

ORDINANCE NO. 2656 NEW SERIES

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA (1) AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE AND A 2008 LEASE AGREEMENT WITH THE WESTERN LOOP 101 PUBLIC FACILITIES CORPORATION RELATING TO THE FINANCING OF A SPRING TRAINING FACILITIES FOR MAJOR LEAGUE BASEBALL, RELATED FACILITIES AND OTHER PUBLIC INFRASTRUCTURE; (2) PLEDGING CERTAIN EXCISE TAXES AND RECEIPTS IMPOSED OR RECEIVED BY THE CITY; (3) APPROVING THE FORM OF AND REQUESTING THE EXECUTION AND DELIVERY BY WESTERN LOOP 101 PUBLIC FACILITIES CORPORATION OF A GROUND LEASE, A SERIES 2008 TRUST INDENTURE IN ONE OR MORE SERIES OF BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$200,000,000, SUCH SERIES 2008 LEASE AGREEMENT AND A PURCHASE AGREEMENT WITH RESPECT TO THE SALE OF SUCH BONDS; (4) DELEGATING TO THE CITY MANAGER OR THE CHIEF FINANCIAL OFFICER OF THE CITY THE AUTHORITY TO DESIGNATE BY SERIES THE FINAL PRINCIPAL AMOUNT, MATURITIES, INTEREST RATES AND OTHER MATTERS WITH RESPECT TO SUCH BONDS; (5) AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE, INCLUDING THE EXECUTION OF CERTAIN DOCUMENTS AND THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT; AND (6) DECLARING AN EMERGENCY.

WHEREAS, the Western Loop 101 Public Facilities Corporation, (the "Corporation"), a nonprofit corporation, is authorized and empowered, among other things (a) to issue its special obligation bonds for the purposes of assisting the City of Glendale, Arizona (the "City") in acquiring and constructing certain municipal improvements and otherwise incurring expenses to improve the use of certain municipal facilities, (b) to enter into a lease and a ground lease and other necessary documents and to provide for rentals sufficient to pay the principal of and premium, if any, and interest on such bonds, (c) to secure such bonds as provided for herein, and (d) to enact this Resolution and enter into the Series 2008 Ground Lease and the Series 2008 Lease Agreement, all as hereinafter defined, upon the terms and conditions provided herein and therein; and

WHEREAS, the City has determined that it is beneficial to its citizens to design, acquire, construct and equip certain spring training facilities for major league baseball and other infrastructure on the land associated with the spring training facilities (the "2008 Stadium

Property” and the “2008 Stadium Project”, respectively) and to design and construct certain public infrastructure necessary to support the spring training facilities (the “2008 Infrastructure Project” and together with the “2008 Stadium Project”, the “2008 Project”); and

WHEREAS, the Board of Directors of the Corporation has indicated that they desire to assist the City in refinancing the 2008 Project and financing certain new costs, among other matters; and

WHEREAS, in order to finance the 2008 Project, the Corporation and the City deem it necessary and desirable for the Corporation to issue additional Bonds which may consist of the Corporation’s Third Lien Excise Tax Revenue Bonds, Series 2008A (the “2008A Bonds”), Third Lien Excise Tax Revenue Bonds, Series 2008B (the “2008B Bonds”) and Third Lien Excise Tax Revenue Bonds, Series 2008C (the “2008C Bonds” and together with the 2008A Bonds and 2008B Bonds, collectively, the “2008 Bonds”), of which one or more series may be issued as taxable 2008 Bonds, to be issued pursuant to the Series 2008 Trust Indenture dated as of October 1, 2008 (the “Indenture”); and

WHEREAS, in connection with the execution and delivery of the 2008 Bonds, the Corporation shall enter into a Series 2008 Ground Lease and a Series 2008 Lease Agreement, each dated as determined by the City Manager or Chief Financial Officer as provided herein (the “Lease Agreement”) with the City pursuant to which the City leases the 2008 Stadium Property to the Corporation, and the Corporation leases the 2008 Stadium Property to the City and the City agrees to make lease payments to secure the 2008 Bonds, respectively; and

WHEREAS, the City Manager or Chief Financial Officer will determine the underwriters of the bonds as provided herein (collectively, the “Original Purchaser”), who will offer to purchase, if executed and delivered, the 2008 Bonds pursuant to a Bond Purchase Agreement (the “Purchase Agreement”), by and among the Corporation, the Original Purchaser and the City, and the proceeds of the sale thereof will be applied for costs of the 2008 Project; and

WHEREAS, the City will pledge its Unrestricted Excise Taxes (as defined in the Lease Agreement) to the payment of its rental payments under the Lease Agreement, but on a basis subordinate to the City’s Senior Obligations and Subordinate Obligations (as each such term is defined herein) as more fully described herein and in the Basic Documents (defined below); and

WHEREAS, there have been presented to the City Council of the City at the meeting of the City Council of the City at which this Ordinance is being adopted (i) the proposed form of 2008 Ground Lease; (ii) the proposed form of the Lease Agreement; (iii) the proposed form of the Continuing Disclosure Undertaking of the City and (vi) the proposed form of the Indenture (including the forms of the 2008 Bonds) (the items above referred to herein collectively as the “Basic Documents”) and the form of Preliminary Official Statement to be distributed in connection with the offer and sale of the 2008 Bonds (the “Preliminary Official Statement”); and

WHEREAS, the Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the assistance it renders the City in financing the 2008 Project, and no part of the net earnings of the Corporation, if any, shall ever inure to the benefit of any person, firm or corporation except the City; and

WHEREAS, this Council desires to authorize the execution and delivery of the Basic Documents and such other documents as may be necessary in connection with the execution and delivery of said Basic Documents, the pledge of Unrestricted Excise Taxes (as defined herein) for the payment of the amounts due under the Lease Agreement and the issuance of the 2008 Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GLENDALE, ARIZONA, THAT:

SECTION 1. In addition to words and terms elsewhere defined in this Ordinance, the capitalized words and terms used herein shall have the meaning given in Article 1 of the Lease Agreement.

SECTION 2. The lease of the 2008 Stadium Property from the City to the Corporation as set forth in the 2008 Ground Lease and the lease of the 2008 Stadium Property from the Corporation as set forth in the Lease Agreement is hereby reconfirmed; and the rent specified in the Lease Agreement for the 2008 Project for those periods specified in the Lease Agreement (the "Lease Payments") will at least be sufficient to pay the principal and interest on the 2008 Bonds and other obligations secured by the Lease Agreement and the Lease Agreement is hereby approved (but subject to the limitations on the source of City payments as set forth in Section 3). The Mayor and City Clerk of the City are hereby authorized and directed to execute the 2008 Ground Lease and the Lease Agreement on behalf of the City in substantially the form on file with the City Clerk and presented to this Council with such modifications, insertions and changes as may be approved by the executing officials, which approval shall be conclusively evidenced by their execution of the Lease Agreement.

SECTION 3. For the payment of the Lease Payments and other amounts due and payable under the Lease Agreement authorized in Section 2 hereof, there are hereby pledged, on a basis junior and subordinate to the City's Senior Obligations and Subordinate Obligations, the City's Unrestricted Excise Taxes. It is intended that this pledge of Unrestricted Excise Taxes will be sufficient to make the Lease Payments pursuant to the Lease Agreement and the City agrees and covenants to make said Lease Payments from such Unrestricted Excise Taxes, except to the extent that it chooses to make such payments from other funds, as permitted by law. Neither the Lease Agreement nor the promise to pay pursuant thereto nor the 2008 Bonds constitute a general obligation of the City nor shall the City be liable for the payments under the Lease Agreement from ad valorem taxes.

SECTION 4. The City Council of the City hereby finds and determines that the financing of the 2008 Project pursuant to the terms of the 2008 Ground Lease, the Indenture and the Lease Agreement and through the issuance and the sale of the 2008 Bonds are in furtherance of the purposes of the City and in the public interest will enhance the standard of living within the City and within the State.

The City Council of the City hereby increases the authorized amount of Bonds that may be issued by the Corporation to an amount not to exceed \$200,000,000.

The City Council of the City hereby restates its approval of the purposes and activities of the Corporation and the issuance of the 2008 Bonds by the Corporation and reconfirms its agreement to accept title to the 2008 Stadium Property upon discharge of the obligations related thereto, as provided in the Lease Agreement.

SECTION 5. The City hereby amends Resolution No. 4075 New Series, which authorized the creation of the Corporation, by increasing the amount of bonds that the Corporation may issue to \$200,000,000 total.

The City hereby approves the issuance and delivery of the 2008 Bonds, as hereinafter described, by the Corporation in an aggregate principal amount not to exceed \$200,000,000.

The 2008 Bonds shall be in the denomination of \$5,000 or any integral multiple thereof, shall be dated as determined by the Chief Financial Officer of the City, shall bear interest from such date payable on January 1 and July 1 of each year, commencing as determined by the Chief Financial Officer, and shall be fully registered bonds without coupons. The 2008 Bonds shall bear interest at an average rate per annum not to exceed 9.00% and shall mature on July 1 in the years determined by the Chief Financial Officer but not later than 2038.

The forms, terms and provisions of the 2008 Bonds and the provisions for the signatures, authentication, payment, registration, transfer, exchange and number shall be as set forth in the Indenture and are hereby approved.

The City Manager or Chief Financial Officer of the City are hereby authorized and directed to determine on behalf of the City and the Corporation by applicable series: (i) the principal amount of the 2008 Bonds; (ii) the final maturity schedule of the 2008 Bonds; (iii) the provisions for redemption in advance of maturity or payment of the 2008 Bonds; (iv) the interest rates on the 2008 Bonds; (v) the sales price and terms of the purchase of the 2008 Bonds (including the underwriter's discount [which shall not exceed 1% of the aggregate principal amount of the 2008 Bonds] and the original issue discount or premium), (vi) the provisions for credit enhancement, if any, for the 2008 Bonds including a debt service reserve fund or surety bond; and (vii) the provisions for a revenue stabilization fund and/or contingency amount, if any, if deemed to be in the best interests of the City.

Each series of Bonds may be issued as tax-exempt or taxable as determined by the Chief Financial Officer of the City. The City Financial Officer may determine to issue only the Series 2008A Bonds and Series 2008B Bonds. If no Series 2008C Bonds are issued, references therein to such Bonds shall have no force and effect.

The provisions for redemption of the Bonds shall be as set forth in the Purchase Contract and the Indenture.

The forms and other terms and provisions of the 2008 Bonds and the provisions for the signatures, authentication, payment, registration, transfer, exchange and number shall be as set forth in the Indenture and are hereby approved.

SECTION 6. The City Manager or the Chief Financial Officer of the City are hereby authorized and directed to select the underwriter(s) of the bonds, provided that any such underwriter shall have net capital in excess of \$10,000,000 and has served as a senior manager or co-manager on an Arizona issue within the last twelve months. If the underwriter(s) have been selected as of the date of this Ordinance, the names of such underwriters shall be as set forth on Exhibit I. The 2008 Bonds shall be sold to the Original Purchaser pursuant to the Purchase Agreement (in a form satisfactory to the City and its counsel) and execution of such Purchase Agreement is hereby authorized and approved.

SECTION 7. The forms, terms and provisions of the Basic Documents, in substantially the forms of such documents (including the exhibits thereto) presented at the meeting of the City Council of the City at which this Ordinance is being adopted, are hereby approved. The Mayor of the City or any other member of the City Council of the City are hereby authorized and directed to execute and deliver, and the City Clerk of the City to attest, the Basic Documents, with such insertions, omissions and changes as shall be approved by the Mayor or the Chief Financial Officer of the City, the execution of such documents being conclusive evidence of such approval and particularly of approval and acceptance of the covenants contained therein by the City Council of the City on behalf of the City.

SECTION 8. The City Council of the City hereby requests the Corporation to take any and all action necessary in connection with the execution and delivery of the Basic Documents and requests that the Corporation execute and deliver the Basic Documents and any other documents necessary in connection therewith and hereby acknowledges that the Corporation is acting on behalf of and at the direction of the City for all purposes described herein.

SECTION 9. The City Manager or Chief Financial Officer is authorized to enter into such agreements as he determines necessary in conjunction with obtaining bond insurance or a reserve fund surety bond, if any.

All actions of the City related to preparing and distributing the Preliminary Official Statement are hereby approved and ratified. The portions of the Official Statement regarding the 2008 Bonds which concern and describe the City are hereby approved and the City Manager or the Chief Financial Officer is hereby authorized and directed to execute the same and any required certificates as to the accuracy and completeness of said Official Statement descriptions of the City.

SECTION 10. The Preliminary Official Statement in substantially the form submitted to the City is approved and the distribution of the same is hereby approved. The Preliminary Official Statement is "deemed final" (except for permitted omissions), by the City as of its date for purposes of SEC Rule 15c212(b)(1) and a final official statement will be prepared and distributed to the Original Purchaser for purposes of SEC Rule 15c212(b)(3) and (4). Either the Mayor, City Manager or Chief Financial Officer of the City is authorized and directed to

complete and sign on behalf of the City and in his or her official capacity, the Official Statement, with such modifications, changes and supplements as either the Mayor, City Manager or Chief Financial Officer of the City shall approve as being necessary or desirable for its purposes. The Mayor, City Manager or Chief Financial Officer of the City is authorized to use and distribute, or authorize the use and distribution of, the Official Statement and any supplements thereto as so signed in connection with the original issuance of the 2008 Bonds as may in his or her judgment be necessary or appropriate. The references to the City contained in the Preliminary Official Statement and such final Official Statement relating to the 2008 Bonds are hereby authorized and approved.

SECTION 11. The Mayor, the City Manager, the Deputy City Manager, the Clerk and the Chief Financial Officer of the City are hereby authorized and directed to do all such acts and things to execute, acknowledge and deliver all such documents (including, without limitation, tax compliance certificates, security agreements and financing statements or any amendments to such documents and all closing documents) as may in their discretion be deemed necessary or desirable to carry out and comply with the terms, provisions and intent of this Ordinance, and the Basic Documents and all exhibits to any of the foregoing. All of the acts of the officers of the City which are in conformity with the intent and purposes of this Ordinance, whether heretofore or hereafter taken or done, shall be and the same are hereby ratified, confirmed and approved in all respects.

SECTION 12. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the 2008 Bonds designated as "tax-exempt" (the "Tax-Exempt Bonds") in such manner and to such extent as may be necessary so that (a) the Tax-Exempt Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the "Code"), or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the Code. The Mayor or the Chief Financial Officer, as the fiscal officer, or any other officer having responsibility for issuance of the Tax-Exempt Bonds shall, alone or with any other officer or employee or consultant to the City, give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Tax-Exempt Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Tax-Exempt Bonds, the facts, circumstances and estimates on which they are based and other facts and circumstances relevant to the tax treatment of interest on the Tax-Exempt Bonds.

The City covenants (a) that it will take or cause to be taken such actions which may be required of it for the interest on the Tax-Exempt Bonds to be and remain excluded from gross income for federal income tax purposes, (b) that it will not take or authorize to be taken any actions which would adversely affect that exclusion and (c) that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Tax-Exempt Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, the Chief Financial Officer and other appropriate officers are hereby authorized and directed to take any

and all such actions, make calculations and rebate payments, and make or give such reports and certifications, as may be appropriate to assure such exclusion of that interest.

SECTION 13. After any of the 2008 Bonds are delivered by the Trustee to the Original Purchaser upon receipt of payment therefor, this Ordinance shall be and remain irrevocable until the 2008 Bonds and the interest thereon shall have been fully paid, canceled and discharged.

SECTION 14. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 15. All orders and Ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order or Ordinance or any part thereof.

SECTION 16. That pursuant to the Facilities Development Agreement, the Teams (as defined in the Lease Agreement), and/or its affiliated or related organizations, are required to make certain contributions ("Team Deposits") necessary for the development of the 2008 Stadium Project (as defined in the Lease Agreement) to the extent development costs are in excess of the city commitment amount. The Team Deposits are currently expected to not exceed \$30,000,000. The Council hereby expresses its official intent pursuant to Treasury Regulation section 1.141-4(c)(3)(v) that such Team Deposits are to be allocated to equity for the 2008 Stadium Project. The Council may amend this Ordinance to reflect revised estimates of costs.

SECTION 17. The immediate operation of the provisions of this Ordinance is necessary for the public peace, health and safety of the residents and citizens of the City for the reason that the bonds herein authorized must be sold at the earliest possible time in order to obtain the most advantageous interest rate (including that certain of the 2008 Bonds will be sold on a tax-exempt basis subject to customary exceptions) on the 2008 Bonds; an emergency is, therefore, declared to exist, and this Ordinance shall be in full force and effect immediately upon its/passage and adoption by the Mayor and Council of the City of Glendale, and it is hereby exempt from the referendum provisions of the Constitution and laws of the State.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 23rd day of September, 2008.


MAYOR

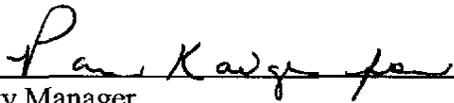
ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager