Michael J. Garcia, City Attorney

**CITY OF SCOTTSDALE, an
Arizona Municipal Corporation**

Bruce Washburn, City Attorney

EXHIBIT "A"

During the term of the Contract, Counsel will bill the Cities at the hourly rate of \$305.00 for the time of William H. Anger and other shareholders in the firm; Counsel's hourly rate may increase by \$15.00 per hour each year on the anniversary of the Effective Date. All other attorneys in the firm or attorneys contracted by the firm to perform services under this Contract will be billed at the rate not to exceed \$265.00 per hour which rate may be increased by \$15.00 per hour on the anniversary of the Effective Date. Paralegals will be billed at the rate of \$170.00 per hour, which rate may be increased by \$10.00 per hour on the anniversary of the Effective Date.

Counsel will bill for the reasonable expenses incurred in performing its legal services. These expenses will include long-distance telephone charges, fax charges, electronic research charges, delivery charges, mail expense associated with any filing in the case, printing and copying, and payments to third parties for filing fees, transcripts, travel expenses, including, without limitation, meals and lodging, for settlement negotiations and meetings outside of the Phoenix metropolitan area, and other items for the Cities' benefit under this Contract.

EXHIBIT B

**Counsel Immigration Warranty
To Be Completed by Counsel Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by Counsel and Subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form, Counsel shall attest that it, and all Subcontractors performing work under the cited Contract, meets all conditions contained herein.

Contract Description: Joint Representation of the Cities of Avondale, Chandler, Glendale and Scottsdale relating to the White Mountain Apache Tribe's Water Rights
Name (as listed in the contract): Engelman Berger, P.C.
Street Name and Number: 3636 North Central Avenue, Suite 700
City: Phoenix State: Arizona Zip Code: 85012

I hereby attest that:

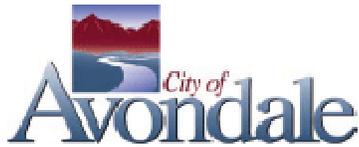
1. Counsel complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All Subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees; and
3. Counsel has identified all Counsel and Subcontractor employees who perform work under the Contract on the attached Employee Verification Worksheet and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214.

Signature of Counsel (Employer) or Authorized Designee:

Printed Name: _____

Title: _____

Date (month/day/year): _____



CITY COUNCIL REPORT

SUBJECT:

Resolution 3061-712 - Authorizing Grant
Acceptance from GOHS for DUI Enforcement

MEETING DATE:

July 16, 2012

TO: Mayor and Council

FROM: Rogene Hill, Assistant City Manager (623) 333-1012

THROUGH: Charlie McClendon, City Manager

PURPOSE:

City Staff is requesting adoption of a resolution allowing Police to accept a grant in the amount of \$25,000 to support DUI overtime.

BACKGROUND:

The Avondale Police Department is an active participant in most West Valley task forces and recognizes the necessity and responsibility to actively participate in these events. The Avondale Police Department plans to host two DUI task forces throughout the year with the jail, transport and testing facilities being open to participating agencies. The funding will be used to conduct dedicated DUI enforcement within the City of Avondale.

DISCUSSION:

The DUI task forces are crucial in educating, enforcing, and preventing DUI's in the valley. Participation in these task forces are valuable to city staff and to the valley. Prior year funding has been used to conduct dedicated DUI enforcement within Avondale. This funding would allow for the Avondale Police Department to use its resources to the fullest, extending DUI coverage through the holidays where enforcement is most important.

BUDGETARY IMPACT:

City staff is requesting authorization for the acceptance of Grant Funds for \$25,000.00 to provide DUI Enforcement. There are no match requirements for this Grant. Federal (402) funds will support Personnel Services (Overtime) Expenses to enhance DUI Enforcement throughout the City of Avondale.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution authorizing the acceptance of a grant in the amount of \$25,000.00 for the Avondale Police Department's Driving Under the Influence Enforcement Program through the Governor's Office of Highway Safety Grant Program.

ATTACHMENTS:

Click to download

[Resolution 3061-712](#)

RESOLUTION NO. 3016-712

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACCEPTANCE OF GRANT FROM THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY FOR OVERTIME PAY.

WHEREAS, the Governor's Office of Highway Safety has awarded the City of Avondale (the "City") a grant in the amount of \$25,000.00 for project funding relating to overtime pay with respect to police officers participating in the City Police Department's Driving Under the Influence Task Force (the "Grant"); and

WHEREAS, the Mayor and Council of the City of Avondale ("City Council") desire to accept the Grant funds.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The City Council hereby authorizes (i) the acceptance of the Grant in an amount not to exceed \$25,000.00 and (ii) the execution of the GOHS Highway Safety Contract with the Governor's Office of Highway Safety relating to the acceptance and administration of the Grant funds (the "Agreement") in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit the Agreement and any other necessary or desirable instruments in connection with the Grant 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, July 16, 2012.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3061-712

[Agreement]

See following pages.

HIGHWAY SAFETY CONTRACT

This page, the Project Director's Manual and attached hereto and incorporated herein by reference, constitute the entire contract between the parties hereto unless deviation is authorized in writing by the Governor's Highway Safety Representative.

CFDA 20.600

1. APPLICANT AGENCY Avondale Police Department	GOHS CONTRACT NUMBER 2013-AL-010
ADDRESS 11485 W. Civic Center Drive, Avondale, Arizona 85323	PROGRAM AREA 401 - AL TASK 1
2. GOVERNMENTAL UNIT City of Avondale	AGENCY CONTACT Lt. Memo Espinoza
ADDRESS City of Avondale	3. PROJECT TITLE
4. GUIDELINES 402 - Alcohol (AL)	DUI Enforcement

5. BRIEFLY STATE PURPOSE OF PROJECT:
Federal (402) funds will support Personnel Services (Overtime) and Employee Related Expenses to enhance DUI Enforcement throughout the City of Avondale.

6. BUDGET COST CATEGORY	Project Period FY 2013
I. Personnel Services	\$19,263.00
II. Employee Related Expenses	\$5,737.00
III. Professional and Outside Services	\$0.00
IV. Travel In-State	\$0.00
V. Travel Out-of-State	\$0.00
VI. Materials and Supplies	\$0.00
VII. Capital Outlay	\$0.00
TOTAL ESTIMATED COSTS	\$25,000.00

PROJECT PERIOD FROM: Effective Date (*Date of GOHS Director Signature*) TO: 09-30-2013

CURRENT GRANT PERIOD FROM: 10-01-2012 TO: 09-30-2013

TOTAL FEDERAL FUNDS OBLIGATED THIS FY: \$25,000.00

A political subdivision or state agency that is mandated to provide a certified resolution or ordinance authorizing entry into this contract must do so prior to incurring any expenditures. Failure to do so may result in termination of the awarded contract.

PROBLEM IDENTIFICATION AND RESOLUTION:**Agency Background:**

The City of Avondale is comprised of 63 square miles and borders the Cities of Phoenix, Tolleson, Litchfield Park and Goodyear. Avondale's current population is about 76,238, according to the 2010 Census Bureau. The Maricopa Association of Government (MAG) has forecast the population to be about 104,527 by the year 2020. There is an estimated 298 miles of roadway within the City of Avondale that is traveled by over 50 million vehicles (estimated) in a year, according to the City of Avondale Traffic Engineering Department. Avondale has three major highways: 1) 101 Loop, 2) I-10, and 3) Maricopa County Route 85. The City of Avondale is blossoming from a small town to a modern economic city. The Avondale Police Department comprised of 115 sworn officers. The Avondale Police Department is responsible for traffic enforcement within the city of Avondale; to include, enforcing traffic laws, investigating collisions, and the detection and apprehension of impaired drivers.

Agency Problem:

The Avondale Police Department is an active participant in most West Valley task forces and recognizes the necessity and responsibility to actively participate in these events. The Avondale Police Department plans to host two DUI task forces throughout the year with our jail, transport and testing facilities being open to participating agencies. The funding put forth is used to conduct dedicated DUI enforcement within the City of Avondale; however, funding of FY2012 grant will be depleted by the end of September 2012. With the addition of our motor officers, additional funding would allow for the Avondale Police Department to use its resources to the fullest, extending our DUI coverage through the holidays where enforcement is most important.

Agency Attempts to Solve Problem:

The Avondale Police Department has taken steps to suppress the DUI/impaired driver's problems by implementing the Traffic Services Bureau (TSB) in 2004. By increasing the traffic bureau, Avondale Police Department has increased the department's efficiency and effectiveness related to DUI/impaired drivers. The DUI task forces are crucial in educating, enforcing, and preventing DUI's in the valley. Participation in these task forces are valuable to not only our city, but to the valley as well. Prior yearly funding has been used to conduct dedicated DUI enforcement within Avondale. The addition of motor officers, has allowed the Avondale Police Department to use its resources to the fullest; while extending our DUI coverage through the holidays. Avondale Police Department has added a DUI mobile command post and other related DUI equipment; including training to phlebotomist and DRE's. These changes have confidently allowed Avondale Police Department to expedite the processing time and increase the amount of DUI arrests by getting the officer back on the street.

Agency Funding:

Federal (402) funds will support Personnel Services (Overtime) and Employee Related Expenses to enhance DUI Enforcement throughout the City of Avondale.

How Agency Will Solve Problem With Funding:

Avondale Police Department DUI Enforcement is outlined as followed:

October 1, 2012 – December 31, 2012

To host and/or participate in Two (2) DUI enforcement details or task forces within the City of Avondale and/or neighboring cities by December 31, 2013.

January 1, 2013 – March 31, 2013

To conduct Two (2) DUI enforcement details within the City of Avondale by March 31, 2013.

April 1, 2013 – June 30, 2013

To conduct One (1) DUI enforcement details within the City of Avondale by April 30, 2013.

July 1, 2013 – September 30, 2013

To conduct One (1) DUI enforcement details within the City of Avondale by September 30, 2013.

TRAFFIC DATA SUMMARY

DESCRIPTION	LAST YEAR (2011)	TWO YEARS AGO (2010)	THREE YEARS AGO (2009)
TOTAL FATAL COLLISIONS	4	2	1
TOTAL INJURY COLLISIONS	174	126	140
TOTAL COLLISIONS INVESTIGATED	1304	0	0
ALCOHOL-RELATED FATALITIES	0	0	0
ALCOHOL-RELATED INJURIES	8	6	9
SPEED-RELATED FATALITIES	1	1	1
SPEED-RELATED INJURIES	23	0	0
PEDESTRIAN FATALITIES	1	0	0
PEDESTRIAN INJURIES	7	0	0
BICYCLE FATALITIES	1	0	0
BICYCLE INJURIES	2	0	0
TOTAL DUI ARRESTS	188	179	225
TOTAL MISDEMEANOR DUI ARRESTS	169	179	225
TOTAL AGGRAVATED DUI ARRESTS	19	0	0
TOTAL EXTREME DUI .15 ARRESTS	111	0	0
TOTAL DUI-DRUG ARRESTS	4	0	0
TOTAL DRE EVALUATIONS	11	0	0
SOBER DESIGNATED DRIVERS CONTACTED	0	0	0
UNDERAGE ALCOHOL VIOLATIONS - TITLE 4	97	0	0
UNDERAGE DUI ARRESTS	11	1	0
UNDERAGE DUI-DRUG ARRESTS	1	0	0
TOTAL AGENCY CITATIONS	5482	6895	5784
SPEED CITATIONS	2287	3169	2270
RED LIGHT RUNNING CITATIONS	128	60	69
SEAT BELT CITATIONS	200	359	239
CHILD SAFETY SEAT CITATIONS	49	278	425

GOALS/OBJECTIVES:

Federal (402) funds will support Personnel Services (Overtime) and Employee Related Expenses to enhance DUI Enforcement throughout the City of Avondale. The following goals and objectives shall be accomplished as a result of this funding:

- Expend funding for Personnel Services (overtime) and Employee Related Expenses provided for DUI activities by September 30, 2013.
- To reduce or maintain the total number of alcohol involved traffic fatalities through DUI enforcement by December 31, 2013.
- To reduce or maintain the total number of alcohol involved traffic injuries through DUI enforcement by December 31, 2013.
- To increase total department-wide DUI arrests by 5% percent from the calendar 2011 base year total of **188 to 198** by December 31, 2013.
- To participate in 6 DUI Task Force Operations by September 30, 2013.
- To prepare complete press release information for media (television, radio, print and on-line) during each campaign period including a main press release, schedule of events, departmental plans and relevant data. **The material will emphasize the campaign's purpose, aggressive enforcement and the high cost of DUI in terms of money, criminal and human consequences.**

METHOD OF PROCEDURE:

The Avondale Police Department will implement the following strategies to meet the outlined goals and objectives:

- Increase enforcement capabilities by implementing additional personnel services (overtime) to participate in DUI activities.
- Develop DUI enforcement projects that will provide highly visible patrols and selective enforcement methods utilizing up-to-date field sobriety techniques.
- Develop comprehensive community DUI prevention projects that employ collaborative efforts in the development and execution of strategic information and education campaigns targeting youth and adults, and focusing specific attention to those who engage in high-risk behaviors.
- Provide DRE training for enforcement officers, prosecutors, and judges to facilitate in the arrest, prosecution, and adjudication of alcohol and/or drug impaired drivers.
- Develop Public information and educational campaigns to raise awareness specific to Arizona's goals and objectives in reducing impaired driving fatalities and collisions. These activities shall include print, radio, television, on-line electronic and other possible innovative projects.

- Work in correlation with the statewide GOHS funded traffic safety prosecutor that is available to all police agencies and adjudicating prosecuting attorney's offices, particularly for cases that may set a state precedent.
- Provide training opportunities for laboratory technicians, law enforcement and prosecutors on use of current technology and new phlebotomy projects.
- Participation is mandatory in multi-agency task forces, specifically the statewide Arizona DUI Task Forces. The mission of these Task Forces is to *"Unite Arizona communities to implement a coordinated public information and education campaign along with combined DUI enforcement activities with an emphasis on holidays and specific event days throughout the year."*
- The Agency will provide a schedule of their respective DUI Task Force details or planned participation in other agency DUI Task Force details a minimum of Three (3) weeks prior to each Mandatory Reporting Period.
- To develop a DUI Operational Plan to establish the method of operation with goals and objectives applicable upon initiation of contracted grant program.

And, in addition, it is the responsibility of the Avondale Police Department to report all holiday task force or individual agency sustained enforcement statistics to GOHS on-line at the GOHS website **no later than 10:00a.m. the morning following each day of the event.**

The holidays and special events include but not limited to: Super Bowl Sunday, Valentine's Day, President's Day, St. Patrick's Day, Spring Break, Easter, Cinco de Mayo, Prom Night, Memorial Day, Graduation Day, Independence Day, Labor Day, Columbus Day, Halloween, and the Thanksgiving through New Year's details.

PLEASE NOTE: Failure to report statistics on time and correctly may result in reimbursements being delayed until completed.

PRESS RELEASE:

Agencies are required to develop and distribute a press release announcing this grant award (a copy of this press release shall be sent to the GOHS Director at the same time it is sent to the media). This press release shall include the objective and specify that the funding is from the Governor's Office of Highway Safety.

BAC TESTING AND REPORTING REQUIREMENTS:

Alcohol impairment is a major contributing factor in fatality and serious injury motor vehicle collisions. Accurate data on alcohol involvement is essential to understanding the full extent of the role of alcohol and to assess progress toward reducing impaired driving.

Arizona is presently and consistently below the documented average among the states in the Blood Alcohol (BAC) testing of drivers involved in fatality motor vehicle collisions.

Each law enforcement agency that receives an enforcement-related grant is required to ensure that this accurate data on all drivers involved are reported. Failure to comply may result in withholding funds and cancellation of the enforcement contract until this requirement is met.

PURSUIT POLICY:

All law enforcement agencies receiving federal funds are encouraged to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police (IACP) that are currently in effect.

SPECIFIC REQUIREMENTS:**Requirements for Professional and Outside Services:**

A copy of all contracts for "Professional and Outside Services" must be submitted to the GOHS Director for written approval before execution.

Requirements for Public Information and Education Materials:

Prior to the printing and distribution of public information and education materials, a sample will be provided to the GOHS Director for review and written approval.

Requirements for Paid Media:

All paid media must be pre-approved by the GOHS Director to ensure that consistent messages are sent statewide. Requests for paid media must include, *at a minimum*, scripts, description of target audience (to include methodology for identifying target audience), type of media to be utilized (electronic, print), campaign schedule, and budget. Additional information may be requested on a case by case basis.

METHOD OF PROCUREMENT:

Procurement procedures shall be in accordance with the Project Director's Manual. Additionally, the Avondale Police Department shall follow State Procurement Code.

A clear audit trail must be established to determine costs charged against this contract. Substantiation of costs shall, where possible, be made utilizing the Avondale Police Department documentation consisting of, but not limited to, copies of time sheets, purchase orders, copies of invoices, and proof of payment.

The Project Director shall retain copies of all documentation in the project file.

State Contract:

Procurement may be made using an open state contract award. Documents submitted to substantiate purchase using an open state contract must bear the contract number.

PROJECT EVALUATION:

This project shall be administratively evaluated to ensure that the objectives have been met.

Quarterly Report

The Quarterly Report (QR) purpose is to provide information on contracted grant activities conducted at the conclusion of each respective quarter. The information provided is used to review progress of the funded project and the successfulness in meeting outlined goals and objectives. The information, photos, highlights,

obstacles, and mandatory statistical data provided in this report are analyzed by the assigned project coordinator. It is critical that the on-line report contains the following information:

- Description of projects/activities conducted to achieve goals and objectives supported by the funding.
- Progress towards the completion of the project meeting the goals and objectives of the funded project. Examples additionally include public information, educational activities, electronic and printed media activities (include newspaper clippings)
- Report of status of procurement process as well as the current and federal fiscal year-to-date program expenditures (equipment materials/supplies etc.)
- Specific problem areas encountered and solutions identified (if applicable)
- Photograph of capital outlay equipment
 - Capital Outlay Equipment Form (Equipment \$5,000 or more)
- Quarterly Enforcement Form
- Original signatures on all Quarterly Reports and RCI's
 - Signatures must include Project Director unless prior authorization for another is on file with GOHS.

Report Schedule

Reporting Period	Due Date
Quarterly Report (October 1 to December 31)	January 15
Quarterly Report (January 1 to March 31)	April 15
Quarterly Report (April 1 to June 30)	July 15
Quarterly Report (July 1 to September 30)	October 31
Final Statement of Accomplishment	October 31

The Quarterly Report **shall be completed on the available on-line form and submitted by mail** to the Governor's Office of Highway Safety. **Note:** The "Quarterly Summary Enforcement Report must be included with each Quarterly Report and Final Statement of Accomplishment.

Final Statement of Accomplishments

The Project Director shall submit a Final Statement of Accomplishments Report to the GOHS **no later than 30 days following the contract end date**. All agencies receiving funding are required to submit a Final Statement of Accomplishments Report. The report is a summary overview of the contracted project and is reviewed by the GOHS project coordinator to determine the following:

- How effective was the funded project in reducing or eliminating the identified traffic safety problem?
- Were the goals and objectives outlined in the contract achieved?
- What positive accomplishments or obstacles/deficiencies did the grantee face in pursuit of their respective goals and objectives?

➤ Evaluate the overall worth of the project?

➤ Will the project be continued in the future (Describe in detail) regardless of assistance from GOHS?

Note: Failure to comply with the outlined GOHS reporting requirements may result in withholding of federal funds or termination of the contract.

PROFESSIONAL AND TECHNICAL PERSONNEL:

Kevin Kotsur, Chief, Avondale Police Department, shall serve as Project Director.

Memo Espinoza, Lieutenant, Avondale Police Department, shall serve as Project Administrator.

Michelle S. Harrington, Governor's Office of Highway Safety, shall serve as Project Coordinator.

REPORT OF COSTS INCURRED (RCI):

The Project Director shall submit a Report of Costs Incurred (RCI) with supporting documentation attached, to the Governor's Office of Highway Safety at a minimum on a quarterly basis in correlation required report. Agencies may submit additional RCI's forms for expenditures when funds have been expended for which reimbursement is being requested.

RCI's shall be typed and delivered via mail or hand with appropriate supporting documentation, delivered to the Governor's Office of Highway Safety. **Electronically submitted RCI's will not be accepted.** Final RCI's will not be accepted after thirty (30) days after the conclusion of each federal fiscal year (September 30th). **Expenditures submitted after the expiration date will not be reimbursed and the agency will accept fiscal responsibility.**

The Governor's Office of Highway Safety will provide the RCI template and instructions with this contract. Failure to meet this requirement may be cause to terminate the project.

PROJECT MONITORING:

Traffic safety grant project monitoring is used by GOHS project coordinators to track the progress of project objectives, performance measures and compliance with applicable procedures, laws, and regulations.

The process is used throughout the duration of the contracted project and serves as a continuous management tool. Project monitoring also presents a good opportunity for developing partnerships, sharing information and providing assistance to contracted agencies. Additionally, project monitoring outlines a set of procedures for project review and documentation.

Project monitoring also serves as a management tool for:

- Detecting and preventing problems
- Helping to identify needed changes
- Identifying training or assistance needed
- Obtaining data necessary for planning, and evaluation

- Identifying exemplary projects

Types of Monitoring

Monitoring is formal and informal, financial and operational. The most common types of monitoring are:

- Ongoing contact with the contracted grantee through phone calls, e-mails, correspondence, and meetings
- On-Site and/or In-House monitoring reviews of project operations, management, and financial records and systems
- Review of project Quarterly Reports
- Review and approval of Requests for Cost Incurred (RCIs)
- Desk review of other documents in the project-grant files for timely submission and completeness

Monitoring Schedule	
Total Awarded Amount	Type of Monitoring
Under \$50,000.00	Desk Review/Phone Conference.
\$50,000.01-\$99,999.99	In-House GOHS Review
\$100,000+	On-Site
Capital Outlay Greater than \$25,000.00 (combined)	On-Site
Desk Review and Phone Conference	Internal Review of all written documentation related to contractual project including but not limited to contract, quarterly reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. A phone conference call conducted during the course of the project which includes the date and time of the call, the person/s contacted and the results. Serves as an informational review to determine progress of programmatic/financial activities. Both the designated project administrator and fiscal contact should be present, if possible, during the phone conference. If identified financial or operational problems are present, GOHS reserves the right to bring the grantee in for an in-house meeting at GOHS. Monitoring form written by Project Coordinator, any findings or areas of improvement, concern or recognition will be provided to the grantee.
In-House Review	Documents performance review results including project activities, reimbursement claims review, equipment purchases, approvals, and other information. Reviews applicable information related to the project(s) including but not limited to contract, quarterly reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. Completed at GOHS in a meeting with appropriate operational and financial personnel. Monitoring form written by Project Coordinator, any findings or areas of improvement, concern or recognition will be provided to the grantee.
On-Site Monitoring	Documents performance review results including project activities, reimbursement claims review, equipment purchases, and other information. Reviews applicable information related to the project(s) including but not limited to contract, quarterly reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. Conducted on-site at the grantee's agency with monitoring form completed on-site by Project Coordinator. Any findings or areas of improvement, concern, or recognition, will be provided to the grantee.

Documentation

All findings will be documented on the GOHS Monitoring Form and placed in the grantee's respective federal file. Findings will be discussed with the grantee designated contract representative (project administrator, fiscal specialist) by phone and/or e-mail. All noted deficiencies will be provided to the grantee with guidance for improvement and solutions to problems. Grantees that exhibit significantly poor performance will be placed on a performance plan as outlined by the project coordinator. Grantee monitoring information will additionally provide documentation for potential funding in subsequent fiscal year grant proposal review.

PROJECT PERIOD:

The Project Period shall commence on the date the GOHS Director signs the Highway Safety Contract and terminate on September 30 of that or subsequent year as indicated on the Highway Safety Contract.

DURATION:

Contracts shall be effective on the date the Governor's Office of Highway Safety Director signs the contract and expire at the end of the project period.

If the Agency is unable to expend the funds in the time period specified and needs an extension, a typed extension request shall be signed by the Project Director on the Agency's letterhead and submitted via mail or hand delivered to the Director of the Governor's Office of Highway Safety within ninety (90) days before the end of the project period.

Electronic, handwritten and verbal requests to alter the Contract in any manner will not be accepted.

Failure to comply may result in cancellation of the contract. Any unexpended funds remaining at the termination of the contract shall be released back to the Governor's Office of Highway Safety.

ESTIMATED COSTS:

I.	Personnel Services (overtime)	\$19,263.00
II.	Employee Related Expenses	\$5,737.00
III.	Professional and Outside Services	\$0.00
IV.	Travel In-State	\$0.00
V.	Travel Out-of-State	\$0.00
VI.	Materials and Supplies	\$0.00
VII.	Capital Outlay	\$0.00

TOTAL ESTIMATED COSTS***\$25,000.00**

*Includes all applicable training, tax, freight, and advertising costs. The GOHS reserves the right to limit reimbursement of Employee Related Expenses from zero (0) to a maximum rate of 40 percent. This is the maximum ERE amount to be reimbursed. It is agreed and understood that the Avondale Police Department shall absorb any and all expenditures in excess of **\$25,000.00**.

**DAILY ENFORCEMENT REPORT
(For Agency Use Only)**

Month Day Year

DESCRIPTION	CONTRACT ACTIVITY	AGENCY ACTIVITY
TOTAL FATAL COLLISIONS		
TOTAL INJURY COLLISIONS		
TOTAL COLLISIONS INVESTIGATED		
ALCOHOL-RELATED FATALITIES		
ALCOHOL-RELATED INJURIES		
SPEED-RELATED FATALITIES		
SPEED-RELATED INJURIES		
PEDESTRIAN FATALITIES		
PEDESTRIAN INJURIES		
BICYCLE FATALITIES		
BICYCLE INJURIES		
TOTAL DUI ARRESTS		
TOTAL MISDEMEANOR DUI ARRESTS		
TOTAL EXTREME DUI .15 ARRESTS		
TOTAL AGGRAVATED DUI ARRESTS		
TOTAL DUI DRUG ARRESTS		
TOTAL DRE EVALUATIONS		
SOBER DESIGNATED DRIVERS CONTACTED		
UNDERAGE ALCOHOL VIOLATIONS - TITLE 4		
UNDERAGE DUI ARRESTS		
UNDERAGE DUI-DRUG ARRESTS		
TOTAL AGENCY CITATIONS		
SPEED CITATIONS		
RED LIGHT RUNNING CITATIONS		
SEAT BELT CITATIONS		
CHILD SAFETY SEAT CITATIONS		

**QUARTERLY ENFORCEMENT REPORT
(Submitted to GOHS)**

Reporting Period

DESCRIPTION	CONTRACT ACTIVITY	AGENCY ACTIVITY
TOTAL FATAL COLLISIONS		
TOTAL INJURY COLLISIONS		
TOTAL COLLISIONS INVESTIGATED		
ALCOHOL-RELATED FATALITIES		
ALCOHOL-RELATED INJURIES		
SPEED-RELATED FATALITIES		
SPEED-RELATED INJURIES		
PEDESTRIAN FATALITIES		
PEDESTRIAN INJURIES		
BICYCLE FATALITIES		
BICYCLE INJURIES		
TOTAL DUI ARRESTS		
TOTAL MISDEMEANOR DUI ARRESTS		
TOTAL EXTREME DUI .15 ARRESTS		
TOTAL AGGRAVATED DUI ARRESTS		
TOTAL DUI DRUG ARRESTS		
TOTAL DRE EVALUATIONS		
SOBER DESIGNATED DRIVERS CONTACTED		
UNDERAGE ALCOHOL VIOLATIONS - TITLE 4		
UNDERAGE DUI ARRESTS		
UNDERAGE DUI-DRUG ARRESTS		
TOTAL AGENCY CITATIONS		
SPEED CITATIONS		
RED LIGHT RUNNING CITATIONS		
SEAT BELT CITATIONS		
CHILD SAFETY SEAT CITATIONS		

CERTIFICATIONS AND AGREEMENTS

This CONTRACT, is made and entered into by and between the STATE OF ARIZONA, by and through the Governor's Office of Highway Safety (GOHS) hereinafter referred to as "STATE", and the agency named in this Contract, hereinafter referred to as "AGENCY".

WHEREAS, the National Highway Safety Act of 1966, as amended (23 USC §§401-404), provides Federal funds to STATE for approved highway safety projects; and

WHEREAS, STATE may make said funds available to various state, county, tribal, or municipal agencies, governments, or political subdivisions upon application and approval by STATE and the United States Department of Transportation (USDOT); and

WHEREAS, AGENCY must comply with the requirements listed herein to be eligible for Federal funds for approved highway safety projects; and

WHEREAS, AGENCY has submitted an application for Federal funds for highway safety projects;

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL PROMISES AND OTHER GOODS AND VALUABLE CONSIDERATION, it is mutually agreed that AGENCY will strictly comply with the following terms and conditions and the following Federal and State Statutes, Rules, and Regulations:

I. Project Monitoring, Reports, and Inspections

- A. AGENCY agrees to fully cooperate with representatives of STATE monitoring the project, either on-site or by telephone, during the life of the Contract.
- B. AGENCY will submit Quarterly Reports (one for each three-month period of the project year) to STATE in the form and manner prescribed by STATE. Notice of the specific requirements for each report will be given in this Contract or at any time thereafter by giving thirty (30) days written notice to AGENCY by ordinary mail at the address listed on the Contract. Failure to comply with Quarterly Report requirements may result in withholding of Federal funds or termination of this Contract.
- C. AGENCY will submit a Final Report/Statement of Accomplishment at completion of the Contract to include all financial, performance, and other reports required as a condition of the grant to STATE within thirty (30) days of the completion of the Contract.
- D. Representatives authorized by STATE and the National Highway Traffic Safety Administration (NHTSA) will have the right to visit the site and inspect the work under this Contract whenever such representatives may determine such inspection is necessary.

II. Reimbursement of Eligible Expenses

- A. AGENCY'S Project Director, or Finance Personnel, will submit a Report of Costs Incurred Form (RCI) to STATE each time there have been funds expended for which reimbursement is being requested. Failure to meet this requirement may be cause to terminate the project under section XIX herein, "Termination and Abandonment".

- B. AGENCY will reimburse STATE for any ineligible or unauthorized expenses for which Federal funds have been claimed and reimbursement received, as may have been determined by a State or Federal audit.
- C. STATE will have the right to withhold any installments equal to the reimbursement received by AGENCY for prior installments which have been subsequently determined to be ineligible or unauthorized.

III. Property Agreement

- A. AGENCY will immediately notify STATE if any equipment purchased under this Contract ceases to be used in the manner as set forth by this Contract. In such event, AGENCY further agrees to either give credit to the project cost or to another active highway safety project for the residual value of such equipment in an amount to be determined by STATE or to transfer or otherwise dispose of such equipment as directed by STATE.
- B. No equipment will be conveyed, sold, salvaged, transferred, etc., without the express written approval of STATE, or unless otherwise provided elsewhere in this Contract.
- C. AGENCY will maintain or cause to be maintained for its useful life, any equipment purchased under this Contract.
- D. AGENCY will incorporate any equipment purchased under this Contract into its inventory records.
- E. AGENCY will insure any equipment purchased under this Contract for the duration of its useful life. Self-insurance meets the requirements of this section.

IV. Travel

In-State and Out-of-State Travel

In-state and out-of-state travel claims will be reimbursed at rates provided by AGENCY'S regulations, provided that such regulations are as restrictive as those of STATE. Where they are less restrictive, ARS §38-624 will apply.

All out-of-state travel must be approved in writing in advance by STATE.

V. Standard of Performance

AGENCY hereby agrees to perform all work and services herein required or set forth, and to furnish all labor, materials, and equipment, except that labor, material, and equipment as STATE agrees to furnish pursuant to this Contract.

VI. Hold Harmless Agreement

Neither party to this agreement agrees to indemnify the other party or hold harmless the other party from liability hereunder. However, if the common law or a statute provides for either a right to indemnify and/or a right to contribution to any party to this agreement then the right to pursue one or both of these remedies is preserved.

VII. Non-Assignment and Sub-Contracts

This Contract is not assignable nor may any portion of the work to be performed be sub-contracted unless specifically agreed to in writing by STATE. No equipment purchased hereunder may be assigned or operated by other than AGENCY unless agreed to in writing by STATE.

VIII. Work Products and Title to Commodities and Equipment

- A. The work product and results of the project are the property of STATE, unless otherwise specified elsewhere in this Contract. All property, instruments, non-consumable materials, supplies, and the like, which are furnished or paid for by STATE under the terms of this Contract, unless otherwise provided for elsewhere in this Contract, are and remain the property of STATE and will be returned at the completion of this project upon request of STATE. The work product and results of the project will be furnished to STATE upon request, if no provision is otherwise made by this Contract.
- B. The provisions of subparagraph A apply whether or not the project contracted for herein is completed.

IX. Copyrights and Patents

Any copyrightable materials, patentable discovery, or invention produced in the course of this project may be claimed by STATE and a copyright or patent obtained by it at its expense. In the event STATE does not wish to obtain such copyright or patent, AGENCY may do so, but in any event, provision will be made by AGENCY for royalty-free, nonexclusive, nontransferable, and irrevocable licenses to be given the United States Government and STATE and its political subdivisions to use such copyrightable material, patented discoveries, or inventions in any manner they see fit. The STATE reserves the right to impose such other terms and conditions upon the use of such copyrights or patents as may be deemed in the best interest of STATE in the event AGENCY is allowed to obtain a copyright or patent.

X. "Common Rule" and OMB Circular No. A-102 (Revised)

"Common Rule" (49 CFR, Part 18): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

OMB Circular No. A-102 (Revised): Grants and Cooperative Agreements with State and Local Governments

The application of USDOT "Common Rule" and Circular A-102 requires that:

AGENCY and sub-grantees will use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law. The most stringent purchasing requirement at each level must be met.

The Arizona Procurement Code (ARS, §41-2501, et. seq.) and promulgated rules (A.A.C. Title 2, Chapter 7) are a part of this Contract as if fully set forth herein and AGENCY agrees to fully comply with these requirements for any procurement using grant monies from this Contract.

XI. Equal Opportunity

- A. Pursuant to the requirements of the Federal-Aid Highway Act of 1968 (U.S.C. §103 et. seq.), AGENCY, as a condition to receiving approval of this Contract submitted under the Highway Safety Act of 1966, as amended, hereby gives its assurance that employment in connection with the subject Highway Safety Project will be provided without regard to race, color, creed, sex, or national origin, and that any contract it enters into with any private agency pursuant hereto will include provisions in compliance with this paragraph (XI).

As a condition of receiving approval of this Contract, AGENCY will be subject to and will comply with Title VI of the Civil Rights Act of 1964 and all applicable requirements of the Department of Commerce regulations as adopted by the USDOT, providing that no person in the United States shall on the ground of race, color, creed, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the subject Highway Safety Project.

- B. If AGENCY fails or refuses to comply with its undertaking as set forth in these provisions, STATE or the USDOT may take any or all of the following actions.
1. Cancel, terminate, or suspend, in whole or in part, the agreement, contract, or other arrangement with respect to which the failure or refusal occurred; and
 2. Refrain from extending any further Federal financial assistance to AGENCY under the Highway Safety Program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from AGENCY.
- C. Pursuant to the requirement of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), AGENCY must operate this Highway Safety Project so that it is accessible and otherwise non-discriminatory to handicapped persons.

XII. Executive Order 2009-09

It is mutually agreed that AGENCY will comply with the terms and conditions of Executive Order 2009-09, *Non-Discrimination in Employment by Government Contractors and Subcontractors*. Executive Order 2009-09 is located in Part II of the Project Director's Manual.

XIII. Application of Hatch Act

AGENCY will notify all of its employees whose principal employment is in connection with any highway safety project, financed in whole or in part by loans or grants under the Highway Safety Act of 1966, as amended, of the provisions of the Hatch Act (5 U.S.C. §7321 et. seq.).

XIV. Minority Business Enterprises (MBE) Policy and Obligation

A. Policy: It is the policy of the USDOT that minority business enterprises as defined in 49 CFR, Part 23, will have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the minority business enterprises requirements of 49 CFR, Part 23 apply to this Contract.

B. Obligation: The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR, Part 23 have the subcontracts financed in whole or in part with Federal funds provided under this Contract. In this regard, all recipients or contractors will take all necessary and reasonable steps in accordance with 49 CFR, Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors will not discriminate on the basis of race, color, creed, sex, or national origin in the award and performance of USDOT-assigned contracts.

XV. Arbitration Clause, ARS §12-1518

Pursuant to ARS §12-1518, the parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this Contract where the provisions of mandatory arbitration apply.

XVI. Inspection and Audit, ARS §35-214

Pursuant to ARS §35-214, all books, accounts, reports, files, and other records relating to this Contract will be subject at all reasonable times to inspection and audit by STATE for five (5) years after completion of this Contract. The records will be produced at the Governor's Office of Highway Safety.

XVII. Appropriation of Funds by U.S. Congress

It is agreed that in no event will this Contract be binding on any party hereto unless and until such time as funds are appropriated and authorized by the U.S. Congress and specifically allocated to the project submitted herein and then only for the fiscal year for which such allocation is made. In the event no funds are appropriated by the U.S. Congress or no funds are allocated for the project proposed herein for subsequent fiscal years, this Contract will be null and void, except as to that portion for which funds have then been appropriated or allocated to this project, and no right of action or damages will accrue to the benefit of the parties hereto as to that portion of the Contract or project that may so become null and void.

XVIII. Continuation of Highway Safety Program

It is the intention of AGENCY to continue the Highway Safety Program identified in this Contract once Federal funding is completed. This intended continuation will be based upon cost effectiveness and an evaluation by AGENCY of the program's impact on highway safety.

XIX. E-Verify

Both Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state. Both Parties warrant that they have registered with and participate with E-Verify. If either Party later determines that the other non-compliant Party has not complied with E-Verify, it will notify the non-compliant Party by certified mail of the determination and of the right to appeal the determination.

XX. Sudan and Iran

Pursuant to ARS § 35-391.06 and 35.393.06, both of the Parties hereby warrant, and represent that they do not have, and its subcontractors do not have, and during the term hereof will not have a scrutinized business operation in either Sudan or Iran.

XXI. Termination and Abandonment

- A. The STATE and AGENCY hereby agree to the full performance of the covenants contained herein, except that STATE reserves the right, at its discretion, to terminate or abandon any portion of the project for which services have not been already performed by AGENCY.
- B. In the event STATE abandons the services or any part of the services as herein provided, STATE will notify AGENCY in writing and within twenty-four (24) hours after receiving such notice, AGENCY will discontinue advancing the work under this Contract and proceed to close said operations under the Contract.
- C. The appraisal value of work performed by AGENCY to the date of such termination or abandonment shall be made by STATE on a basis equitable to STATE and AGENCY and a final reimbursement made to AGENCY on the basis of costs incurred. Upon termination or abandonment, AGENCY will deliver to STATE all documents, completely or partially completed, together with all unused materials supplied by STATE.
- D. AGENCY may terminate or abandon this Contract upon thirty (30) days written notice to STATE, provided there is subsequent concurrence by STATE. Termination or abandonment by AGENCY will provide that costs can be incurred against the project up to and including sixty (60) days after notice is given to STATE.
- E. Any equipment or commodities which have been purchased as a part of this Contract and which have not been consumed or reached the end of its useful life will be returned to STATE upon its written request.

XXII. Cancellation Statute

All parties are hereby put on notice that this Contract is subject to cancellation pursuant to ARS §38-511, the provisions of which are stated below.

In accordance with ARS §38-511, this Contract may be cancelled without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the STATE, its political subdivisions or any department or agency of either, 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 or the Contract.

The cancellation shall be effective when written notice from the Governor or chief executive officer or governing body of the political subdivision is received by all other parties to the Contract unless the notice specifies a later time.

AGREEMENT OF UNDERSTANDING AND CERTIFICATION OF COMPLIANCE

Acceptance of Condition

It is understood and agreed by the undersigned that a grant received as a result of this Contract is subject the Highway Safety Act of 1966, as amended (23 U.S.C.A. §§401-404), ARS §28-602, and all administrative regulations governing grants established by the USDOT and STATE. It is expressly agreed that this Highway Safety Project constitutes an official part of the STATE's Highway Safety Program and that AGENCY will meet the requirements as set forth in the accompanying Project Director's Manual, which are incorporated herein and made a part of this Contract. All State and Federal Statutes, Rules, Regulations, and Circulars referenced in this Contract are a part of this document as if fully set forth herein. It is also agreed that no work will be performed nor any obligation incurred until AGENCY is notified in writing that this project has been approved by the Governor's Highway Safety Representative.

Certificate of Compliance

This is to certify that AGENCY will comply with all of the State and Federal Statutes, Rules and Regulations identified in this Contract.

Certification of Non-Duplication of Grant Funds Expenditure

This is to certify that AGENCY has no ongoing nor completed projects under contract with other Federal fund sources which duplicate or overlap any work contemplated or described in this Contract. It is further certified that any pending or proposed request for other Federal grant funds which would duplicate or overlap work described in the Contract will be revised to exclude any such duplication of grant fund expenditures. It is understood that any such duplication of Federal funds expenditures subsequently determined by audit will be subject to recovery by STATE.

Single Audit Act

If your political subdivision has had an independent audit meeting the requirements of the Single Audit Act of 1984, (31 U.S.C.A. §7501 et. seq.), please forward a copy to GOHS, Attention: Fiscal Services Officer, within thirty (30) days of the effective date of this Contract. If such audit has not been performed, please advise when it is being scheduled.

REIMBURSEMENT INSTRUCTIONS

1. **Agency Official authorized by Project Director to certify and sign Reports of Costs Incurred (RCIs):**

Name: Stephanie George

Title: Accountant

Telephone Number: (623)333-2021 Fax Number: (623)333-0200

E-mail Address: sgeorge@avondale.org

2. **Agency's Fiscal Contact:**

Name: Stephanie George

Title: Accountant

Telephone Number: (623)333-2021 Fax Number: (623)333-0200

E-mail Address: sgeorge@avondale.org

Federal Identification Number: 80-6000233

3. **REIMBURSEMENT INFORMATION:**

Warrant/Check to be made payable to:

City of Avondale

Warrant/Check to be mailed to:

City of Avondale; Attn: Finance & Budget
(Agency)

11465 W. Civic Center Dr.
(Address)

Avondale, AZ 85373-6807
(City, State, Zip Code)

Lobbying Restrictions

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients will certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC §1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature of Project Director:

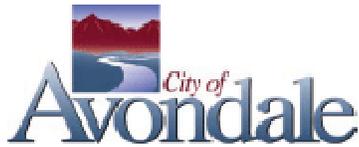
Kevin Kotsur, Chief
Avondale Police Department

*Signature of Authorized Official of
Governmental Unit:*

Charlie McClendon, City Manager
City of Avondale

Date Telephone

Date Telephone



CITY COUNCIL REPORT

SUBJECT:

Resolution 3062-712 - Third Amendment to Intergovernmental Agreement with Maricopa County

MEETING DATE:

July 16, 2012

TO: Mayor and Council

FROM: Gina Montes, Neighborhood & Family Services Director (623) 333-2727

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting City Council approval of a resolution authorizing an Intergovernmental Agreement with Maricopa County to receive a grant in the amount of \$91,256 for the provision of financial and crisis case management services.

BACKGROUND:

Avondale residents have been provided crisis services through the Community Action Program since 1964. Services are provided to those who find themselves experiencing financial difficulties. Working families and those who live below the poverty level can be challenged to set aside money for an unexpected crisis and therefore have a need to request assistance when the breadwinner loses employment, when an accident causes a disability or when an elderly parent or newborn joins the household.

DISCUSSION:

The Neighborhood & Family Services Department will administer the services to residents who reside in the service area that in addition to Avondale includes Goodyear, unincorporated parts of Laveen, Litchfield Park and unincorporated areas up to Glendale Avenue. Staff provide financial assistance to residents facing personal and economic emergencies or crises, such as loss of a home, job or household income making it impossible to meet financial obligations. Staff have access to federal funds from a variety of sources provided through Maricopa County for utilities and rent/mortgage costs.

BUDGETARY IMPACT:

The proposed fiscal year 2012-13 budget is \$168,846. This amount includes \$91,256 from Maricopa County, \$20,700 from the City of Goodyear and \$57,590 from Avondale's General Fund. The General Fund portion is included in the proposed budget.

RECOMMENDATION:

Staff recommends that City Council adopt a resolution authorizing the third amendment to an IGA with Maricopa County for a grant in the amount of \$91,256 for the provision of financial and crisis case management services.

ATTACHMENTS:

Click to download

[Resolution 3062-712](#)

RESOLUTION NO. 3062-712

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE THIRD AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY RELATING TO THE PROVISION OF FINANCIAL AND CRISIS CASE MANAGEMENT ACTIVITIES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Third Amendment to the Intergovernmental Agreement with Maricopa County relating to the provision of financial and crisis case management activities (the “Third Amendment”) is hereby approved in substantially the form attached hereto as Exhibit A.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, July 16, 2012.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3062-712

(Third Amendment)

See following pages.

AMENDMENT # 3
 TO THE INTERGOVERNMENTAL AGREEMENT
 BETWEEN
MARICOPA COUNTY
 ADMINISTERED BY ITS
HUMAN SERVICES DEPARTMENT
 AND
 CITY OF AVONDALE

Total Contract Term Amount: **\$ 91,256.00**
 Contract Term Start Date: July 1, 2012
 Contract Term End Date: June 30, 2013

This Amendment #3 (“Agreement”), amending the original Agreement executed July 8, 2010, as amended, is entered into pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, between Maricopa County, administered by its Human Services Department (“County” or “Department”) and the City of Avondale, acting by and through its Mayor and City Council (“Contractor”). The County and Contractor are collectively referred to herein as the “Parties” and individually as a “Party.” This Agreement will be for the provision of Financial and Crisis Case Management activities.

WHEREAS, the County is empowered by Arizona Revised Statutes § 11-251 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the County.

WHEREAS, the Contractor is empowered by Arizona Revised Statutes §§ 9-240, 9-500.11, 11-952, and 46-241 *et seq.* to enter into this Agreement, and has by resolution, delegated the undersigned the authority to execute this Agreement on behalf of the Contractor.

The Contractor, for and in consideration of the covenants and conditions set forth in this Agreement, shall provide and perform the services set forth herein. All rights and obligations of the Parties shall be governed by the terms of this Agreement, its exhibits, attachments, and appendices, including any Subcontracts, Amendments, or Change Orders as set forth herein.

The purpose of this Amendment is to address the following:

- I. Extend the contract term for one additional year to end June 30, 2013.

Amend Section II - Special Provisions: Paragraph **Q** is deleted in its entirety and replaced with the following:

Q. CONTRACT TERM AND OPTION TO EXTEND

- 1. The term of the Agreement shall commence **July 1, 2012**, and shall end on **June 30, 2013**, unless terminated, cancelled, or extended as otherwise provided herein.
- 2. The Contractor shall **not** provide services prior to contract term commencing or after the end date of the Agreement.

3. Upon execution of this Agreement and incurring allowable expenses within the contract term, the Contractor shall invoice the County per Section V, Compensation, under this Agreement.

II. The Agreement amount is not to exceed \$91,256.00 and is subject to Section I, General Provisions' Paragraph F, AVAILABILITY OF FUNDS, under this Agreement.

III. Amend Section I - General Provisions: Paragraph **FF** is deleted in its entirety and replaced with the following:

FF. INSURANCE REQUIREMENTS

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

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County and State of Arizona in no way warrant that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

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

1. Commercial General Liability – Occurrence Form

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

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

a. The policy shall be endorsed to include the following additional insured language: *“Maricopa County and the State of Arizona, their departments, agencies, boards, commissions, and their officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor”.*

b. Policy shall contain a waiver of subrogation against Maricopa County, the State of Arizona and their departments, agencies, boards, commissions, and their officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

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

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

a. The policy shall be endorsed to include the following additional insured language: *“Maricopa County and the State of Arizona, their departments, agencies, boards, commissions, and their officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.*

b. Policy shall contain a waiver of subrogation against Maricopa County and the State of Arizona, their departments, agencies, boards, commissions, and their officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

- Each Accident \$1,000,000
- Disease – Each Employee \$1,000,000
- Disease – Policy Limit \$1,000,000

a. Policy shall contain a waiver of subrogation against Maricopa County and the State of Arizona, their departments, agencies, boards, commissions, and their officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

4. Professional Liability (Errors and Omissions Liability)

Each Claim \$1,000,000

Annual Aggregate \$2,000,000

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, the Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Work Statement under this Contract.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies, except Worker’s Compensation and Professional Liability insurance, are to contain, or be endorsed to contain, the following provisions:

1. Maricopa County, the State of Arizona, and their respective departments, agencies, boards, commissions, and their respective officers, officials, agents, and employees and the

Contractor shall be additional insureds to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by the Contract.

2. The Contractor's and its subcontractors' insurance coverage shall be primary insurance with respect to all other available sources.

3. The Contractor's and its subcontractors' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage provided by the subcontractors shall not be limited to the liability assumed under the indemnification provisions of their contracts with the Contractor.

C. NOTICE OF CANCELLATION: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to Maricopa County. Such notice shall be sent directly to Maricopa County Human Services Department (Attn: Community Services Division), 234 N. Central Avenue, Ste 3000, Phoenix, AZ 85004, and shall be sent by certified mail, return receipt requested.

D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A VII. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

If the social services program utilizes the Social Service Contractors Indemnity Pool (SSCIP) or other approved insurance pool for insurance coverage, SSCIP or the other approved insurance pool is exempt from the A.M. Best's rating requirement listed in this Contract. If the Contractor or its Subcontractor chooses to use SSCIP or another approved insurance pool as its insurance provider, the Contract or Contractor's Subcontract would be considered in full compliance with insurance requirements relating to the A.M. Best rating requirements.

E. VERIFICATION OF COVERAGE: Contractor shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved Maricopa County before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the Contract's contract term. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to Maricopa County Human Services Department (Attn: Community Services Division), 234 N. Central Avenue, Ste 3000, Phoenix, AZ 85004. The County's Contract number is to be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. APPROVAL: Any modification or variation of these Insurance Requirements under this Contract must have prior approval from Maricopa County Risk Management, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

G. EXCEPTIONS: In the event the Contractor's subcontractor(s) is/are a public entity, then the Insurance Requirements may, based upon the sole discretion of the County, not apply. Such public entity may, based upon the sole discretion of the County, provide a certificate of self-insurance to the Contractor and may be provided to the County upon request.

IV. Delete Section III, Work Statement, in its entirety and replace with Section III, Financial and Crisis Case Management, Work Statement.

V. Delete Attachments A and C, Facility Location Chart, and Operating Budget, resp., and replace with revised Attachments A and C, attached hereto and incorporated herein.

VI. Add clause AA in Section II, Special Provisions, as follows:

AA. COMMUNITY NEEDS ASSESSMENT ACTIVITIES

1. Contractor shall participate in County needs assessment activities related to the Contractor's community service area (CSA).

2. Upon request, the Contractor will provide to the County results of needs assessment activities or environmental scans conducted by the Contractor.

VII. The foregoing paragraphs contain all the changes made by this Amendment. Except as amended herein, all other terms and conditions of the Original Agreement, as amended, remain in full force and effect.

IN WITNESS THEREOF, the Parties have signed this Amendment:

APPROVED BY:
CITY OF AVONDALE

APPROVED BY:
MARICOPA COUNTY

Marie Lopez Rogers, Mayor

Max Wilson, Chairman

Date: _____

Date: _____

Attested To:

Attested To:

Carmen Martinez, City Clerk

Fran McCarroll, Clerk of the Board

IN ACCORDANCE WITH A.R.S. § 11-952, THIS AGREEMENT HAS BEEN REVIEWED BY THE UNDERSIGNED WHO HAVE DETERMINED THAT THIS AGREEMENT IS IN PROPER FORM AND WITHIN THE POWER AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA.

CITY OF AVONDALE

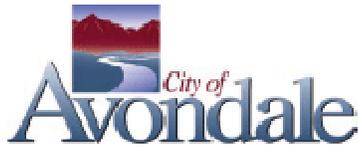
MARICOPA COUNTY

By: _____
Andrew J. McGuire, City Attorney

By: _____
Deputy County Attorney

Date: _____

Date: _____



CITY COUNCIL REPORT

SUBJECT:

Ordinance 1498-712 - Authorization for the Acquisition of Real Property for Public Use

MEETING DATE:

July 16, 2012

TO: Mayor and Council

FROM: Sammi Curless, Economic Development Specialist (623) 333-1412

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting City Council adopt an ordinance authorizing the City of Avondale to participate in the public auction to purchase 125 South Avondale Boulevard.

BACKGROUND:

A public auction for the sale of 125 South Avondale Boulevard is scheduled to occur on July 31, 2012. The building, approximately 31,000SF, has a 50% occupancy rate and is owned by 125 S. AVONDALE, L.L.C.

DISCUSSION:

The City's participation in the auction for this property enables the City to potentially secure a commercial building lying within the Avondale Civic Center at a favorable price. If acquired, the building could eliminate the need for any future construction of facilities in the City's municipal office complex. Additionally, as Phoenix International Raceway currently has its corporate office in the building, the City has a revenue stream to pay for the cost of acquisition. Further, it is in the best interests of the City to maintain Phoenix International Raceway's corporate offices within Avondale, and City ownership of the building will aid that goal.

BUDGETARY IMPACT:

Should the City be the successful bidder on the property, funds are available in the Economic Opportunities (101-6700-00-6180) and contingency funds to complete the acquisition.

RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance authorizing the City of Avondale to participate in the bank auction related to 125 South Avondale Boulevard and to acquire the property if the City is the successful bidder.

ATTACHMENTS:

Click to download

[Ordinance 1498-712](#)

ORDINANCE NO. 1498-712

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACQUISITION OF REAL PROPERTY FOR PUBLIC USE.

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City of Avondale (the “City”) to acquire real property in fee simple or any lesser interest, inside or outside its corporate limits for any City purpose, when the public convenience requires it and in accordance with the provisions of State law; and

WHEREAS, that certain parcel of real property located at the Southeast corner of the intersection of Avondale Boulevard and Coldwater Springs Boulevard, generally described as Lot 3 of Avondale Civic Center, as more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by reference (the “Property”) is set for public auction; and

WHEREAS, the City desires to acquire the Property for future expansion of City facilities and to ensure the continued location of Phoenix International Raceway’s corporate office within the corporate limits of the City; and

WHEREAS, the Council of the City of Avondale (the “City Council”) desires to authorize the participation in the public auction of the Property and the acquisition of same if the City is the successful bidder.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. Participation in a public auction for the sale of the Property (including all improvements thereon) is hereby authorized, including the posting of any necessary bid security and any other steps necessary to allow the City’s participation.

SECTION 3. Acquisition of the Property, if the City is the successful bidder, is hereby authorized, and such budget transfers of funds as are necessary to complete the transaction are hereby authorized.

SECTION 4. The Mayor, the City Manager, the City Clerk, the City Budget and Finance Director and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

SECTION 5. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision of portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, July 16, 2012.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 1498-712

[Legal description and map of Property]

See following pages.

125 South Avondale Boulevard
MCA 101-01-011

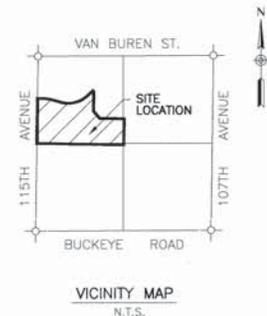
LEGAL DESCRIPTION

Lot 3 of Avondale Civic Center, according to the final plat recorded in Book 642 of maps, page 7 in the office of the County Recorder of Maricopa County, Arizona

TRACT AREAS

Tract Name	Usage	Area (acres)
*A	See Note 4	1.4100

BOOK 642 PAGE 7
 OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2003-0869328
03/20/03 03:30 PM



DIBBLE & ASSOCIATES
 CONSULTING ENGINEERS
 2633 EAST INDIAN SCHOOL ROAD
 PHOENIX, ARIZONA 85016
 PHONE: 602-957-1155
 FAX: 602-957-2838

OWNER/DEVELOPER:
 City of Avondale, Arizona
 525 N. Central Ave.
 Avondale, Arizona 85323
 Phone 623-932-2400
 Fax 623-932-2205
 Contact: Todd Hileman

ENGINEER/SURVEYOR
 Dibble & Associates
 2633 E. Indian School Road Suite 401
 Phoenix, Arizona 85016
 Phone 602-957-1155
 Fax 602-957-2838
 Contact Kenneth O. Shipley

FINAL PLAT OF AVONDALE CIVIC CENTER

A SUBDIVISION OF A PART OF THE NW 1/4 SECTION 7
 T1N, R1E, G.&S.R.B.&M., MARICOPA COUNTY, ARIZONA

DEDICATION:

State of Arizona }
 County of Maricopa } S.S.

KNOW ALL MEN BY THESE PRESENTS:

That the City of Avondale, as owner, has subdivided under the name of AVONDALE CIVIC CENTER UNIT 1, a subdivision in a portion of the Northwest Quarter of Section 7, Township 1 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona as shown and platted hereon and hereby publishes this plat of AVONDALE CIVIC CENTER UNIT 1 and hereby declares that said plat sets forth the location and gives the dimensions of the Lots, Streets, Tract and Easements constituting same and that each Lot, Tract and Street shall be known by the number or name given each, respectively on this plat, and that the City of Avondale hereby dedicates to the public, the right-of-way for public streets, public utilities, and other easements. Easements are dedicated for the purposes shown.

IN WITNESS WHEREOF: the City of Avondale, as owner, has hereunto caused its corporate name to be affixed by the undersigned officer thereunto duly authorized, this 19th day of May, 2003.

BY: [Signature]
 IT'S Mayor

ACKNOWLEDGMENT

State of Arizona }
 County of Maricopa } S.S.

On this 26th day of May, 2003.

Before me the undersigned officer, personally appeared [Signature]

Who acknowledged herself/himself to be the Mayor of the City of Avondale

In witness whereof,
 I hereunto set my hand and official seal



BY: [Signature] My commission expires: June 4, 2004

APPROVED BY THE COUNCIL OF THE CITY OF AVONDALE, AZ.

THIS 19th DAY OF May, 2003.

BY: [Signature] 5-28-03
 MAYOR DATE

ATTEST: [Signature] 5-28-03
 CITY CLERK DATE

BY: [Signature] 5/28/03
 CITY ENGINEER DATE



LEGAL DESCRIPTION

THOSE PORTIONS OF LOT 2 AND THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 1 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 7;
 THENCE SOUTH 01°00'36" WEST, 1860.10 FEET ALONG THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 7 TO THE TRUE POINT OF BEGINNING;
 THENCE CONTINUING SOUTH 01°00'36" WEST, 745.40 FEET ALONG SAID MID-SECTION LINE TO THE CENTER OF SAID SECTION 7;
 THENCE NORTH 89°03'29" WEST, 2430.80 FEET ALONG THE EAST-WEST MID-SECTION LINE OF SAID SECTION 7 TO THE EAST LINE OF THE WEST 55.00 FEET OF SAID LOT 2;
 THENCE ALONG SAID EAST LINE, NORTH 01°07'28" EAST, 1267.09 FEET;
 THENCE DEPARTING SAID EAST LINE, SOUTH 88°52'32" EAST, 145.00 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 700.00 FEET;
 THENCE EASTERLY 178.47 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14°36'29";
 THENCE SOUTH 74°16'03" EAST, 316.57 FEET TO THE POINT OF BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 750.00 FEET;
 THENCE EASTERLY 753.85 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 57°34'30", THENCE NORTH 48°09'27" EAST, 260.46 FEET;
 THENCE SOUTH 41°50'33" EAST, 40.00 FEET;
 THENCE SOUTH 00°56'17" WEST, 555.69 FEET;
 THENCE SOUTH 40°41'20" EAST, 272.66 FEET;
 THENCE SOUTH 89°03'29" EAST, 699.64 FEET TO THE TRUE POINT OF BEGINNING.

NOTES:

- No structure of any kind, including signage, may be constructed on, over, or placed within the public utility easements except paving and landscaping.
- Electric and communication lines to be constructed underground as required by the Arizona Corporation Commission.
- This development lies within the City of Avondale water service area and has been designated as having an assured water supply.
- Tract A to be owned and maintained in common by the owners of lots 3, 4 and 6 for private and public open space use.
- The sign easements are for use by the City of Avondale for Avondale Civic Center identification signage.

MONUMENTATION

- ADOT Brass Cap in Handhole, SW Cor. Sec. 7, T1N-R1E
- ADOT Brass Cap in Handhole, E 1/4 Cor. Sec. 7, T1N-R1E
- MCHD Brass Cap in Handhole, N 1/4 Cor. Sec. 7, T1N-R1E
- 1/2" Rebar With Cap LS 17388, Center of Sec. 7, T1N-R1E

BASIS OF BEARINGS

Assumed North 01°07'28" East, along the West line of the Northwest Quarter of Section 7, T1N-R1E of the Gila and Salt River Base and Meridian, Maricopa County, Arizona

LEGEND

- PUBLIC UTILITY EASEMENTS
- NON-VEHICULAR ACCESS EASEMENT
- PEDESTRIAN CORRIDOR/UTILITY ESMT.
- RIGHT-OF-WAY LINE
- SET 1/2" REBAR WITH CAP RLS 37793
- SET BRASS CAP PER MAG DET. 120-1, TYPE "B" UPON COMPLETION OF PAVING IMPROVEMENTS
- INDICATES SUBDIVISION CORNER
- SET 1/2" REBAR UNLESS NOTED OTHERWISE

SURVEYOR'S CERTIFICATION

This is to certify that this plat is correct and accurate and the monuments described herein have either been located, set or will be set as described to the best of my knowledge and belief.

[Signature] 27 May 03
 KENNETH O. SHIPLEY RLS #37793 Date

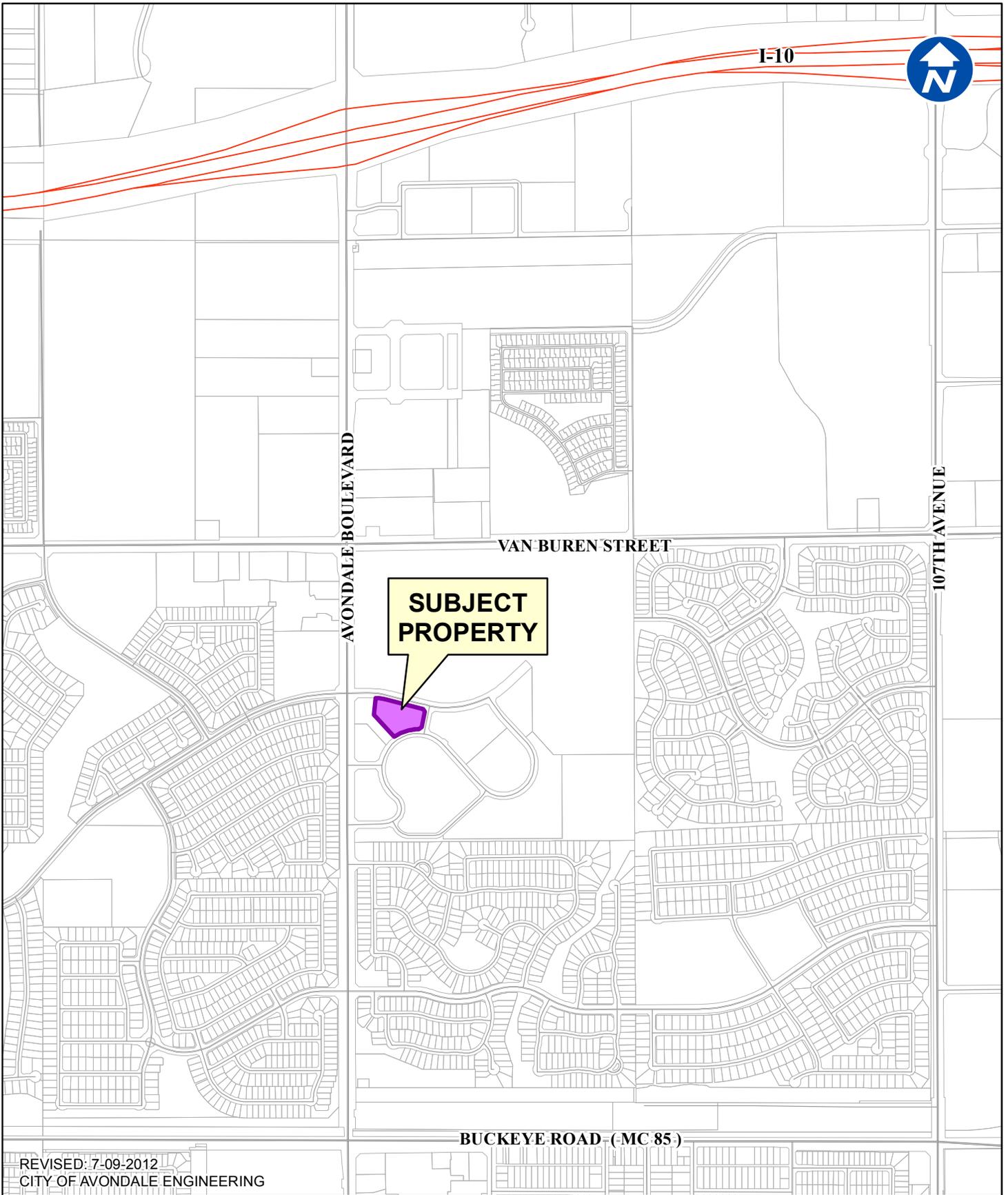


FINAL PLAT
 AVONDALE CIVIC CENTER
 115TH AVENUE & COLDWATER SPRINGS BLVD.
 AVONDALE, ARIZONA

DMA JOB NO: 10-0224	DATE: 5-27-03	SCALE: 1" =
SURVEYED BY: KOS	DRAWN BY: JEV	REVIEWED: MGJ
REVISIONS:		
IMG NO: 1		
SH: 1 OF 2		

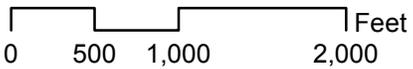
Site # 03-13

LOCATION MAP

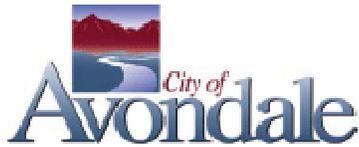


REVISED: 7-09-2012
CITY OF AVONDALE ENGINEERING

APPROXIMATE SCALE



**125 South Avondale Boulevard
Lot 3 Avondale Civic Center**



CITY COUNCIL REPORT

SUBJECT:

Resolution 3060-712 - Intergovernmental Agreement for the Southwest Family Advocacy Center

MEETING DATE:

July 16, 2012

TO: Mayor and Council
FROM: Kevin Kotsur, Police Chief (623) 333-7201
THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve an intergovernmental agreement (IGA) with the City of Avondale, the Town of Buckeye, the City of Goodyear and the County of Maricopa (an Arizona municipal corporation, acting by and through the Maricopa County Sheriff's Office [Maricopa]) for design, construction and operation of the Avondale, Buckeye, Goodyear and Maricopa Southwest Family Advocacy Center. The center will be located at 2333 N. Pebble Creek Parkway, Suite A-200, Goodyear, Arizona.

BACKGROUND:

The Southwest Family Advocacy Center (SWFAC) is a multidisciplinary facility developed and funded by the Police Departments of the City of Avondale, the Town of Buckeye, and the City of Goodyear. The three municipalities entered into an intergovernmental agreement (IGA) with the approval of the Avondale City Council in July of 2007. The center opened in May of 2008, and since that time has provided multidisciplinary investigative services to child victims and witnesses of physical and sexual abuse, neglect, drug endangerment, domestic violence and adult victims of sexual assault, domestic violence and elderly abuse.

The Maricopa County Sheriff's Office (MCSO) in collaboration with the Maricopa County Attorney's Office approached the Southwest Family Advocacy Center (SWFAC) to become a Partnering Agency in the SWFAC. MCSO has brought over 100 cases to the SWFAC over the past four years and recognizes the positive impact co-location and partnership will have on their investigations, prosecutions and the treatments available for victims.

Each partnering agency will share equally in the operational, maintenance and relocation costs of the Southwest Family Advocacy Center. The City of Avondale is the jurisdiction responsible for managing all administrative functions associated with operating the SWFAC.

DISCUSSION:

The Avondale, Goodyear and Buckeye Police Departments and the Maricopa County Sheriff's Office face similar challenges with growth and an increase in calls for investigation, prosecution and treatment of cases involving child physical and sexual abuse and adult domestic violence and sexual assault. Individually these jurisdictions cannot support the creation of a Family Advocacy Center, but collectively they can afford to share the expense of this facility.

All partnering agencies recognize the operational impact that the SWFAC has on the investigation, prosecution and treatment of these cases. The time spent conducting the investigation before the center was open averaged over 12 hours which was reduced to an average of 3.5 hours after the

center opened. Statistics from the SWFAC and Maricopa County Attorney's Office report that conviction rates for cases coming out of the SWFAC have increased to 95% compared to 42% prior to the opening of the center. Before the center was open, victims were provided a referral card for post incident counseling services and since the center opened counseling services have been available on site through two agencies (Childhelp and A New Leaf).

BUDGETARY IMPACT:

Funding for Avondale's portion of this partnership is available in the 2012 - 2013 operational budget. Funding for Goodyear and Buckeye's portion of this partnership is available in their respective budgets. Funding for the Maricopa County Sheriff's Office portion of this partnership is available in the Maricopa County's budget and approved by the Maricopa County Board of Supervisors.

RECOMMENDATION:

Staff recommends that the City Council approve the intergovernmental agreement with the Town of Buckeye, the City of Goodyear and County of Maricopa for the design, construction and operation of the Southwest Family Advocacy Center and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

[Resolution 3060-712](#)

RESOLUTION NO. 3060-712

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT AMONGST THE CITY OF AVONDALE, THE TOWN OF BUCKEYE, THE CITY OF GOODYEAR AND MARICOPA COUNTY RELATING TO THE DESIGN, CONSTRUCTION AND OPERATION OF THE SOUTHWEST FAMILY ADVOCACY CENTER.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Intergovernmental Agreement amongst the City of Avondale, the Town of Buckeye, the City of Goodyear and Maricopa County relating to the design, construction and operation of the Southwest Family Advocacy Center (the “Agreement”) is hereby approved in substantially the form attached hereto as Exhibit A.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, July 16, 2012.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3060-712

(Agreement)

See following pages.

**INTERGOVERNMENTAL AGREEMENT
AMONGST
THE CITY OF AVONDALE, THE TOWN OF BUCKEYE,
THE CITY OF GOODYEAR AND THE COUNTY OF MARICOPA, ARIZONA
FOR THE SOUTHWEST FAMILY ADVOCACY CENTER
AMENDED AND RESTATED JULY 16, 2012**

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is entered into as of the date of the last signature below, by and amongst the City of Avondale, an Arizona municipal corporation (“Avondale”), the Town of Buckeye, an Arizona municipal corporation (“Buckeye”), the City of Goodyear, an Arizona municipal corporation (“Goodyear”) and the County of Maricopa, Arizona, an Arizona municipal corporation, acting by and through the Maricopa County Sheriff’s Office (“Maricopa”) (Avondale, Buckeye, Goodyear and Maricopa are referred to herein individually as a “Partnering Agency” and collectively as the “Partnering Agencies”), for the design, construction and operation of the Southwest Family Advocacy Center (the “Center”).

RECITALS

A. At present, the number of reported child and vulnerable sexual/physical abuse, sexual abuse of adults and domestic violence cases in the cities of Avondale and Goodyear, the Town of Buckeye and Maricopa County is increasing, representing a continuing threat to the mental, physical, emotional welfare and safety of the victims within the corporate limits of Avondale, Buckeye, Goodyear and Maricopa.

B. Despite the Partnering Agencies’ best efforts to protect victims, the current systems used by the Partnering Agencies often cannot meet many victims’ needs.

C. Each Partnering Agency currently implements a system that is designed for and oriented to all victims of these crimes, but which has few provisions tailored to the specific needs of individual victims. The advocacy system is designed to reduce trauma associated with crimes of child and vulnerable sexual/physical abuse, sexual abuse of adults and domestic violence cases by consolidating interviews, streamlining communication and coordination between agencies, providing specialized interviewing techniques and providing forensic medical exams.

D. The Partnering Agencies believe that all four municipalities can improve services provided to victims of child and vulnerable sexual/physical abuse, sexual abuse of adults and domestic violence by the creation, development and implementation of a multi-disciplinary team approach in the investigation, assessment, referral for prosecution and medical and therapeutic treatment involving child and vulnerable sexual/physical abuse, sexual abuse of adults and domestic violence cases.

E. Each of the Partnering Agencies shall have specific responsibilities with regard to the investigation, assessment, medical treatment, and prosecution of child and vulnerable sexual/physical abuse, sexual abuse of adults and domestic violence cases.

F. The multi-disciplinary team approach, through the institution of the Center, will serve to enhance the individual efforts of each Partnering Agency.

G. The Partnering Agencies are authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. § 11-952.

H. The Agreement was entered into between the Partnering Agencies on March 3, 2007. The Agreement was amended and restated on July 9, 2007 to change the day-to day operations manager of the Center from Buckeye to Avondale, add the location of the Center's Initial Facility, add the responsibilities of the Partnering Agencies regarding Joint Use Items and to add an initial budget for the Center.

I. The Partnering Agencies desire to amend and restate the Agreement to (i) provide for the inclusion of Maricopa County Sheriff's Office as a Partnering Agency, (ii) address the treatment of the donations made to the Center, (iii) address the distribution of the Center's assets at the termination of the Agreement and (iv) revise several of the terms and conditions by which the Partnering Agencies will jointly operate the Center.

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 Partnering Agencies agree as follows:

1. Purpose and Intent of Agreement.

1.1 The Partnering Agencies intend to develop, own and manage the Center for use by the Partnering Agencies to provide on-site agency collaboration through the use of the multi-disciplinary team approach in prevention, investigation, assessment, protection, referral for prosecution and treatment of child and vulnerable sexual/physical abuse, sexual abuse of adults and domestic violence cases.

1.2 This Agreement provides for the operation and funding of the Center and supersedes any and all agreements previously entered into for the operation of the Center.

1.3 Avondale shall act as the overall day-to-day manager of the Center subject to the guidance of the Steering Committee (as defined in Subsection 5.1 below).

2. Term. This Agreement shall remain in full force and effect until December 31, 2018 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for successive three-year terms (each a "Renewal Term") thereafter until the Partnering Agencies terminate this Agreement pursuant to the terms and conditions contained herein. 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.

3. Finances. Each Partnering Agency shall contribute toward the annual operating, maintenance and repair cost of the Center (“O&M Costs”) in equal shares, as more fully set forth herein.

3.1 Budget. The Center Director (as defined in Subsection 5.2 below) and the Avondale Police Department Budget Manager will develop an estimated annual Center operations and maintenance budget for review by the Partnering Agencies by November 15th of each year. The Steering Committee shall adopt and approve a final operations and maintenance budget for the following fiscal year, no later than February 1st of the current fiscal year. The operations and maintenance budget shall include all annual operating, maintenance, and repair costs for the Center, including, but not limited to, (A) authorized personnel salaries and benefits, (B) services and supplies including, but not necessarily limited to, utilities, office supplies, maintenance supplies, contractual services, (C) expenditures related to repair and maintenance of the Center facility, (D) liability insurance as provided in Section 7.4 below and (E) all other expenditures approved by the Steering Committee (the “O&M Budget”).

3.2 Partnering Agency Obligations. Each Partnering Agency shall bear, at its own expense, the operating, repair, and maintenance costs incurred solely for the benefit of each respective Partnering Agency (i.e., Partnering Agency provided office furniture and equipment used by the respective Partnering Agency). Each Partnering Agency will acquire, hold or dispose of the personal property housed at the Center and necessary to operate its respective portion of the Center (i.e. computers, printers, etc.).

3.3 Center Fund. All Center accounts are subject to oversight and control of the Steering Committee. Avondale will administer the financial activities of the Center as a revenue fund (the “Center Fund”) in accordance with generally accepted accounting principles. All monies received by the Center, including each Partnering Agencies’ proportionate share of the O&M Costs, shall be deposited into the Center Fund. Expenditures from the Center Fund over \$5,000 require the approval of the Steering Committee. The Center Fund will receive and separately account for all income belonging to the Center, including outside rental income, if any. All monies not expended in the Center Fund will remain the property of the Center Fund and roll forward into the next fiscal year for expenditure in accordance with the provisions herein. Any interest earned on the monies in the Center Fund, after deducting applicable bank charges, must be credited to this Center Fund. Nothing in this Agreement will act as an abrogation of the budgeting and appropriation authority of the legislative and/or governing bodies of the respective Partnering Agencies.

3.4 Joint Use Purchases. All property items (i.e. furniture, equipment, supplies and furnishings) authorized by the Steering Committee to be jointly purchased for use by the Partnering Agencies shall be considered “Joint Use Items.” The cost for Joint Use Items shall be shared equally by the Partnering Agencies and shall be paid for out of the Center Fund. All Joint Use Items shall be considered property of the Center and shall not be removed from the Center by a Partnering Agency. Avondale, as the day-to-day operator of the Center, shall not dispose of or otherwise convert any such Joint Use Items without the consent of the Steering Committee. Subject to the termination provisions set forth in Section 10 below, all Joint Use Items shall be held by Avondale for the benefit of and use by all Partnering Agencies.

3.5 Center Relocation Costs. During fiscal year 2012-2013, the period beginning July 1, 2012 and running through June 30, 2013 (“FY 2012-13”), each Partnering Agency will bear one-fourth of the costs of relocating the Center from 140 North Litchfield Road, Suite 106, Goodyear, Arizona (the “Initial Facility”) to 2333 North Pebble Creek Parkway, Goodyear, Arizona (the “Relocated Center Facility”).

3.6 New Partnering Agency. During FY 2012-13, in addition to its annual proportionate share of the O&M Costs, Maricopa shall pay \$50,000.00 into the Center Fund by October 1, 2012.

3.7 Reimbursement. Each Partnering Agency shall reimburse the Center for the costs of repair of damage to the Center beyond ordinary wear and tear, caused by the Partnering Agency. The Center Director shall (A) determine the costs of repair and a preliminary determination as to whether such repairs are beyond ordinary wear and tear and (B) report such determinations to the Steering Committee, which shall be the final decision as to whether the costs are to be assessed to a Partnering Agency. In the event that the Steering Committee disagrees with the Center Director’s determination, the costs shall be paid from the Center Fund. This provision does not apply to claims covered under any property coverage or insurance.

3.8 Invoices. Avondale, acting by and through the Center Director, shall invoice each Partnering Agency at least annually for its proportionate share of O&M Costs, by July 30th for each following fiscal year. For purposes of municipal budgeting and planning purposes, an estimate of the proportionate share for the following fiscal year will be provided to each Partnering Agency not later than February 1st of each year.

4. Center Location. Avondale shall enter into a lease for a facility, that is mutually agreeable to the Partnering Agencies, to house the Center and shall be responsible for all necessary payments related thereto. The Center is currently located at the Initial Facility. During FY 2012-13, the Center shall be relocated from the Initial Center Facility to 2333 North Pebble Creek Parkway, Goodyear, Arizona, the Relocated Center Facility.

5. Center Governance.

5.1 Steering Committee. The Steering Committee is hereby established by this Agreement and shall serve as the governing body of the Center. The Steering Committee shall consist of the Avondale Police Chief, the Buckeye Police Chief, the Goodyear Police Chief and the Maricopa County Sheriff’s Office Bureau Chief (the “Steering Committee”).

A. Chairperson. During FY 2012-13, the Avondale Police Chief shall serve as chairman of the Steering Committee. Thereafter, at the first meeting of each fiscal year (July 1 through June 30), the Steering Committee chairperson position shall rotate among the founding partners (Buckeye, Goodyear and Avondale, in that order).

B. Responsibilities. As the governing body of the Center, the Steering Committee shall (1) review and approve any capital improvement plan for the Center, (2) review and approve the annual Center O&M Budget for the period July 1 through June 30 or

portion thereof for each year of operation, by February 1st for the following fiscal year, (3) review and approve the Center Operations Manual, and any amendments thereto, (4) review and approve donations to the Center and (5) conduct all other duties and responsibilities necessary for the operation of the Center.

C. Meetings. The Steering Committee will meet as necessary, but not less than quarterly. Meetings will be scheduled on not less than 30 days' written notice to each Partnering Agency, except upon consent of all of the members of the Steering Committee. The Center Director will attend Steering Committee meetings as a non-voting member. Steering Committee members may appoint alternates who may attend Steering Committee meetings but who shall not have a vote except in the absence of the respective Steering Committee member. The Center Director shall develop the meeting agenda, preside at and conduct all meetings of the Steering Committee. As soon as possible after each meeting, a copy of the minutes shall be provided to each of the members.

D. Voting Authority. Members of the Steering Committee shall vote on all items on the basis of one vote per Steering Committee member. Except in the case of a tie, in which the Steering Committee Chairman will have two votes. In the case of the absence of a Steering Committee member, an appointed alternate shall have the right to vote on behalf of the respective Partnering Agency. A Steering Committee member may not designate another Steering Committee member to be his proxy for voting purposes. Before any action or decision of the Steering Committee is taken or made, the members present shall have the opportunity to discuss their respective Partnering Agency's positions or opinions on matters before the Steering Committee.

5.2 Center Director. The "Center Director" shall be an Avondale employee, appointed by and serving at the pleasure of the Avondale City Manager, as provided herein. The Center Director's salary and benefits shall be paid for out of the Center O&M Budget. The members of the Steering Committee will participate in the selection process of the Center Director and will make a recommendation to the Avondale City Manager regarding selection of the Center Director. After considering recommendations from the Steering Committee members participating in the selection process, the Avondale City Manager will select the Center Director. The Steering Committee may make recommendations to Avondale regarding the Center Director's performance at the time when Avondale is preparing to conduct the Center Director's evaluation. Avondale agrees to consider the Steering Committee's recommendations in conducting the Center Director's performance evaluation and, in addition, Avondale may use additional criteria in evaluating the Center Director's performance for the year. If the Center Director's position becomes vacant while this Agreement is in effect, Avondale agrees to provide an interim Center Director and to recruit and select a new Center Director as outlined herein. All cost for recruitment and selection for the position of Center Director shall be paid for by the Center O&M Budget.

A. Responsibilities. The Center Director will be primarily responsible for implementing the decisions of the Steering Committee and for overseeing the day-to-day operations of the Center. Through the Steering Committee's annual review and approval of the annual budget for the Center, the Steering Committee will establish priorities for the Center Director for the upcoming year as they relate to the Center.

B. Center Operations. Avondale, acting by and through the Center Director shall serve as the day-to-day manager of the Center. The Center Director shall have the responsibility to maintain the Center in good condition and repair as outlined in the lease agreement and for overseeing the maintenance and repair of the Center by the property owner. Avondale shall develop facility management contracts with vendors and oversee the procurement of emergency repairs for the Center, as required. Emergency repairs will be defined as those repairs that are immediately necessary to protect buildings, facilities and grounds from further damage and to keep the Center functional. The Center Director along with the Avondale Police Department Budget Manager shall establish and maintain accounts and records, including personnel, property, financial, project management, and other records as required by Avondale and consistent with generally accepted accounting principles to ensure proper accounting for all ongoing operating and maintenance costs.

C. Operations Manual. The Center Director will develop an operations manual to be submitted to the Steering Committee for review and approval. The operations manual will address matters relating to (1) scheduling procedures, (2) policies, procedures and practices for day-to-day (or otherwise necessary and beneficial to the) operations of the Center, (3) the staffing and organizational structure of the Center, (4) policies, procedures, practices, terms and rental fees, if any, for use of the Center by non-participating agencies, (5) Partnering Agency responsibilities when using the Center, (6) general guidance for the Center Director's professional operation and management of the Center and (7) any other matters deemed necessary or beneficial by the Center Director and Steering Committee (the "Center Operations Manual").

D. Quarterly Reports. The Center Director shall provide each Partnering Agency with a quarterly update outlining each Partnering Agency's usage for the quarter and cumulative total for the current year. The quarterly update shall include usage from Partnering and non-partnering agencies, as well as information related to the administration, leadership, budget, donations, personnel, training and community outreach conducted during the quarter. Quarterly updates shall be presented to the Steering Committee for approval.

6. Indemnification. To the fullest extent permitted by law, each Partnering Agency (each, an "Indemnitor") shall indemnify, defend and hold harmless the Center and each other Partnering Agency and each council member, officer, employee or agent thereof (each Partnering Agency and any such person being herein called an "Indemnitee") 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 Indemnitee 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 Indemnitor, its officers, employees, agents or any tier of subcontractor in the performance of this Agreement.

6.1 Comparative Negligence. In the event of any lawsuit that names the Center or more than one Partnering Agency as a defendant ("Defendant Party" or "Defendant Parties"), the Defendant Parties shall seek to secure an allocation of comparative negligence among themselves

where appropriate and each Defendant Party shall provide contribution to each other Defendant Party to the extent of the comparative allocation.

7. Insurance.

7.1 General Insurance Requirements. The Partnering Agencies mutually agree to provide for their respective financial responsibilities relating to liability arising out of this Agreement through either the purchase of insurance or the provision of a self-funded insurance program.

7.2 Workers' Compensation Insurance. The Partnering Agencies agree that they are not joint employers for the purpose of workers compensation coverage and that any Partnering Agency employee assigned to the Center shall remain an employee of such Partnering Agency. To the extent that employees of one Partnering Agency perform duties on behalf of another Partnering Agency, such employee shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of ARIZ. REV. STAT. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Partnering Agency shall post a notice pursuant to the provisions of ARIZ. REV. STAT. § 23-1022 in substantially the following form:

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

7.3 Non-Partnering Agency Insurance. The Center Director shall secure and maintain indemnification and proper proof of insurance coverage from any non-partnering agency assigning individuals to the Center.

7.4 Center Insurance. The Center Director shall make provision for and maintain all standard and prudent liability insurance coverage with a deductible in an amount equal to the mandatory arbitration limit as set by the Maricopa County Superior Court. Coverage shall be secured through the placement of coverage with a third party insurer. All costs of coverage will be incorporated into the Center O&M Budget, and will be divided equally between the Partnering Agencies on an annual basis. This Section shall be limited to the extent provided for in the contract for insurance secured through a third party insurer.

7.5 Settlement Procedures and Authority. In the event a liability claim or lawsuit is filed against the Center or all of the Partnering Agencies related to the use and operation of the Center, there shall be a meeting between the risk managers and attorneys from each Partnering Agency to discuss how best to address the claim or lawsuit. Should the parties agree to settle any claim or lawsuit against the Center, the risk managers and attorneys will make such a recommendation to their respective governing body. The authority for the settlement of any claim or lawsuit against the Center or all of the Partnering Agencies shall lay with the governing body of each Partnering Agency and shall be provided for by funds allocated among the Partnering Agencies,

whether such funds are available through the O&M Budget or additional contributions from the Partnering Agencies are required. Except to the extent provided for in the contract for insurance secured through a third party insurer, the authority to settle any claim or lawsuit arising out of or in connection with the use or operation of the Center made against an individual Partnering Agency or some of the Partnering Agencies not amounting to all of the Partnering Agencies shall lay with the individual Partnering Agency or Agencies in accordance with any governing legal authorities applicable to such Partnering Agency or Agencies, as the case may be.

8. Amendments. Prior to processing an amendment to this Agreement, a recommendation shall be provided by the Center Director and forwarded to the Steering Committee for approval. To be effective, any modification of this Agreement must be in writing, signed by the parties and approved by their respective governing bodies. The addition of any new Partnering Agency shall constitute an amendment to this Agreement and shall be processed pursuant to this Section 8.

9. Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the Partnering Agencies with respect to its subject matter hereof, and all agreements, whether oral or written, entered into prior to this Agreement with respect to the subject matter hereof are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Partnering Agencies 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 Partnering Agencies 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.

10. Termination of Agreement.

10.1 Voluntary Termination. A Partnering Agency may terminate its participation in this Agreement by providing not less than 60 days written notice of the intent to terminate the Agreement to the other Partnering Agencies. A Partnering Agency terminating this Agreement as provided herein shall forfeit (A) any contribution made to the annual operating, maintenance, and repair costs referenced in Section 3 of this Agreement, (B) any contributions made toward the acquisition of, or any interest in, the Joint Use Items and (C) any interest in the donation(s) made to the Center pursuant to Section 13 below.

10.2 Involuntary Termination. The failure of any Partnering Agency to adhere to the terms and conditions of this Agreement, including timely payment of fees due, may constitute grounds for that Partnering Agency's involuntary termination from participation in the Center. A Partnering Agency in breach of any of the terms of this Agreement ("Breaching Party") must be notified in writing by the Center Director that, unless it comes into compliance within 30 days of receipt of the written notice, its participation in the Center may be involuntarily terminated. If the Breaching Party fails to remedy the breach within the specified time frame, the issue of its involuntary termination will be considered by the Steering Committee. The Steering Committee will provide the Breaching Party an opportunity to appear before it and to show why its participation in

the Center should not be involuntarily terminated. The failure of the Breaching Party to appear shall constitute a waiver of any future right to do so. Upon unanimous agreement of the Partnering Agencies not in default, the Steering Committee will notify the Breaching Party in writing that its participation in the Center is terminated and that it will forfeit any claim to any Center assets. Avondale retains the right to seek legal redress, if necessary, to obtain payment on amounts due from other Partnering Agencies. A Partnering Agency terminated for late or non-payment forfeits any claim to any Center assets, Center contributions or use of the Center.

10.3 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. A Partnering Agency may cancel this Agreement without penalty or further obligations by the Partnering Agency 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 Partnering Agency 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.

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

11. Assignment. A Partnering Agency may fully assign its rights and obligations under this Agreement as provided herein. No partial assignment of a Partnering Agency's rights and obligations hereunder shall be permitted. The assigning Partnering Agency's rights and obligations hereunder may only be assigned by a written instrument, approved by the respective governing bodies of the departing Partnering Agency and the remaining Partnering Agencies, expressly assigning such rights, and approved by the governing body of the new Partnering Agency, specifically assuming such rights and obligations. Upon approval of an assignment and assumption hereunder, the assigning Partnering Agency's rights and obligations hereunder shall terminate.

12. Applicable Law; Venue. In the performance of this Agreement, all Partnering Agencies to the Agreement shall abide by and conform to any and all laws of the United States, the State of Arizona, 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.

13. Donations to the Center. Avondale is authorized to accept donations on behalf of the Center. The Partnering Agencies will direct all inquiries regarding potential donations to the Center to the Center Director, who will have the primary responsibility for negotiating the terms of each

potential donation. The Center Director will inform the Steering Committee of the details of the offered donations. The Steering Committee will have the discretion to accept or reject proposed donations provided that the Steering Committee will reject any offered donation which, in the Steering Committee's sole discretion, (i) would negatively affect the Center's reputation, (ii) include designated uses for the donation specified by the potential donor that are inconsistent with the purposes of the Center, (iii) are from a potential donor who lacks the authority or mental capacity to make the donation, or (iv) subject to subsection 13.3, where the donated property is not capable of being promptly and easily converted to cash or a cash equivalent. Once the Steering Committee has accepted a proposed donation pursuant to subsection 13.4 below, the Center Director will cause the donor to execute a Southwest Family Advocacy Center Gift Agreement ("Gift Agreement"), substantially in the form attached hereto as Exhibit A, for donations with a value of \$1,000.00 or more. The Center Director will cause the donor to execute the Avondale Charitable Donation Receipt, attached hereto as Exhibit B, for donations with a value of less than \$1,000.00. Avondale shall maintain a system to hold, account for and distribute such donations. All donations of property other than cash, or cash equivalents may be accepted by Avondale on behalf of the Center subject to the provisions herein.

13.1 Real Property. Avondale may accept donations of real property on behalf of the Center. Real property donations will be accepted according to the Avondale's established practice for the acquisition of real property. The Center Director shall forward all inquiries regarding the donation of real property to the Avondale City Manager.

13.2 Personal Property. Avondale may accept gifts of personal property on behalf of the Center subject to the following conditions.

A. Steering Committee Determination. Subject to subsection 13.3 below, Avondale will not accept donations of personal property unless the Steering Committee believes the property may be of value to or used by the Center.

B. Live Property; Special Facilities. Avondale will not accept live property, nor will Avondale accept any property requiring special facilities or security.

13.3 Disposition of Donated Property. Unless the Steering Committee determines that the retention of donated property would further the purposes of the Center, the Steering Committee will direct the Center Director to promptly sell, or cause to be sold, all donated property, which sale shall be conducted according to the Avondale Procurement Code and any applicable laws and regulations. The Center Director will treat the proceeds from such sales as a cash donation under subsection 13.5. Avondale will not accept a donation under circumstances that obligate Avondale to own such donated property for a definite term or in perpetuity. The Center Director, the Steering Committee, and the Partnering Agencies shall not make any representation to any donor or potential donor that property will or will not be held by the Center for a specific period of time.

13.4 IRS Donation Forms. When appropriate, the Center Director will assist the appropriate Avondale staff member in preparation and execution of an IRS Form 8283, Non-Cash Charitable Contributions, when presented by the donor for signature. A qualified appraisal must be attached to IRS Form 8283. When appropriate, the Center Director will assist the appropriate

Avondale staff member in preparation and filing of an IRS Form 8282, Donee Information Return, with the Internal Revenue Service promptly after the sale of donated property.

13.5 Cash Donations; Proceeds from Donated Property. Avondale will deposit into the Center Fund all donations made in cash, by check or by credit card, and all proceeds from the sale of property donations. All checks must be made payable to “City of Avondale.”

13.6 Use of Donated Property. All donations made to Avondale on behalf of the Center will be used in accordance with the desires of each donor, if specified by the donor in the Gift Agreement, but in any event, for the exclusive benefit, and to satisfy the purposes, of the Center. Except as otherwise stated in this subsection 13.6 (A) the Steering Committee will have the sole authority to direct the Center Director concerning the use of each donation which is equal to or less than \$25,000 and (B) the Steering Committee shall make a recommendation to the Partnering Agencies, who will jointly direct the Center Director concerning the use of each donation which is in excess of \$25,000. The County/ City/Town Manager of each of the Partnering Agencies, or his/her designee, is authorized to give final approval on behalf of his/her respective Partnering Agency with respect to this subsection 13.6. The Center Director will be primarily responsible for implementing the decisions of the Steering Committee or the decisions of the Steering Committee and the Partnering Agencies, as the case may be.

13.7 Donor Identity. All information concerning the identity of a donor will be considered information subject to disclosure in accordance with the Arizona Public Records Law. If a donor requests that his/her identity remain confidential, to the extent permitted by law, Avondale will attempt to prohibit and or limit the disclosure of such information.

13.8 Tax Implications. The Center Director will advise all donors and prospective donors to seek independent legal and tax advice regarding all aspects of their proposed donations. The Center Director, the Steering Committee and the Partnering Agencies shall not make any representation to any donor or potential donor regarding the state or federal tax treatment of any donation to Avondale on behalf of the Center. The Steering Committee will consult with a tax advisor to ensure that the Center’s acceptance of donations complies with state and federal tax law.

13.9 Legal Documentation. The Center Director is not authorized to execute any agreement, contract, trust or other legal document pertaining to a donation to the Center. All such agreements, contracts, trusts or legal documents shall be approved by Avondale’s City Manager after review by the Avondale City Attorney.

14. Miscellaneous.

14.1 Relationship of Partnering Agencies. Each Partnering Agency to the Agreement shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the others. Each Partnering Agency shall be solely and entirely responsible for its acts or acts of its agents and employees during the performance of this Agreement. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This Agreement shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and

unambiguously set forth herein. Nothing contained in this Agreement confers any right to any person, (including, but not limited to, the Center Director) or entity not a party to this Agreement.

14.2 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.

14.3 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.

14.4 Waiver. Failure of any Partnering Agency to exercise any right or option arising out of a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

14.5 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

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

If to the City of Avondale

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

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

If to the Town of Buckeye

Notice to: Town of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326
Attn: Stephen S. Cleveland, Town Manager

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

If to the City of Goodyear

Notice to: City of Goodyear
190 North Litchfield Road
Goodyear, Arizona 85338
Facsimile: (623) 882-7520
Attn: Brian Dalke, Interim City Manager

If to Maricopa County

Notice to: County of Maricopa, Arizona
301 West Jefferson Street
Phoenix, Arizona 85003
Facsimile: (602) 506-6362
Attn: Tom Manos, County Manager

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

14.7 Agreement Subject to Appropriation. The performance by each Partnering Agency to this Agreement of its respective obligations under the Agreement is subject to actual availability of funds appropriated by each Partnering Agency for such purposes. Each Partnering Agency to the Agreement shall be the sole judge and authority in determining the availability of funds under the Agreement and each Partnering Agency shall keep the other Partnering Agencies fully informed as to the availability of funds for its obligations. The obligation of each Partnering Agency to fund any obligation pursuant to the Agreement is a current expense of such Partnering Agency, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Partnering Agency. If the governing body of a Partnering Agency fails to appropriate money sufficient to meet its obligations as set forth in the Agreement during any immediately succeeding fiscal year, the Agreement shall terminate with respect to that Partnering Agency at the end of the then-current fiscal year and such Partnering Agency shall thereafter be relieved of any subsequent obligation under the Agreement. The Agreement will remain in full effect for the remaining Partnering Agencies to the Agreement.

14.8 E-verify, Records and Audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Partnering Agencies and their respective 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). The Partnering Agencies' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either party under the terms of this Agreement. The Partnering Agencies each retain the legal right to randomly inspect the papers and records of each other Partnering Agency and each other Partnering Agencies' subcontractors who work under this Agreement to ensure that the other party and its subcontractors are complying with the above-mentioned warranty. The Partnering Agencies warrant to keep their respective papers and records open for random inspection during normal business hours by each other Partnering Agency. The Partnering Agencies and their respective subcontractors shall cooperate with each other Partnering Agencies' random inspections including granting the inspecting Partnering Agency entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

14.9 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, each Partnering Agency certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this Section, the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If it is determined by a court of competent jurisdiction that a Partnering Agency submitted a false certification, that Partnering Agency's participation in this Agreement shall terminate without any further action by any other Partnering Agency. This Agreement will remain in full force and effect with respect to the remaining Partnering Agencies.

IN WITNESS WHEREOF, the Partnering Agencies have executed this Agreement on the dates of their respective signatures written below.

[SIGNATURES ON FOLLOWING PAGES]

“Partnering Agency”

CITY OF AVONDALE, an Arizona
municipal corporation

Marie Lopez Rogers, Mayor

Date: _____

ATTEST:

Carmen Martinez, City Clerk

CERTIFICATION BY LEGAL COUNSEL

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Andrew J. McGuire, City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Partnering Agency”

TOWN OF BUCKEYE, an Arizona
municipal corporation

Jackie A. Meck, Mayor

Date: _____

ATTEST:

Lucinda Aja, Town Clerk

CERTIFICATION BY LEGAL COUNSEL

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Scott W. Ruby, Town Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Partnering Agency”

CITY OF GOODYEAR, an Arizona
municipal corporation

Georgia Lord, Mayor

Date: _____

ATTEST:

Lynn Mulhall, City Clerk

CERTIFICATION BY LEGAL COUNSEL

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Roric V. Massey, City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Partnering Agency”

COUNTY OF MARICOPA, ARIZONA, an Arizona
municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Fran McCarroll, Clerk of the Board

CERTIFICATION BY LEGAL COUNSEL

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

County Attorney

**EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
AMONGST
THE CITY OF AVONDALE, THE TOWN OF BUCKEYE,
THE CITY OF GOODYEAR AND THE COUNTY OF MARICOPA, ARIZONA
FOR THE SOUTHWEST FAMILY ADVOCACY CENTER**

[Gift Agreement]

See following pages.

**SOUTHWEST FAMILY ADVOCACY CENTER
GIFT AGREEMENT**

THIS GIFT AGREEMENT (this "Agreement") is made as of _____, 201_, by and between the City of Avondale ("Avondale"), an Arizona municipal corporation, and the following donor ("Donor"):

Name: _____
Address: _____

Home Phone: _____
Other Phone: _____
Facsimile: _____
E-Mail: _____

Avondale serves as the day-to-day manager for the Southwest Family Advocacy Center (the "Center").

The Center gratefully acknowledges Donor's thoughtful generosity in assisting the Center to fulfill its mission to prevent, protect and treat victims of sexual or physical abuse and victims of domestic violence (the "Mission").

1. Cash Gift Pledge. Donor hereby agrees to make a cash gift to the Center in the amount of \$ _____. Donor agrees to pay this cash pledge in full on or before the ____ day of _____, 201_, in the following manner (please complete all that apply):

- by \$_____ cash enclosed;
- by \$_____ check enclosed, made payable to "City of Avondale";
- by \$_____ credit card charge as follows:
 Visa MasterCard American Express Discover

Credit Card No. _____

Exp. Date: _____ 3-Digit Code: _____

- by \$_____ cash or check in the following payments:
Regular Payments of \$_____ each:

Monthly beginning on _____, 2_____
Quarterly beginning on _____, 2_____
Semi-annually beginning on _____, 2_____
Annually beginning on _____, 2_____

OR

Modified Payment Schedule:

1st payment of \$ _____ on _____, 2_____
2nd payment of \$ _____ on _____, 2_____
3rd payment of \$ _____ on _____, 2_____
4th payment of \$ _____ on _____, 2_____

by bequest or other planned gift in the amount of \$ _____, as follows:

_____.

Recognizing that the Center is relying upon Donor's commitment in order to continue to carry out its Mission, and acknowledging the importance of the timeliness of such payments, Donor agrees to consult with the Center in the event it is deemed necessary or advisable to modify the above payment schedule.

2. Personal Property Gift Pledge. Donor hereby agrees to make a gift to the Center of personal property described as follows: _____

_____.

3. Further Assurances. Avondale and Donor each agrees to perform all further acts and to execute, acknowledge and deliver any additional documents or instruments that are necessary to carry out the provisions of this Agreement.

4. Representations and Warranties. Donor represents and warrants that:

(i) Authorization. All actions on the part of Donor which are required for the execution, delivery and performance by Donor of this Agreement have been duly and effectively taken. Donor has full power and authority to enter into and perform its obligations under this Agreement. The person(s) executing this Agreement on behalf of Donor have full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transaction contemplated hereby.

(ii) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of Donor, enforceable against Donor in accordance with its terms.

(iii) Title. Donor has good title to all property being donated pursuant to this Agreement and, upon execution of this Agreement; Avondale shall have and receive good and marketable title to the donated property free and clear of any liens.

(iv) No Other Agreement. Donor has not entered into, there is not existing as of the date of this Agreement, and Donor covenants that it shall not hereafter enter into, any other agreement, written or oral, under which Donor is obligated to donate, sell or lease to any third party the property being donated pursuant to this Agreement.

(v) Litigation. Donor has no knowledge of any pending or threatened condemnation or similar proceeding affecting the property being donated pursuant to this Agreement or any portion thereof.

5. Permitted Purposes. Donor acknowledges that Avondale will make use of Donor's gift for the Center's benefit to further its Mission. Donor may specify below one or more purposes for use of the gift, provided that such purpose(s) are consistent with the Center's Mission, which the Center shall determine in its sole discretion. Unless otherwise specified below, the Center shall have the sole discretion to determine the use of the gift in accordance with the Mission and the Center's governing documents.

I desire that my gift be used for the following purpose(s): _____

_____.

6. Donor Recognition. All information concerning the identity of the Donor and information regarding the gift made by Donor will be considered information subject to disclosure in accordance with the Arizona Public Records Law. If Donor requests that his/her identity and gift amount(s) remain confidential, to the extent permitted by law, the Center will attempt to prohibit and or limit the disclosure of such information. If Donor desires to keep his/her identity and gift information confidential, please indicate so by checking the box below:

Donor requests that the Center, to the extent permitted by law, keep the Donor's identity and information regarding any gift confidential.

7. Tax Treatment. THE CENTER MAKES NO REPRESENTATIONS TO DONOR WITH RESPECT TO THE STATE OR FEDERAL TAX TREATMENT OF DONOR'S GIFT. DONOR IS ADVISED TO SEEK THE ADVICE OF DONOR'S ATTORNEY AND TAX ADVISOR REGARDING ALL ASPECTS OF DONOR'S GIFT.

8. Governing Law. This Agreement shall be governed by the laws of the State of Arizona, without regard to conflict of law principles and any suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

9. Entire Agreement; Amendments. The parties understand and agree that this Agreement (i) sets forth the entire agreement between the parties with respect to Donor's gift;

(ii) supersedes all prior discussions, agreements and understandings, whether written or oral, relating to the subject matter hereof; (iii) may be amended or modified only by a subsequent writing which is signed by both parties; and (iv) is binding upon Donor and the Center, and their respective heirs, personal representatives and successors.

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 _____, 201_,
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]

**EXHIBIT B
TO
INTERGOVERNMENTAL AGREEMENT
AMONGST
THE CITY OF AVONDALE, THE TOWN OF BUCKEYE,
THE CITY OF GOODYEAR AND THE COUNTY OF MARICOPA, ARIZONA
FOR THE SOUTHWEST FAMILY ADVOCACY CENTER**

[Charitable Donation Receipt]

See following page.



11465 W. Civic Center Dr • Avondale, AZ 85323
623-333-1000 www.avondale.org

Charitable Donation Receipt

Donor Name: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone: _____ **Email:** _____

please contact me about further donation opportunities with the City.

Amount of cash contribution: \$ _____ **Value of donated property:** \$ _____

(Must be estimated by donor)

Description of donated property: _____

I _____ acknowledge receipt of the aforementioned donation and I state that the City of Avondale has not provided any goods or services to the donor in return for the contribution.

Signature of Avondale Employee

Date

Signature of Witness

Date

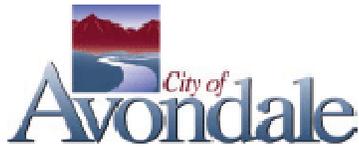
(In order for this form to be valid it must have two signatures.)

THE CITY OF AVONDALE MAKES NO REPRESENTATIONS TO DONOR WITH RESPECT TO THE STATE OR FEDERAL INCOME TAX TREATMENT OF DONOR'S GIFT. DONOR IS ADVISED TO SEEK THE ADVICE OF DONOR'S ATTORNEY AND TAX ADVISOR REGARDING ALL ASPECTS OF DONOR'S GIFT.

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CITY COUNCIL REPORT

SUBJECT:

Update on the State of Arizona Water Resources Fund.

MEETING DATE:

July 16, 2012

TO: Mayor and Council
FROM: Kevin Artz
THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff will be providing an update on the elimination of the State of Arizona Water Resource fee and seek direction for an effective date to remove the water resource fee.

BACKGROUND:

In July 2011, The State enacted Senate Bill 1624, which established a new municipal fee to be deposited in the State's Water Resource Fund. The fee for the City of Avondale for FY 2011-12 was approximately \$95,000. The City has paid the fee for FY 2011-12.

In December 2011, Council approved resolution 3024-1211, approving new fees on utility accounts to recover the cost of the State's water resource fee. Effective February 2012, the City began billing each utility account \$0.33 per month to recover the cost.

Effective July 2012, the State of Arizona has eliminated the Water resource fee charged to each municipality.

DISCUSSION:

As the State has eliminated the water resources fee, the City must also eliminate the fee from the resident's utility bill. The City has a couple options relating to the elimination of the State fee. First, the City could continue to bill the fee to the residents thru January 2013 and recover the full \$95,000 that was paid to the State of Arizona.

An Alternative would be to eliminate the fee sooner and have the City's water fund absorb the unbilled portion of the fee. If the fee were eliminated in August, the City would forgo collecting approximately \$45,000 of the \$95,000 paid to the State. There is adequate fund balance in the water fund to absorb \$45,000, if the fee is eliminated in August.

Staff has received several calls from residents inquiring when the fee will be removed from their bill. Based on the feedback received, the residents believe the fee should be removed effective July (bills received in August).

RECOMMENDATION:

Staff recommends that Council provide direction for an effective date to remove the State of Arizona Water resource fee. Staff will prepare the appropriate resolution for the August 6, 2012 meeting, if that is the desire of the Council.

ATTACHMENTS:

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No Attachments Available