

# CITY CLERK ORIGINAL

C-7862  
12/07/2011

## EQUIPMENT LEASE AGREEMENT

This Equipment Lease Agreement ("Agreement") is entered into between SolarBee, Inc., a North Dakota corporation ("SolarBee"), and City of Glendale, an Arizona municipal corporation ("City"), as of this 7<sup>th</sup> day of December, 2011 ("Effective Date").

### AGREEMENT

1. **Lease.** SolarBee agrees to rent to the City, and the City agrees to rent from SolarBee, the equipment fully described in Exhibit A of this Agreement ("Equipment").
2. **Rental Fees, Delivery, Installation and Startup Charges.**
  - 2.1 The City agrees to pay monthly rental charge of \$1,505.00 plus all applicable taxes ("Rent").
  - 2.2 The rental period will be for one month, beginning on the day SolarBee completed the installation of the Equipment to the satisfaction of the City ("Installation Date"). The rental period will continue automatically for one month at a time, beginning on the day after the last day of the prior rental period, until the longer of (a) 12 months after the Installation Date, or (b) 90 days after written notice is received by SolarBee from the City to terminate this Agreement.
  - 2.3 SolarBee will invoice monthly Rent to the City on the first day of a rental period. The City will pay the Rent within 30 days of the invoice date. In addition to the Rent, the first invoice will include \$13,909.00 for the potable factory delivery, installation and startup costs.
3. **Factory Delivery, Installation and Startup.**
  - 3.1 SolarBee will send trained factory representatives to deliver Equipment and to perform on-site assembly, placement, testing and startup functions. SolarBee will also train designated City personnel on the operation and maintenance of the Equipment.
  - 3.2 SolarBee will compile a comprehensive report describing Equipment location, testing and machine operation data collected during the installation and testing process.
4. **Removal.** Within 30 days after the termination of this Agreement, SolarBee will remove the Equipment from the City at SolarBee's own expense. The City will coordinate with SolarBee on the removal date and provide necessary personnel to assist with the proper removal of the Equipment.
5. **Beekeeper Service Program.**
  - 5.1 The Beekeeper Service Program ("Program") uses trained technicians to keep the Equipment at optimal efficiency and performance. The maintenance and service covered by the Program is fully described in Exhibit B of the Agreement.
  - 5.2 The Program cost during the rental term is included in the monthly Rent.

**6. Malfunction of the Equipment; Damage to the Equipment.**

- 6.1 The City will be entitled to a reduction in Rent on a pro-rated basis for a period commencing on the date of Equipment malfunction or failure. The City will notify SolarBee the Equipment malfunction or failure as soon as practicable.
- 6.2 The City will operate the Equipment in accordance with the manufacturer's manual and written instructions from SolarBee personnel.
- 6.3 The SolarBee is responsible for all malfunctions, failures, damage to or loss of Equipment unless the malfunction, failures, damage to or loss of Equipment is caused by the gross negligent or intentional misconduct of the City.

**7. Insurance.** SolarBee and each subcontractor hired by SolarBee must obtain and maintain the following insurance ("Required Insurance"):

- 7.1 General Liability.
  - 7.1.1 SolarBee must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - 7.1.2 Sub-contactors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
  - 7.1.3 The commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, products and completed operations, XCU hazards if requested by the City, and a separation of insurance provision.
  - 7.1.4 These limits may be met through a combination of primary and excess liability coverage.
- 7.2 Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for SolarBee and \$1,000,000 per accident for subcontractors and covering owned, non-owned and hired automobiles.
- 7.3 Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- 7.4 Equipment Insurance. SolarBee must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by SolarBee or its subcontractors.
- 7.5 Notice of Changes. SolarBee's policies must provide for not less than 30-day advance written notice to City representative of:
  - 7.5.1 Cancellation or termination of SolarBee or its subcontractor's policies;

- 7.5.2 Reduction of the coverage limits of any of SolarBee or its subcontractor's policies; and
- 7.5.3 Any other material modification of SolarBee or subcontractor's policies related to this Agreement.
- 7.6 Certificates of Insurance.
  - 7.6.1 Within 10 business days after the execution of the Agreement, SolarBee must deliver to City representative certificates of insurance for SolarBee and its subcontractor's policies, which will confirm the existence or issuance of SolarBee and its subcontractor's policies in accordance with the provisions of this section, and copies of the endorsements of SolarBee and its subcontractor's policies in accordance with the provisions of this section.
  - 7.6.2 City is and will be under no obligation either to ascertain or confirm the existence or issuance of SolarBee and its subcontractor's Policies, or to examine SolarBee and its subcontractor's Policies, or to inform SolarBee or its subcontractor in the event that any coverage does not comply with the requirements of this section.
  - 7.6.3 SolarBee's failure to comply with Required Insurance requirements constitutes a material default under this Agreement.
- 7.7 Additional Insured.
  - 7.7.1 Except with respect to workers' compensation and employer's liability coverages, the City must be named and properly endorsed as an additional insured on all liability policies required by this section.
  - 7.7.2 The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
  - 7.7.3 All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and acceptable to all parties.
- 7.8 Upon the written request of SolarBee, City's Risk Manager may waive or reduce any of the Required Insurance.
- 8. **Indemnification.** To the fullest extent permitted by law, SolarBee must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense," collectively, "Demands or Expenses") asserted by a third party (i.e. a person or entity other than City or SolarBee) and that arises out of or results from the breach of this Agreement by SolarBee or SolarBee's negligent actions, errors or omissions (including any subcontractor or other person or firm employed by SolarBee).

9. **Notice.**

- 9.1 Unless otherwise specifically provided herein, all notices, demands or other communications given must be in writing and is deemed delivered upon personal delivery, as of the second business day after mailing by United States mail, postage prepaid, return receipt requested, or upon the next business day if delivered by Federal Express or similar overnight delivery system, addressed as follows:

If to Glendale:

Craig Johnson  
Executive Director, Water Services  
City of Glendale  
7070 West Northern Avenue  
Glendale, Arizona 85303

With a copy to:

City Attorney  
City of Glendale  
5850 West Glendale Avenue, Suite 450  
Glendale, Arizona 85301

If to SolarBee:

Harvey Hibl  
West US Manager  
SolarBee, Inc.  
11867 Bradburn Boulevard.  
Westminster, Colorado 80031

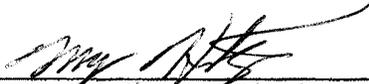
- 9.2 The address to which any notice, demand or other writing may be given, made or sent to any party may be changed by sending a written notice to addresses provided in section 9.1.

10. **Choice of Forum; Choice of Law.** Any legal actions instituted pursuant to this Agreement must be filed in the County of Maricopa, State of Arizona. The laws of the State of Arizona will govern the interpretation and enforcement of this Agreement.
11. **Conflict of Interest.** No member, official or employee of Glendale may have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement that is prohibited by law. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.
12. **No Waiver.** Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
13. **Severability.** If a court of competent jurisdiction found any provision of this Agreement invalid or unenforceable, the remaining provisions of this Agreement will not be affected and remain valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.

14. **Modification.** No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.
15. **Immigration Law Compliance.** SolarBee, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program. Any breach of this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
16. **Prohibitions.** SolarBee certifies under A.R.S. §§ 35-391 et seq., and 35-393 et seq., that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

IN WITNESS WHEREOF, SolarBee and the City have caused this Agreement to be executed as of the day first above written.

SolarBee, Inc., a North Dakota corporation

  
\_\_\_\_\_  
Printed Name: Myron Hintz  
Title: Vice President

CITY OF GLENDALE, an Arizona  
municipal corporation

  
for \_\_\_\_\_  
Ed Beasley, City Manager

ATTEST:

  
\_\_\_\_\_  
Pamela Hanna, City Clerk

(SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Craig Tindall, City Attorney

EXHIBIT A  
EQUIPMENT DESCRIPTION

**Model Number:** SB10000PW v18

**Description:** A 10,000 gpm (14.4 MGD) total flow, 316-stainless steel and non-corrosion polymer construction, 25-year life high-efficiency brushless electric motor designed to provide day and night operation with a solar-charged battery power system, digital control system for intelligent power management specific to this application, six parameter SCADA outputs, three 80-watt solar panels and a control box, mounted on a 316SS pedestal, 36 feet diameter fluid intake hose, and fluid intake injection assembly (injection hose from the intake to the top of the tank).

EXHIBIT B  
BEEKEEPER SERVICE PROGRAM

The BeeKeeper Service Program (BeeKeeper) ensures the SolarBee equipment is well maintained and operating at peak performance thus achieving the best possible water quality. The BeeKeeper allows our customers to take full advantage of our equipment, experience and training to protect their investment in water quality. Benefits Include:

**Universal Damage Repair:** Tornadoes, hurricanes, vandalism, lightning...you name it, it's covered! All structural repairs and replacement parts needed from damage incurred for any reason are covered. This includes acts of nature, accidents and vandalism. This coverage alone can save you thousands, tens of thousands, or hundreds of thousands of dollars should disaster strike.



**Power System Upgrades and Updates:** Technology moves fast in today's world and we are moving just as fast to keep on the leading edge. All hardware, software and firmware upgrades are included as they become available. The heart of the superb SolarBee performance is the large low-rpm digital brushless high-torque motor, PV modules, battery system and computerized power management system. SolarBee has invested millions of dollars to develop these computerized controls and continually improve them for increased machine performance, self-diagnostics, self-repair and reliability.

**Access to On-Staff Water Quality Experts:** Our water quality experts are available for data analysis and application troubleshooting if the need arises. SolarBee obtained water quality data and customer water quality data will be analyzed including expert review and free conference calls to discuss water quality issues. SolarBee employs many experts in the water quality field including specialized areas such as limnology, hydrology, toxicology, wastewater, oceanography, biology and engineering.

**Guaranteed Periodic On-Site Maintenance Throughout the Year:** The power system, impeller, intake, structural components and the electronic systems are inspected. The solar modules and flow dish are adjusted and cleaned. In all, complete inspection is completed for mechanical, structural and electronic items. All necessary or advisable machine repairs and/or upgrades are also made. Water quality testing will be conducted at the time of service (weather permitting). A water quality test report and site visit report are forwarded to the customer after each service call.

**Rapid On-Site Response for Critical Service Issues:** We have Field Teams covering the United States and Canada at any given time ensuring we can help you when you need it most! Life is unpredictable, but a rapid SolarBee response is something you can count on. The SolarBee Customer Service Department is also available to assist with troubleshooting, as they are only a phone call or an email away.

**Removal, Storage and Re-Installation:** If a SolarBee needs to be removed for any reason, SolarBee offers removal, storage, and reinstallation of the machine at a discounted BeeKeeper rate.

**Trained and Experienced Service Technicians:** Our BeeKeeper Service Program allows our customers to take advantage of our highly trained service technicians. We have the equipment, experience, and training to ensure the SolarBees are well maintained while following OSHA regulations. Our dedication to safety and high level of training has earned us the prestigious SHARP recognition award. We have the means to safely service the equipment whether in a tank, reservoir, or wastewater pond.