CITY CLERK
ORIGINAL

C-7652
04/12/2011

License Agreement No. P50167
C-85-11-025-3-00

LICENSE AGREEMENT
FOR USE OF REAL PROPERTY

This License Agreement for Use of Real Property ("Agreement") is executed to be effective (as stated below) the 12th day of April, 2011 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("Glendale") and Maricopa County, a political subdivision of the State of Arizona ("County").

WHEREAS, Glendale is the owner of certain real property located at the southeast corner of 44th Drive and Peoria Avenue known as Fire Station 154, 4439 West Peoria Avenue, which is legally described on attached Exhibit A ("City Property"); and

WHEREAS, County desires to install, operate and maintain an air quality monitor site on a portion of the City Property, as described in this Agreement and depicted on attached Exhibit B ("Monitor Site"); and

WHEREAS, Glendale is willing to grant to County a license to use the Monitor Site for the uses described above.

THEREFORE, in consideration of the following mutual covenants and conditions, it is hereby agreed as follows:

1. LICENSED AREA/MONITOR SITE.

The Monitor Site, located on City Property legally described on attached Exhibit A, is graphically depicted on attached Exhibit B.

2. REPRESENTATIONS AND WARRANTIES.

A. Glendale represents and warrants to County that: (i) Glendale, and its authorized signatory, has full right, power and authority to execute this Agreement; and (ii) Glendale's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on Glendale.

B. County represents and warrants to Glendale that: (i) County, and its authorized signatory, has full right, power and authority to execute this Agreement; and (ii) County's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on County.

C. County has studied and inspected the Monitor Site and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in subsection (A) above, including any warranties or representations by Glendale as to title or its condition or fitness for any use. County has inspected the Monitor Site and obtained information and professional advice as County has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

A. Nothing in this Agreement shall be construed as granting County the authority to use any property that is owned by any person or entity other than Glendale. County assumes sole responsibility for ensuring the placement of its multi-use path improvements, for the purposes of this license, is on property owned by Glendale.

B. This License Agreement is not intended to represent permission granted in perpetuity. Either party may terminate this Agreement without cause by giving one hundred eighty (180) days' advance written notice to the other of intent to terminate.

C. If County continues to occupy the Monitor Site after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement.

D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, County's rights in the Monitor Site are limited to the rights created by this Agreement, which create only a license in the Monitor Site, which is revocable only as set forth expressly herein. Glendale and County do not by this instrument intend to create a lease, easement or other real property interest. County has no real property interest in the Monitor Site. County's sole remedy for any breach or threatened breach of this Agreement by Glendale will be an action for damages. County's rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the Monitor Site. County's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over the Monitor Site or County's use of the Monitor Site.

E. This license Agreement is specific to County, and may not be transferred or assigned in any manner, without the prior written approval of Glendale.

4. FEES.

Upon execution of the Agreement and upon City's proper invoicing of County, County shall pay City a first year license fee of Six Hundred Dollars ($600.00) for entering into the Agreement. Thereafter, at the anniversary date of the Agreement and upon City's proper invoicing of County, County shall pay an annual License fee of Six Hundred Dollars ($600.00) until such time as Agreement is terminated pursuant to the terms of this Agreement.

5. UTILITIES.

County is responsible for obtaining and paying for all utilities necessary for its use of the Monitor Site.

6. USE RESTRICTIONS.

A. County shall not remove, damage or alter in any way any existing improvements or personal property of Glendale within the Monitor Site without Glendale's prior written approval, which shall not be unreasonably withheld. County shall repair any damage or alteration to Glendale's property to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.

B. County shall use the Monitor Site solely for the purpose of installing and operating an air quality monitoring location, generally consisting of the following elements:

One to three air particulate samplers which are tested for biological agents only

C. County shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the authorized use, which right shall be exercised so as to not unreasonably interfere with any Glendale operations.

D. County shall keep the Monitor Site maintained, orderly and clean at all times.

E. Subject to the terms set forth herein, County acknowledges that County's use of the Monitor Site shall be subject and subordinate to, and shall not adversely affect, Glendale's use of the Monitor Site.

7. HAZARDOUS WASTE.

County shall not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the Monitor Site in violation of the Arizona Hazardous Waste Management Act, ARIZONA REVISED STATUTES ("A.R.S.") § 49-901 *et seq.*, the Resource Conservation and Recovery Act, 42 UNITED STATES CODE ("USC") 6901 *et seq.*, the Toxic Substances Control Act, 15 USC 2601 *et seq.*, or any other federal, state or local law pertaining to hazardous waste or toxic substances. County shall not use the Monitor Site in a manner inconsistent with any regulations, permits or approvals issued by any state agency. County shall defend, indemnify and hold Glendale harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the Monitor Site to the extent attributable to or caused by County, and shall immediately notify Glendale of any hazardous waste or toxic substance at any time discovered or existing upon the Monitor Site. County shall promptly and without a request by Glendale provide Glendale's Environmental Program Manager with copies of all written communications between County and any governmental agency concerning environmental inquiries, reports or problems relating to hazardous waste or toxic substances on the Monitor Site.

8. CONSTRUCTION AND MAINTENANCE.

A. County has, at its own cost, all responsibilities for the installation of all improvements proposed by County to the Monitor Site as depicted on Exhibit B, including costs associated with construction, operation and maintenance, unless damage thereto is caused by Glendale or its agents or contractors;

B. All improvements made by County to the Monitor Site pursuant to the terms of this Agreement are subject to and must be in compliance with all applicable codes, ordinances and laws, including the Americans with Disabilities Act, and constructed in conformance with Glendale's approved design standards.

C. County shall not permit any liens to be placed or remain on the Monitor Site by virtue of any work performed under this Agreement.

9. INDEMNIFICATION.

County shall defend, indemnify and hold harmless Glendale and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as "Glendale" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation (collectively, "Damages"), that arise out of any act or omission of County or its agents, employees and invitees (hereinafter referred to collectively as "County" in this Section) in connection with County's operations in the Monitor Site and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that are caused by the failure of County to comply with any provision of this Agreement except to the extent the Damages are caused by Glendale's, or its agents' gross negligence, fault or willful misconduct. Glendale shall give County prompt notice of any claim made or suit instituted that may subject County to liability under this Section, and County shall have the right to compromise and defend the same to the extent of its own interest. Glendale shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of Glendale's selection and at Glendale's sole cost without relieving County of any obligations under this Agreement. County's obligations under this Section survive any termination of this Agreement or County's activities in the Monitor Site.

10. INSURANCE.

Glendale acknowledges that County is self insured. County shall provide Glendale with a certificate of self-insurance upon request.

11. DAMAGE OR DESTRUCTION.

Glendale has no obligation to reimburse County for the loss of or damage to fixtures, equipment or other personal property, except for loss or damage as is caused by the negligence or fault of Glendale or its officers, employees or agents. County may insure all fixtures, equipment or other personal property for its own protection if it so desires.

12. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, County's right to occupy the Monitor Site and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the Monitor Site in good condition, normal wear and tear and casualty not caused by County excepted.

13. NOTICE.

A. Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO GLENDALE:	City of Glendale Property Manager 5850 W. Glendale Ave., Suite 315 Glendale, AZ 85301
WITH A COPY TO:	City of Glendale City Attorney 5850 W. Glendale Ave., Suite 450 Glendale, AZ 85301
TO COUNTY :	Maricopa County Finance Department Attention: Real Estate Manager 301 W. Jefferson, Suite 960 Phoenix, AZ 85003

B. Any notice given by certified mail shall be deemed to be received on the third business day after the date of mailing. Either party may designate in writing a different address for notice purposes pursuant to this Section.

14. SEVERABILITY.

If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.

15. TAXES AND LICENSES.

A. County shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the Monitor Site under authority of this Agreement, including any tax assessable on Glendale. If laws or judicial decisions result in the imposition of a real property tax on the interest of Glendale as a result of County's occupancy of the Monitor Site, the tax shall also be paid by County on a proportional basis for the period this Agreement is in effect.

B. County shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement any and all licenses and permits required for the activities authorized by this Agreement.

16. ALTERNATIVE DISPUTE RESOLUTION; LITIGATION.

This Agreement shall be governed by the laws of the State of Arizona. If a dispute arises concerning any of the terms of this Agreement, the parties will meet and attempt in good faith to negotiate a resolution of the dispute. If a resolution is not reached, the parties will consider entering into an alternative dispute resolution process, including mediation and/or arbitration. This Section shall not foreclose the right of either party to file a court action. In the event of any litigation or arbitration between Glendale and County arising under this Agreement, the successful party shall be entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.

17. RULES AND REGULATIONS.

County shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the Monitor Site, including all laws, ordinances, rules and regulations adopted after the Effective Date. County shall display to Glendale, upon request, any permits, licenses or other evidence of compliance with the law.

18. RIGHT OF ENTRY RESERVED.

A. Glendale may, at any time, enter upon the Monitor Site for any lawful purpose, so long as the action does not unreasonably interfere with County's use or occupancy of the Monitor Site.

B. Without limiting the generality of the foregoing, Glendale and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Monitor Site at all times to make repairs, replacements or alterations thereto that may, in the opinion of Glendale, be deemed necessary or advisable and from time to time to construct or install over, in or under the Monitor Site the systems or parts thereof and, in connection with maintenance, use the Monitor Site for access to other parts in and around the Monitor Site; provided that in the exercise of the right of access, repair, alteration or new construction, Glendale shall not unreasonably interfere with the use and occupancy of the Monitor Site by County.

C. Exercise of any of the foregoing rights by Glendale or others pursuant to Glendale's rights shall not constitute an eviction of County, nor be made the grounds for any abatement of rent or any claim for damages.

19. OWNERSHIP OF EQUIPMENT.

It is expressly understood and agreed that County retains title to all equipment installed by it and may modify, replace or remove such equipment when necessary. County and Glendale acknowledge that all equipment and improvements of County shall be deemed personal property of County.

20. CONFLICTS OF INTEREST.

This Agreement may be cancelled for conflicts of interest as described under A.R.S. § 38-511.

21. PROHIBITIONS.

County, and on behalf of any subcontractor, certifies, to the extent applicable under A.R.S. §§ 35-391 *et seq* and 35-393 *et seq*, that neither has "scrutinized" business operations, as defined in the preceding sections, in the countries of Sudan or Iran.

22. AGREEMENT AS LICENSE.

The Parties intend and mutually agree that this Agreement shall be construed as a mere license by Glendale to County to operate within the City Property. This Agreement shall not be construed as a lease, sublease, rental agreement or easement. It is understood and mutually agreed that County has no interest whatsoever in the City Property.

23. VENUE; GOVERNING LAW.

The proper venue for any proceeding at law or in equity or under the provisions for arbitration shall be Maricopa County, Arizona and Glendale and the County hereby waive any right to object to venue. This Agreement shall be construed in accordance with and be governed by the laws of the State of Arizona.

24. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the subject matter stated and supersedes all prior negotiations, understandings and agreements between the parties concerning those matters. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom the waiver or modification is sought to be enforced. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument. The terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

[Signatures Appear on Following Page]

EXECUTED to have an Effective Date as of the date of the signature last affixed below.

CITY OF GLENDALE, an Arizona municipal corporation

Ed Beasley, City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall, City Attorney

MARICOPA COUNTY, a political subdivision of the State of Arizona

JUL 05 2011

Chairman of the Board

ATTEST:

Clerk of the Board 06 22 11 (SEAL)

APPROVED AS TO FORM:

6/14/11

Attorney for the County

EXHIBIT A
LEGAL DESCRIPTION OF CITY PROPERTY

That parcel of land described in Warranty Deed recorded August 30, 1979 in Docket 13866, Page 91, Official Records of Maricopa County, Arizona, as follows:

Tract "A", HAPPY VILLAGE MALL, according to Book 213 of Maps, page 43, records of Maricopa County, Arizona.
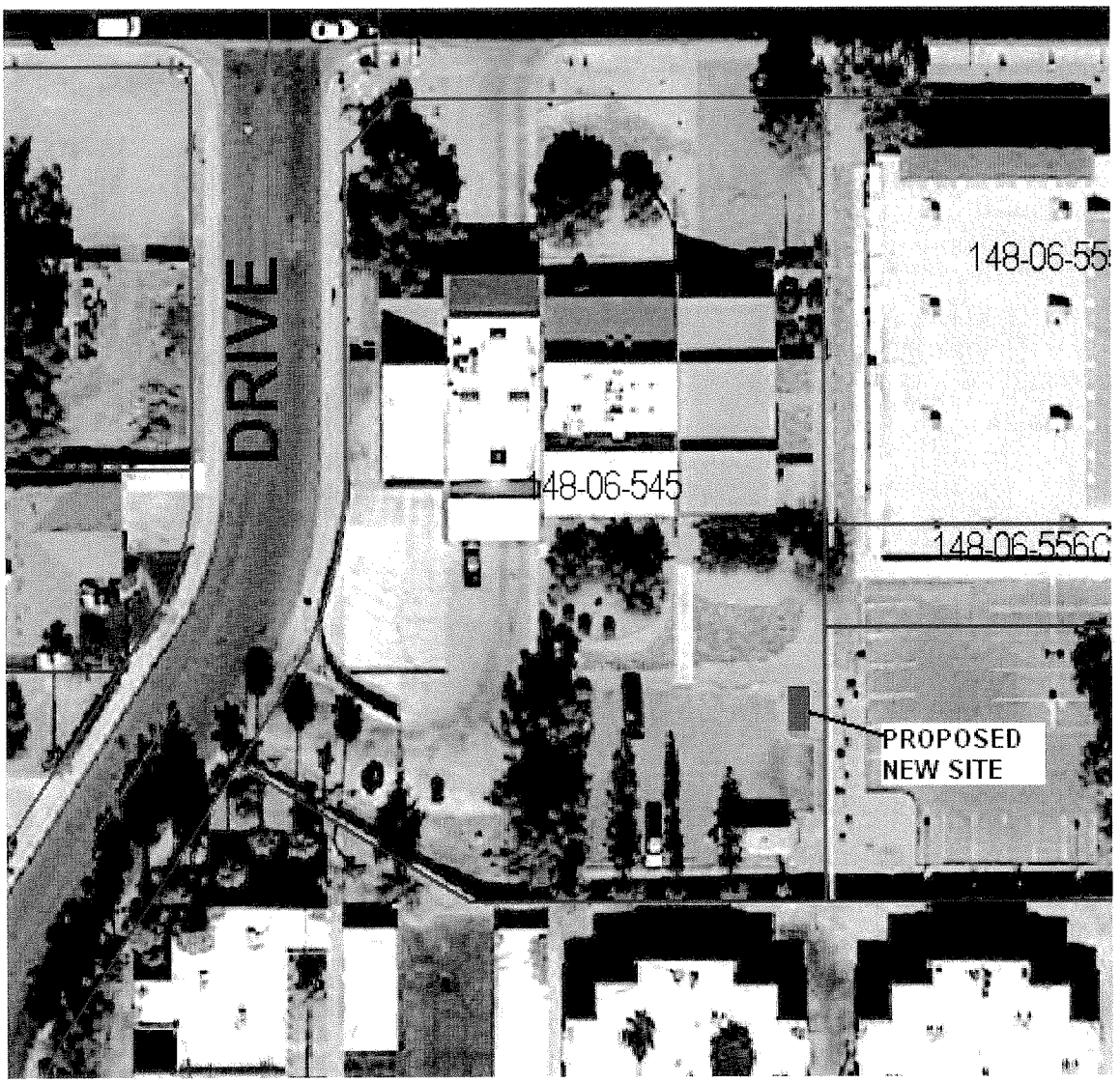
EXHIBIT B
MONITOR SITE
4431 W. Peoria Avenue