



**AGENDA
ARCADIA CITY COUNCIL
CITY COUNCIL CHAMBERS
23 NORTH POLK AVENUE, ARCADIA FL**

**TUESDAY, APRIL 1, 2014
6:00 PM**

CALL TO ORDER, INVOCATION, PLEDGE AND ROLL CALL

CONSENT AGENDA

1. City Council Minutes for March 18, 2014 (Penny Delaney - City Clerk))

DISCUSSION ITEMS

2. Amendment to Proposed Contract between Miss DeSoto Softball and the City of Arcadia (Carrie Taylor – Parks Supervisor / Mike Cross – Miss DeSoto Softball)
3. Impound Ordinance – Second Reading (Marshall Anderson – Arcadia Police Dept)
4. Resolution No. 2014-03 – Authorizing a Lease Purchase Agreement with Leasing 2, Inc. Regarding Vacuum Truck (A.J. Berndt - Utilities)
5. Resolution No. 2014-04 - Authorizing a Lease Purchase Agreement with Leasing 2, Inc. Regarding Front Loader Garbage Truck and Rear Loader Garbage Truck (Steve Underwood - Public Works)
6. Resolution No. 2014-05 - Vacation of an Unimproved Public Right-of-Way (Carl McQuay - City Planner)
7. Provide Direction to Staff on City Administrator Recruitment (Penny Delaney – City Clerk)
8. Resolution No. 2014-06 – Amending Resolution No. 2014-01 Regarding Supplemental Joint Participation Agreement for Airfield Lighting 433003-1-94-01 (Tom Slaughter – Interim City Administrator)

COMMENTS FROM DEPARTMENTS

9. City Marshall
10. Attorney
11. City Administrator

PUBLIC (Please limit presentation to five minutes)

MAYOR AND COUNCIL REPORTS

ADJORN

NOTE: Any party desiring a verbatim record of the proceedings of this hearing for the purpose of appeal is advised to make private arrangements therefore.

PLEASE TURN OFF OR SILENCE ALL CELL PHONES

AGENDA No. 1



CITY COUNCIL AGENDA ITEM
Requested Council Meeting Date: April 1, 2014

DEPARTMENT: Administration

SUBJECT: Minutes from March 18, 2014

RECOMMENDED MOTION: Council Approval

SUMMARY:

FISCAL IMPACT: _____ () Capital Budget
() Operating
() Other

ATTACHMENTS: () Ordinance () Resolution () Budget (x) Other

Department Head:

Date:

Finance Director (As to Budget Requirements)

Date:

City Attorney (As to Form and Legality)

Date:

City Administrator: Tom Slaughter

Date:

COUNCIL ACTION: () Approved as Recommended () Disapproved
() Tabled Indefinitely () Tabled to Date Certain _____ () Approved with Modifications

**AGENDA MINUTES
CITY COUNCIL
CITY OF ARCADIA
TUESDAY, MARCH 18, 2014
6:00 P.M.**

CALL TO ORDER, INVOCATION, PLEDGE OF ALLEGIANCE & ROLL CALL

The Mayor called the meeting to order at approximately 6:00 p.m. with the following members and staff present:

Arcadia City Council

Mayor Alice Frierson
Councilmember Robert R. Allen
Councilmember Keith Keene

Deputy Mayor Joseph E. Fink
Councilmember Robert W. Heine

Arcadia City Staff

Interim City Administrator Tom Slaughter
City Marshall Matthew A. Anderson
Finance Director Beth Carsten
Code Enforcement Officer Carl McQuay

City Clerk Penny Delaney
City Attorney Thomas J. Wohl

Councilmember Allen gave the invocation, which was followed by the Pledge of Allegiance and roll call.

PRESENTATION

1. Community Center – Smith Brown Community Foundation

Alan Johnson who represents the Board of Directors for the Smith Brown Community Foundation and the Florida Department of Health for DeSoto County Board of Health stated that the foundation would like to lease the Smith Brown Gym to provide a base for youth activities that will improve the lives of young people now and for the future. He stated that over the next few months the foundation will be planning the construction improvements and fund raising and wanted to provide a memorandum of understanding for a long-term lease for the City. Ashley Coone, Vice-Chairman of the Smith Brown Community Foundation, stated that in 1998, the foundation was started to provide programming for youth in the community. She stated that a task force was formed in May of 2013 to identify resources that would improve the quality of life for residents in DeSoto. She further stated that the task force identified the Smith Brown Recreation Center as a facility that could meet this need. Ms. Coone stated that the foundation would like to request an open dialogue with the City Council in working towards a memorandum of understanding and eventually a contingent long-term lease for the purposes of securing funding to renovate the gym and utilize it as a community facility. She advised the Smith Brown Recreation Center will serve as a space for organizations, agencies and churches to provide programming and resources to the community, a community meeting space and will serve as a

space where the Smith Brown Community Foundation can provide programming for adults for parenting classes, financial literacy, health and wellness, programming for culture and arts programs for youth and programs that promote the family unit. Renovations needed will include bathrooms, ADA standards, and air conditioning. She advised there is a planning committee that is accessing the estimated costs for the renovations and the operations expenses. She further advised the foundation would like to secure a lease agreement with the City within six months to a year contingent upon the fact that the foundation has to secure funding. She stated that the foundation would like to secure overhead funding through community sponsorships and grants. Mayor Frierson stated that this is a win/win situation for the community and she hoped that the foundation would get all the civic organizations behind it. She felt it was a fantastic undertaking. Councilmember Keene stated that he is very excited about the proposal. He further stated that it was refreshing to have the community come with a solution to the issue rather than continue to talk about what the problems are and he advised that the foundation has his support. Mayor Frierson agreed and asked the foundation if they would like to have a member of the Council to be present at the meetings to keep the Council updated as to what is going on. Councilmember Keene asked the City Attorney what was needed in order to form with the foundation so that they could move forward with the proposal. The City Attorney stated that they were asking for a memorandum of understanding, but that the ultimate goal would be to enter into a lease with the foundation and the consideration that the City would be giving is the improvements that the foundation would be making to the City's asset. Deputy Mayor Fink stated that the City needs this desperately in that portion of the City, but wanted to make sure that it goes into effect without any encumbrance that would put the foundation at risk of possibly not being able to complete the project. Councilmember Keene volunteered to be present at the foundation's meetings.

2. Proclamation – Donate Life Month

No one from the Life Link Foundation attended the council meeting. Mayor Frierson advised that the City Clerk would read the Proclamation regarding Donate Life Month. The City Clerk read the Proclamation. Mayor Frierson stated that this is a very worthy cause and hoped that everyone would give consideration to it. Councilmember Heine made a motion to approve the Proclamation and Councilmember Keene seconded the motion. No discussion followed and it was unanimously, 5/0, approved.

3. Proclamation – Main Street

Mayor Frierson asked if anyone from Main Street was present and asked for those individuals to go to the podium. She then advised that the City Clerk would read the Proclamation regarding Main Street and the improvements to downtown. The City Clerk read the Proclamation. Mayor Frierson stated that she had received positive feedback and stated it was a job well done. Councilmember Heine made a motion to approve the Proclamation and Councilmember Keene seconded the motion. No discussion followed and it was unanimously, 5/0, approved.

CONSENT AGENDA – Agenda Items 4-6

Deputy Mayor Fink made a motion to approve the consent agenda and Councilmember Heine seconded the motion. No discussion followed and it was unanimously, 5/0, approved.

DISCUSSION ITEMS

7. Resolution 2014-2 – Amending Resolution 2013-29 by Extending Time for Submittal of the Top Five (5) Candidates

Mayor Frierson instructed the City Clerk to read the Resolution by title only and the City Clerk did so. Councilmember Heine made a motion to approve the Resolution and Deputy Mayor Fink seconded the motion. Deputy Mayor Fink asked John Super, Chairman of the Search Committee, if this would be sufficient. Mr. Super advised that it would and further advised that the committee had met on March 17, 2014. After having considered the additional eight (8) applicants, he stated that the committee still arrived at the same top five (5) candidates since the additional eight (8) applicants were not qualified. Mr. Super asked the City Clerk to advise council of the top five (5) candidates. The City Clerk read the list, as follows: Steven A. Holsinger, Eric C. Rindfleisch, Paul H. Poczobut, Jr., Michael G. Standley and Thomas Slaughter. Mayor Frierson asked for the locations of the candidates as to where they're from, other than Mr. Slaughter. The City Clerk advised that Mr. Holsinger is from Willows, California; Mr. Rindfleisch is from Edgar, Wisconsin; Mr. Poczobut is from Ada, Minnesota; Mr. Standley is from Freeport, Florida and Mr. Slaughter is from here. No discussion followed and it was unanimously, 5/0, approved.

8. Resolution 2014-3 – Authorizing a Lease Purchase Agreement with Leasing 2, Inc. Regarding Vacuum Truck; and

9. Resolution 2014-4 – Authorizing a Lease Purchase Agreement with Leasing 2, Inc. Regarding Front Loader Garbage Truck and Rear Loader Garbage Truck

Mayor Frierson advised that Item 8 and Item 9 were going to be pulled from the agenda as a little more work was needed to be done on those two items. The City Attorney advised that he and Steve Underwood had talked with John Mintz of JLM who the City is buying the equipment from. He stated there was a little confusion on the lease they provided the City and they are trying to get that straightened out with the leasing company.

10. Personnel Policy Manual Update

The Interim City Administrator advised that this is the fourth time this has been discussed. There was a comprehensive overview the first two times and the last time consisted of providing the page replacements that would go to the original set. He asked if there were any changes regarding what is trying to be accomplished. Councilmember Heine asked for confirmation that this could be changed as needed. The Interim City Administrator agreed and stated that any future changes would be made in a two part effort. The first would be when an

issue is raised, it will be presented to Council and Council would provide direction, but it would also be an opportunity for Council to hear from staff members as well. If agreed, the second meeting on the resolution would be an approval meeting. Mayor Frierson asked if Council is ready to approve it or if more time is needed. Councilmember Keene stated that he was ready to approve it and other councilmembers agreed. Mayor Frierson instructed the City Clerk to read the Resolution by title only and the City Clerk did so. Councilmember Keene made a motion to approve the Resolution and Councilmember Heine seconded the motion. No discussion followed and it was unanimously, 5/0, approved.

11. Monthly Financial Update

Beth Carsten, the City Financial Director, reviewed the financial updates as of March 10, 2014. She stated as of March 10th, the City is 44% through the fiscal year. She stated regarding revenues, we should be at 44% of received and we've received 46.7%. She further stated that the City is just a little below the small city surtax. The enterprise funds look good with the water/sewer at 48% and solid waste at 47.9%. She stated that she felt there was more revenue items that were not included regarding the airport and that she is working on that. She advised that to date, the city has received a total of 41.2% of total revenues. Regarding expenses in the general fund, she stated that to date, the City is at 35.5% and the City spent 15.9% of the small county surtax money. She advised that water/sewer is at 29.3%, solid waste is at 33.7% and the airport is at 2.4%. Mayor Frierson asked if there were any areas that Ms. Carsten was concerned with at present that Council needs to keep a watch on. Ms. Carsten stated there were issues with some items that there's just not enough in the budget, i.e. equipment, but that they were keeping a handle on it as best they can. There's nothing terrible. Ms. Carsten advised that she has been able to get a better handle on the insurance overage and after reviewing everything and speaking with Mr. Ambler that the shortfall will not be as bad as Council originally thought. She advised that at this point she sees a \$22,000.00 shortfall, but thinks it will be less than that and possibly not a shortfall.

Councilmember Keene asked when she felt the City would receive some of the State Local 9th Cent Gas Tax. Ms. Carsten stated that she did not know and that most come in automatically and she has been watching for it. Councilmember Keene stated that regarding the airport, he wondered if some of the issue has something to do with grant funding that the City has not received yet. Ms. Carsten stated that she thought some of it had to do with reimbursements and that she needed to go through that to reconcile it. Mayor Frierson pointed out that the City had collected 74% of the ad valorem taxes. Councilmember Heine stated that he liked the monthly report. He stated that he knew she had a mess to start with and said it seems like she's done an outstanding job with it.

Ms. Carsten advised that the audit starts Monday, March 24, 2014, and along with that comes the issue of the water/sewer annual report being due March 29, 2014. She stated that is where we actually report as to what our annual audit is and we won't have it completed at that time. She stated that she spoke with the lady that administers it and was advised that we could give them un-final figures. This was done last year because it wasn't filed on time. She said we would file a failure to report and even though it sounds bad, there are no penalties. Once we

have it prepared and ready, we'll send it in. She asked if it was okay with Council and they agreed.

She pointed out that the Finance Department is looking at MUNIS training in April for the utility department. She stated that they wanted to give it their all due to the expense involved. She asked if it would be okay to close the utility department for two days from 8:00 – 4:30 on a Monday and Tuesday. She also stated that they could stagger it between herself and another employee to be at the window if they wish. Deputy Mayor Fink stated that he would like to see them all get their training. Councilmember Keene stated that he felt it would be best if someone was at the window, at least a portion of the day. Mayor Frierson agreed with Councilmember Keene. After much discussion, it was decided to leave the window open

COMMENTS FROM DEPARTMENTS

12. CITY MARSHALL

Marshall Anderson asked if anyone had any concerns. Councilmember Heine made the statement that there were a lot of break-ins in town and the Marshall advised that they had no leads and asked the public to keep their eyes open. Linda Luppino asked how they were getting in. The Marshall stated they were all through doors or broken windows.

The Marshall also stated that Pioneer Day was this past weekend and the Explorer program was there to be seen in the public and also do some recruiting. He advised that regarding the Rodeo, Saturday and Sunday were completely sold out and that there was a lot of positive response from people regarding the same.

Councilmember Keene thanked Marshall Anderson and the police department regarding the way the mercury issue was handled at the DeSoto Middle School. Marshall Anderson stated that it was great to see the Health Department and the School Board come together on the issue.

Marshall Anderson also advised that Karen Whaley has been instrumental in kick-starting the installation of traffic lights in areas that needed to be replaced.

13. CITY ATTORNEY

NONE

14. INTERIM CITY ADMINISTRATOR

The Interim City Administrator advised that the City is working on a Community Development Block Grant for the Bridal Path Water and Sewer Project. The bids came in and the lowest was approximately \$800,000.00 and the highest was approximately \$1,200,000.00. He stated that one area has been identified that could be phased out that would provide a better opportunity to serve the project within the budget. It has been recommended that it be re-bid and lower the costs for the project overall. It doesn't set the project back, but it does allow us to zero

in on a more accurate number that meets our budget needs and the needs of the community. He asked for any questions or comments and none were given..

He stated that the next matter is regarding an issue that was in The Arcadian that described deficiencies or improvements to the City's public meeting. He stated that was taken seriously and he met with the Mayor and they discussed several thoughts and ideas. From that, Staff is putting together a list of actions to be taken to correct deficiencies and to identify improvements to the process. He stated these would be brought to the Council's next meeting to be discussed. Mayor Frierson stated that she had considerable feedback from the article and that the public is very offended regarding the subject of a sign-in sheet and state whether they are city or county in order to speak. Councilmember Keene stated that he didn't feel it was unreasonable to know whether they lived in the city or county as long as it didn't restrict their ability to speak. The Interim City Administrator stated that that type of input helps, but he stated that he had not heard of a proposal that would limit a member of the public to speak. However, some communities provide a three or five minute limit. He stated with some public comment cards, it allows staff to get back with an individual on a matter to explain a vote or provide additional information. He stated it also allows for accuracy regarding spelling for the public record. Councilmember Keene stated that he felt the City's meetings needed certain decorum. He further stated that he had been told by an attorney that served this Council for many years that Robert's Rules had never been adopted and he couldn't believe it. Deputy Mayor Fink stated that it was more Council's concern that Staff's. He further stated that it's a difficult job and the balancing act is very difficult. He concurred with Councilmember Keene and felt that anyone should be able to speak on the record, but he felt that it is important for the issues of quasi judicial and permanent record purposes.

The final matter that the Interim City Administrator brought forward was to confirm with Council that the Strategic Plan Workshop will be on Monday, March 24, 2014, at 4:00 p.m. Deputy Mayor Fink advised that he will not be able to attend. The Interim City Administrator asked if it needed to be rescheduled and Deputy Mayor Fink stated for Council to proceed. Councilmember Keene stated that he hated that Deputy Mayor Fink could not attend, but felt it was important to proceed. The Interim City Administrator stated that the information would be provided to Deputy Mayor Fink.

PUBLIC

Lorenzo Dixon of 920 West Magnolia Street, Arcadia, Florida, advised Council of an incident involving Marshall Anderson and Lieutenant Evans. He stated there was a bogus and malicious charge brought against him by the police department and Marshall Anderson and Lieutenant Evans played a major role in it. He advised his property has "No Trespassing" signs in his driveways due to events in the past. Several years ago, Captain Anderson (at the time) was identified as prowling in his backyard. Delshay Turner, along with another officer, took pictures of footprints that were in my backyard and we all agreed that the prints were similar to bootprints that officers wear. It was reported to the Sheriff's Office to avoid a coverup. Due to that, the signs have been placed in his yard.

He stated that there was another incident where he had to ask Gary Frierson and a Mr. Butler to get off of his property and he did so. He stated this is also court records as he helped to get Mr. Butler prosecuted. He further stated that his neighbor advised him a couple of weeks ago that a couple of police officers were in his driveway. To this day, no explanation has been presented as to why they were there. He advised that Lieutenant Evans has stated in one of his sworn statements that he (Mr. Dixon) has a record and history of violence. Therefore, he and Arcadia Police Department will have the opportunity in the next few weeks to prove that and produce those records. He stated that he was exonerated and ordered not guilty by the Honorable Kimberley Carlton Bonner as charged by the Arcadia Police Department. He stated Lieutenant Evans' statement was a defamation of character and slander and he will have the opportunity to prove that statement. He advised Council will receive further information from his lawyer concerning this matter in which the City's officers have involved the City causing damages and liability.

Gary Frierson of 1 N. Luther Avenue, Arcadia, Florida advised that he and Tommy Butler did go by Mr. Dixon's house because Mr. Butler had asked him to be a construction consultant on a job. He further stated that he had testified for Mr. Butler also and that was his only involvement. He advised that as far as him going by Mr. Dixon's house this morning, he has acquired management of a building on S. Hillsborough and had been notified by the Health Department to sample the water. He pointed out that the Health Department is on the west end of town and in order to go back to his office, he had to pass Mr. Dixon's house.

Greg Smith of P.O. Box 2616, Arcadia, Florida, stated that he was there on behalf of Friends of the Arcadia Airport. He provided packets to Council regarding the Fly-In that took place March 7-9, 2014, which included e-mails and photos regarding the event. He stated the weekend was a success and thanked Council for their support. He also advised that they now hold their 501C3 tax status and will be allowing them to apply for grants that should support the needs of the airport that are not funded by the FAA and the FDOT.

MAYOR AND COUNCIL MATTERS

Councilmember Keene thanked the Friends of the Arcadia Airport for all that they do. Deputy Mayor Fink agreed with Councilmember Keene regarding the outstanding job that Friends of the Arcadia Airport does. He further stated that Lee Gallagher of the Veterans Office for the County wants to set up another Fly-In and felt that was what the City needs.

ADJOURN

Having no further business at this time, the meeting was adjourned at 7:30 P.M.

ADOPTED THIS ___ DAY OF _____, 2014

By:

Alice Frierson, Mayor

ATTEST:

Penny Delaney, City Clerk

AGENDA No. 2



CITY COUNCIL AGENDA ITEM
Requested Council Meeting Date: April 1, 2014

DEPARTMENT: Parks
SUBJECT: Amendment to Proposed Contract Between Miss DeSoto Softball and the City of Arcadia
RECOMMENDED MOTION: Council Approval

SUMMARY:

FISCAL IMPACT: _____ Capital Budget
 Operating
 Other

ATTACHMENTS: Ordinance Resolution Budget Other

Department Head: _____ Date: _____

Finance Director (As to Budget Requirements) _____ Date: _____

City Attorney (As to Form and Legality) _____ Date: _____

City Administrator: Tom Slaughter _____ Date: _____

COUNCIL ACTION: Approved as Recommended Disapproved
 Tabled Indefinitely Tabled to Date Certain _____ Approved with Modifications

Amendment to proposed Contract between Miss Desoto Softball & the City of Arcadia

Miss Desoto Softball has elected to join in an agreement with Southern Shockers Inc. for use of certain structures and city owned softball fields, for the purpose of allowing softball teams to practice. Southern Shockers Inc. teams will maintain current team insurance with the City of Arcadia & Miss Desoto Softball listed as an additional insured.

Use and upkeep of said structures and fields will be in line with all agreements already established through the proposed contract that this amendment is included within. Southern Shockers Inc. will maintain field #3 by mowing, weeding & applying pesticides when necessary.

Southern Shockers Inc. will use said amenities during the following times. Field #3 will be made available Saturday mornings from 8-12pm, Sunday afternoons from 1:30p-5pm and at least one night during the week, normally Tuesday nights, but that could be adjusted based on field/light needs for Miss Desoto related games. Field #2 will be made available Sunday afternoon from 1:30p-5p, concluding the field needs for the Shockers Organization.

Southern Shockers Inc. will provide a calendar showing scheduled practices and tournaments (which will show when a team will not be using the field during a weekend).

Southern Shockers Inc. will receive keys to the restrooms located at the field #3 structure, to allow for convenient use. The restrooms will be cleaned and maintained following any Shockers related activity at the field.

Southern Shockers Inc. agrees to handle any cost related to damage and split any cost related to wear and tear and upkeep on field #3 (ie: re-cutting the infields) and if any damage that should take place during the one practice a week on field #2.

Southern Shockers Inc. agrees to handle field prep for their fields, electing not to use the Dirt Pro currently housed at field #1. As well as supply bases at the time of each scheduled practice. Following practice the bases will be removed and the bracket plugs will be returned into the ground, to allow for easy access for the next person that uses the field.

Southern Shockers Inc. agrees to make adjustments to the schedule, if the need arises, for Miss Desoto Softball to use all three fields during a weekend event.

Miss Desoto Softball agrees to the above statements.

Miss Desoto Softball agrees to notify the Southern Shockers 30 days in advance of a schedule event that would require the use of all three fields and/or look at the schedule for a date in which the Shocker team (s) are not practicing. This also applies to advance notice of field closers due to seeding or pest/weeding, where use of the field would be restricted.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER K&K Insurance Group, Inc. 1712 Magnavox Way Fort Wayne IN 46804	CONTACT NAME: Mass Merchandising Underwriting PHONE: (A/C, No. Ext): 1-800-426-2889 FAX: (A/C, No): 1-260-459-5105 E-MAIL ADDRESS: info@sportsinsurance-kk.com
INSURED Miss Desoto FastPitch Softball Inc. DBA: M.D.F.S po box 2638 Arcadia, FL 34266 A Member of the Sports, Leisure & Entertainment RPG	INSURER(S) AFFORDING COVERAGE INSURER A: Nationwide Mutual Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 23787

COVERAGES **CERTIFICATE NUMBER: W00423200** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YY)	POLICY EXP (MM/DD/YY)	LIMITS
A X	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN: AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	X		6BRPG0000005378800	02/18/2014 9:32 AM EDT	02/18/2015 12:01 AM	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$5,000,000 PRODUCTS-COMP/OP AGG \$1,000,000 PROFESSIONAL LIABILITY \$1,000,000 LEGAL LIAB TO PARTICIPANTS \$1,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Not provided while in Hawaii			6BRPG0000005378800	02/18/2014 9:32 AM EDT	02/18/2015 12:01 AM	COMBINED SINGLE LIMIT (Ea Accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION						EACH OCCURRENCE AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETORSHIP/PARTNER/ EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			PER STATUTE OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT
A	MEDICAL PAYMENTS FOR PARTICIPANTS			6BRPG0000005378800	02/18/2014 9:32 AM EDT	02/18/2015 12:01 AM	PRIMARY MEDICAL EXCESS MEDICAL \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Sport(s): Softball Age(s): 12 and under, 13-15
The certificate holder is added as an additional insured, but only with respect to the liability arising out of the operations of the insured named above.

CERTIFICATE HOLDER City Of Arcadia Parks and rec. 23 N. Polk ave Arcadia, FL 34266 (Owner/Lessor of Premises)	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Scott Pemberton</i>
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CONTRACT FOR THE ESTABLISHMENT, MANAGEMENT, OPERATION AND CONDUCT OF A DESOTO COUNTY YOUTH SOFTBALL PROGRAM BETWEEN THE CITY OF ARCADIA, FLORIDA AND DESOTO COUNTY YOUTH BASEBALL AND SOFTBALL.

This agreement entered into this 19th day of Feb. 2013, by and between the City of Arcadia, Florida, hereinafter referred to as "City" and Desoto County Youth Baseball and Softball hereinafter referred to as "DCYBS".

WITNESSETH THAT:

WHEREAS The City of Arcadia, Florida desires to further the creation, establishment, maintenance, management and conduct of a youth athletics program for youth of Desoto County, and

WHEREAS the Association is a not for profit corporation organized under the State of Florida for the purpose of, and having as its general nature and objects the organization of a youth athletic program in Desoto County, Florida to promote and encourage sports, recreation and sociability, to manage and conduct games, sporting events, and promote and contribute to the physical and normal well-being and develop such youth;

NOW THEREFORE it is understood and agreed between the parties as follows:

The Association agrees:

1. That any player, coach or manager involved in any physically-violent act toward another player, coach or manager (including teammates) or league official (umpires, scorekeepers, and board members) will be immediately banned from any further participation in D.C.Y.B.S. activities or City of Arcadia property. This includes a minimum of One Year suspension to the Association.
2. To assume full responsibility for conduct, organization, establishment, creation, maintenance and conduct of a youth athletic program extended to all youth of Desoto County, Florida.
3. That it shall not , exclude from participation, deny the benefits of such program, or discriminate against any participant, spectator, coach or player in the conduct of such program based on race, color, religion, sex, or national origin.
4. That it shall endeavor in all ways possible to conduct its activities in furtherance of this program, on City property or elsewhere, so as not to

endanger any person and shall indemnify and hold harmless the City of Arcadia, its officers, agents and employees, from any and all claims of any kind occasioned wholly or in part by the acts or omissions of the Association, its officials, agents, employees, volunteer help or spectator, to City premises while they are used by or under the control of the Association.

5. The Association hereby assumes full responsibility for the character, acts, and conduct of all persons admitted onto City property by consent of the Association, its officers, employees, or agents. The Association agrees to indemnify and save the City harmless from and against any loss, damage or liability occasioned from or growing out of or arising from any default hereunder or any tortious or negligent act upon the part of the Association, the Association's agents, employees, or members.
6. That it will, at its own expense, at all times during the term of this Lease, maintain in force a policy or policies of insurance which will name the City as additional insured against liability for injury or death of persons or loss or damage of their property occurring in or about the demised premises. The liability under such insurance shall be not less than One Million dollars (\$1,000,000.00) for any one person injured or killed, One Million Dollars (\$1,000,000.00) for any one accident, and One Hundred Thousand Dollars (\$100,000.00) for property damage.
7. That it will, simultaneously with the execution of this Agreement, deliver to the City an endorsement to the Association's insurance policy showing the City as an additional insured. Such endorsement shall provide for forty five (45) days notice to the City in the event of cancellation.
8. That it will at all times comply with all laws, statues, ordinances, rules and regulations of the United States Government, the State of Florida, Desoto County, the City of Arcadia and any department or agency thereof.
9. That it shall use the City property hereafter placed at its disposition only for promotion, practices, and play of organized youth athletic activities and shall not permit the use of the City premises for any other purpose or for immoral, objectionable, or unlawful acts. All athletic activities organized, sponsored or conducted on City property under this program shall be approved in advance by the City of Arcadia.
10. To publish as broadly as possible throughout Desoto County, notice of it's sponsored athletic activities to be held on City premises.
11. That it will be fully responsible for repairing any property and equipment damaged during any Association sponsored activities held on City

property. The Association further agrees that it shall be responsible for repairs and replacement of scoreboards and lights, as needed.

12. That it shall pay all electricity costs for ball field lighting and concession building electric service in connection with association sponsored activities: However the City shall be responsible for the first \$3,000.00 for such charges on an annual basis. The City shall invoice the Association monthly for such charges and shall apply \$3,000.00, the first day of March (March 01) of each year of this Agreement. After the \$3,000.00 credit is exhausted, the association shall remit payment in full for all such charges to the City within 30 days following receipt of the invoice.
13. To manage schedules for youth fields 1-3 and to submit a detailed schedule of planned activities each month to the City to avoid any scheduling conflict with other organizations that may seek to use the City's facilities. The Association's written schedule shall be delivered to the City no later than the 15th day of the month proceeding the month during which the activity is scheduled to occur. After that date, the Association may request additional dates from the City on a first-come, first-served basis (i.e., with the same priority as any third party request for the use of said fields)
14. That it will provide general maintenance of the fields at no cost to the City, including but not limited to care of the fields, repairs, painting, leveling of fields, and lining of fields.
15. DCYBS will have complete control over all outbuildings associated with fields 1 – 3, will provide all required maintenance of the outbuildings and will maintain the lock and key with a key given to the City in the event of an emergency.
16. Michael Cross, or his predecessor, will be solely responsible for the field machine that DCYBS will keep in their control and under their supervision. They will make the machine available to DCAAAA as needed and, with notice to the City, may assign one person with DCAAAA as the responsible party for DCAAAA.

The City of Arcadia, Florida agrees:

1. To reserve the use of Youth Softball Fields, including the restroom and concession facilities together, with the right and privilege to sell food and non alcoholic beverages, during approved Association-sponsored activities.
2. To provide electricity (up to \$3,000.00 in cost per year) and to provide water and sewer for facilities used to conduct Association activities.

TERM OF AGREEMENT

The term of Agreement shall be from 2/19/13 until and including 2/18/14

TERMINATION

At all times during the term of this Agreement, the City of Arcadia, Florida shall have the right to unilaterally terminate this Agreement, upon the giving of thirty (30) days written notice to the Association.

NOTICES

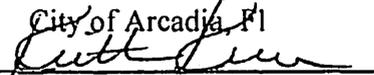
Any notice given by one party to other in connection with this Agreement shall be in writing and shall be sent via U.S. mail, postage prepaid:

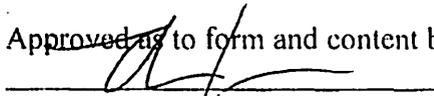
To the City: City of Arcadia
Attn: City Administrator
23 N. Polk Avenue
Arcadia, Fl 34266

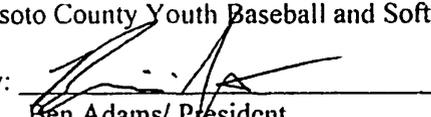
To the Association Desoto County Youth Baseball and Softball
P.O. Box
Arcadia, Fl 34266

ATTEST:

Virginia Haas, CMC, City Recorder

City of Arcadia, Fl
By: 
Keith Keene, Mayor

Approved as to form and content by:

Thomas J. Wohl, City Attorney

Desoto County Youth Baseball and Softball
By: 
Ben Adams/ President
Printed Name: BENJAMIN ADAMS

AGENDA No. 3



CITY COUNCIL AGENDA ITEM
Requested Council Meeting Date: April 1, 2014

DEPARTMENT: Administration
SUBJECT: Impound Ordinance

RECOMMENDED MOTION: Council Approval

SUMMARY: Second Reading of Ordinance No. 997

FISCAL IMPACT: _____ () Capital Budget
() Operating
() Other

ATTACHMENTS: (X) Ordinance () Resolution () Budget () Other

Department Head: Marshall Matt Anderson Date:

Finance Director (As to Budget Requirements) Date:

City Attorney (As to Form and Legality) Date:

City Administrator: Tom Slaughter Date:

COUNCIL ACTION: () Approved as Recommended () Disapproved
() Tabled Indefinitely () Tabled to Date Certain _____ () Approved with Modifications

ORDINANCE NO. 997

**AN ORDINANCE OF THE CITY OF ARCADIA, FLORIDA;
CREATING ARTICLE III OF CHAPTER 98 OF THE CITY OF
ARCADIA CODE OF ORDINANCES; REGULATING
IMPOUNDMENT OF MOTOR VEHICLES; REPEALING ALL
ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT
THEREWITH; PROVIDING FOR CODIFICATION; PROVIDING
FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE
DATE.**

WHEREAS, the City of Arcadia is vested with Home Rule authority pursuant to Article VIII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes, to enact ordinances; and

WHEREAS, Chapters 901 and 943, Florida Statutes, define and provide for municipal law enforcement; and

WHEREAS, use of vehicles in the commission of crimes is detrimental to the safety, health and welfare of the residents of the City of Arcadia; and

WHEREAS, it appears to be in the best interest of the citizens of the City of Arcadia that Chapter 98 the Code of Ordinances be amended as set forth herein,

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Arcadia, Florida:

SECTION 1. Findings. The Council hereby adopts and incorporates by reference herein all of the findings set forth above as findings of the Council.

SECTION 2. Amendment of the Code of Ordinances. The Code of Ordinances of the City of Arcadia is hereby amended to create Article III of Chapter 98 as follows:

“ARTICLE III. IMPOUNDMENT OF MOTOR VEHICLES

Sec. 98-61. Definitions.

The following words and phrases, when used in this article, shall have the following meanings:

Business days means any day, Monday through Friday, which is not designated as an official city holiday.

Owner means the person(s) or entity to whom a particular motor vehicle is registered or titled; such term shall also mean all other persons whom can be reasonably identified as having a legal interest in the vehicle including lessors, renters or lien holders.

Police officer means any person who is elected, appointed, or employed by the city; who is vested with authority to bear arms, and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal criminal, traffic or highway laws of the state, county or city. This definition includes all certified supervisory and command personnel of the police department, but does not include support personnel employed by the city police department.

Special master means the code enforcement special master(s) or hearing officer(s) appointed by the city council pursuant to section 2-147 of the Code.

Stolen means the trespassory taking and carrying away of the tangible personal property of another with the intent to permanently deprive.

Vehicle means any device capable of being moved upon a public highway or public waterway and in, upon or by which any person or property may be transported or drawn upon a public highway or public waterway.

Sec. 98-62. Seizure and impoundment of vehicles.

A vehicle shall be subject to seizure and impoundment whenever a police officer has probable cause to believe that:

- (1) The vehicle was used, intended or attempted to be used, to facilitate the violation of any criminal statute and the operator of the vehicle has been taken into custody by the police department and such motor vehicle would thereby be left unattended;
- (2) The vehicle was used, intended or attempted to be used, to facilitate the commission of any violation of F.S. Ch. 893 (Drug abuse, prevention and control), as amended; or
- (3) Contains any controlled substance as defined in F.S. § 893.02, as amended.

Except that this section shall not apply and no vehicle shall be seized or impounded pursuant to this section if a law enforcement agency seizes the vehicle pursuant to the Florida Contraband Forfeiture Act.

Sec. 98-63. Procedures upon seizure or impoundment.

Upon seizing a vehicle, the police officer or other officer or agent of the city police department shall:

- (1) Arrange for the towing or removal of the vehicle;

(2) Provide written notice to any owner present, or person in control of the vehicle, of the fact of the seizure, the right to request a preliminary hearing pursuant to section 98-64 and the right to request a final hearing pursuant to section 98-65.

(3) Provide notice of seizure by hand delivery or send notice by certified mail to all other owner(s) of the vehicle at address(es) set forth in the vehicle registration, if any, within three business days of the date of seizure; and

(4) Notices as required by paragraphs (2) and (3) of this section shall include the fact of the seizure, the right to request a preliminary hearing pursuant to section 98-64 and the right to request a final hearing pursuant to section 98-65.

Sec. 98-64. Preliminary hearing.

Any owner of a seized or impounded vehicle may request a preliminary hearing in accordance with the following requirements:

(1) Within ten (10) calendar days of receipt of the notice of seizure, any owner may request a preliminary hearing, by delivering to the city, at the address set forth in the notice, a written request for a preliminary hearing. The written request must be received by the city within the allotted time or the right to a preliminary hearing shall be waived. The request must include a telephone number(s) where the owner or the owner's designated agent can be telephonically notified of the date, time and location of the preliminary hearing, and the hours indicating when the owner or designated agent will be available for such telephonic notification.

(2) Upon timely receipt of an owner's written request for a preliminary hearing, the city shall schedule a hearing to be held within five (5) calendar days following the date of receipt of the request, or as soon as practicable thereafter. Notice of the preliminary hearing shall be provided in accordance with notice requirements set forth in section 2-154 of the Code and shall include the date, time and location of the preliminary hearing. If the requesting owner fails to attend the preliminary hearing, and the special master finds that the city has complied with the notice procedures, as set forth herein, then such failure shall constitute a waiver of the owner's right to a preliminary hearing. Any failure of the requesting owner to receive actual notice of the preliminary hearing shall not otherwise invalidate the administrative penalty proceedings as set forth herein.

(3) The preliminary hearing shall be held before a special master. The sole issue to be considered by the special master is whether the seizing police officer had probable cause under this section to seize and impound the vehicle. The formal rules of evidence shall not apply and hearsay evidence, including any relevant police report, is admissible. The city has the burden of demonstrating probable cause.

(4) If a preliminary hearing is not requested, or if it was waived, or if the special master finds that there was probable cause to seize and impound the vehicle, then the vehicle shall continue to be impounded pending final hearing or the payment of the appropriate administrative civil penalty or fine, as designated in section 98-69, together with all towing costs

and storage and outstanding penalties or fines for citations previously issued for violations of statutory or code provisions identified in section 98-62 above. Alternatively, the owner may secure release of the vehicle by posting a cash bond, either by money order or certified check, in the amount of the administrative penalty together with all towing and storage costs and outstanding penalties or fines for citations previously issued for violations of statutory or code provisions identified in section 98-62 above, plus final hearing costs of \$50.00. If no probable cause is found at the preliminary hearing, the vehicle shall be released to the owner as soon as practicable without the imposition of an administrative fine, towing and storage costs or hearing costs.

Sec. 98-65. Final hearing.

A final hearing may be requested by any owner in accordance with the following provisions:

(1) The vehicle owner may request a final hearing by delivering to the city, within 15 calendar days of receipt of the notice of seizure, a request for a final hearing. The request must be delivered to the address provided in the notice of seizure and must include an address where the owner or the owner's designated agent can be notified of the date, time, and place of the final hearing.

(2) Upon timely receipt of a request for final hearing, the city shall schedule a hearing to be held within 30 calendar days of the receipt of the request, or as soon as practicable thereafter. The city shall provide written notice, in accordance with notice requirements set forth in section 2-154 of the Code, to the requesting owner at the address on the request for final hearing. The notice shall state the date, time and location of the final hearing to be conducted by the special master pursuant to this section.

(3) If an owner fails to timely request a final hearing, or if the owner fails to attend the final hearing, and the special master finds, that the city has complied with the notice procedures, as set forth herein, then such failure shall constitute a waiver of the owner's right to a final hearing and it shall be deemed admitted that the seized vehicle was used in violation of section 98-62.

(4) If not waived, the final hearing shall be held before the special master. The formal rules of evidence will not apply at the final hearing and hearsay evidence shall be admissible. The city shall have the burden to prove by clear and convincing evidence that the vehicle was used as set forth in section 98-62. It shall be a defense that the vehicle was stolen at the time that it was seized and impounded; or that the owner was without knowledge as to the use of the vehicle in violation of section 98-62. The owner of the vehicle shall have the burden to prove said defense by a preponderance of the evidence.

(5) If the final hearing has been waived, or if, after the hearing, the special master finds by clear and convincing evidence that the vehicle was used as set forth in section 98-62, the special master shall enter an order authorizing the continued impoundment of the vehicle pending payment of the appropriate administrative civil penalty prescribed in section 98-69,

towing and storage costs, outstanding penalties or fines for citations previously issued for violations of statutory or code provisions identified in section 98-62 above and hearing costs of \$50.00 or until otherwise released by the city. Any bond posted shall be applied against the imposed penalty and costs. If the special master finds that the city did not meet its burden of proof, or that the vehicle owner has proven by a preponderance of the evidence a valid defense as set forth in subsection (4) above, the vehicle shall be released to the vehicle owner as soon as practicable without the imposition of an administrative penalty, storage or hearing costs, and any cash bond posted shall be returned.

Sec. 98-66. Enforcement; sale; proceeds; lien.

(a) A copy of the final order issued by the hearing officer shall be recorded in the public record and, upon recording shall constitute a lien against the vehicle. The city, as holder of a lien against the vehicle, to the extent the lien has not been discharged or otherwise satisfied, may enforce the lien in any manner provided by law after ninety (90) calendar days from the date of the final order.

(b) If the vehicle against which the lien is created is still under impoundment ninety (90) calendar days from the date of the final order and the owner has not satisfied the lien or the lien has not otherwise been discharged, the city may elect to sell the vehicle through a public sale or auction.

(c) If the custodian elects to sell the vehicle, he or she must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given to the owner and an advertisement of the sale shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens, except the city's lien. The advertisement must include a description of the vehicle and the time and place of the sale. The sale may take place no earlier than ten (10) calendar days after the final publication.

(d) If the owner is absent from the sale, the proceeds of a public sale pursuant to this section, after payment and satisfaction of the city's lien and the costs of transportation, storage and publication of notice, shall be deposited with the city into an interest-bearing trust account not later than 30 calendar days after the date of sale and held there for one year. If no claim is made for these funds within a period of one year after the date of the sale, the proceeds shall become the property of the city and deposited into the appropriate city fund.

(e) In the event that the sale proceeds are insufficient to satisfy the amount owed pursuant to the hearing officer's final order and the costs of transportation, storage and publication of notice, the order shall constitute a lien against any real or personal property owned by the vehicle owner. Such lien shall be superior to all other liens, except a lien for taxes, and shall bear interest at the maximum rate allowed by law, as set forth in F.S. § 687.03, as amended from time to time, from the date of its filing. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the real or personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. The city attorney or his designee is authorized to foreclose any

lien established hereby in the same manner as is provided by law for the foreclosure of other municipal liens or alternatively, as provided by law for the foreclosure of mortgages. No lien created pursuant to this chapter may be foreclosed on real property which is homestead under § 4, Art. X of the State Constitution. In an action to enforce an order or to foreclose on a lien as provided in this section, the city shall be entitled to recover all costs, including a reasonable attorney's fee, which it incurs thereby.

(f) Any vehicle not disposed by public sale shall become the property of the city and may thereafter be disposed of in accordance with the provisions of applicable law.

Sec. 98-67. Exceptions.

(a) The City Marshall, or his designee, is hereby authorized to enter into settlement agreements as may be appropriate to accomplish the objectives of this section.

(b) Nothing herein shall prohibit the city from releasing a vehicle seized under the provisions of this section, if such release is determined to be in the best interests of the city.

(c) Nothing herein shall be construed to prohibit the city from enforcing the provisions of this section against a vehicle initially seized pursuant to the Florida Contraband Forfeiture Act (but not both) if in the best interest of the city.

Sec. 98-68. Appeals.

The owner of the vehicle which was seized and impounded may appeal a ruling or order of the special master by proceedings in the circuit court for the county in accordance with Rule 9.190, the Florida Rules of Appellate Procedure. An appeal shall be filed within thirty (30) calendar days of the execution of the order to be appealed. The nature of the appeal shall be from a final administrative order.

Sec. 98-69. Administrative civil penalties and fines.

The following administrative civil penalties and fines apply for vehicles impounded pursuant to this article:

(1) A first violation shall be subject to an administrative civil penalty of \$125.00, plus all towing and storage fees as well as any applicable hearing costs; and any other applicable penalties or fines provided for in the Code.

(2) A second violation shall be subject to an administrative civil penalty of \$250.00, plus all towing and storage fees as well as any applicable hearing costs; and any other applicable penalties or fines provided for in the Code.

(3) A third violation shall be subject to an administrative civil penalty of \$500.00, plus all towing and storage fees as well as any applicable hearing costs; and any other applicable penalties or fines provided for in the Code.

SECTION 3. Codification. The publisher of the City’s Code of Laws, the Municipal Code Corporation, is directed to incorporate the amendments included in Section 2 above into the Code of Ordinances.

SECTION 4. Severability. If any section, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such section, sentence, clause, or provision shall be deemed severable, and such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance.

SECTION 5. Effective Date. This ordinance shall be effective immediately upon final passage by the City Council.

PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA, on this ___ day of _____, 2014.

CITY OF ARCADIA, FLORIDA

ALICE FRIERSON, MAYOR

ATTEST:

By: _____
PENNY DELANEY, CITY CLERK

PASSED ON FIRST READING: _____, 2014

PASSED ON SECOND READING: _____, 2014

APPROVED AS TO FORM:

THOMAS J. WOHL, CITY ATTORNEY

AGENDA No. 4



CITY COUNCIL AGENDA ITEM
Requested Council Meeting Date: April 1, 2014

DEPARTMENT: Systems

SUBJECT: Resolution No. 2014-03

RECOMMENDED MOTION: Council Approval

SUMMARY: Authorization of Lease Purchase Agreement with Leasing 2, Inc. regarding Vacuum Truck

FISCAL IMPACT: _____ () Capital Budget
() Operating
() Other

ATTACHMENTS: () Ordinance (X) Resolution () Budget () Other

Department Head: _____ Date: _____

Finance Director (As to Budget Requirements) _____ Date: _____

City Attorney (As to Form and Legality) _____ Date: _____

City Administrator: Tom Slaughter _____ Date: _____

COUNCIL ACTION: () Approved as Recommended () Disapproved
() Tabled Indefinitely () Tabled to Date Certain _____ () Approved with Modifications

RESOLUTION 2014- 03

A RESOLUTION OF THE CITY OF ARCADIA, FLORIDA, CITY COUNCIL, AUTHORIZING A LEASE-PURCHASE AGREEMENT WITH LEASING 2, INC. FOR THE PURPOSE OF ACQUIRING ONE (1) VAC-CON V350SHA/850 COMBINATION VACUUM TRUCK ON A FREIGHTLINER CHASSIS; DETERMINING THAT SUCH LEASE-PURCHASE AGREEMENT IS IN THE BEST INTEREST OF THE CITY; AUTHORIZING THE PROPER OFFICIALS, OFFICERS AND EMPLOYEES OF THE CITY TO DO ALL THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH SUCH LEASE-PURCHASE AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (“City Council”) of the City of Arcadia, Florida (the “City”) has determined that there exists a need for the acquisition of one (1) Vac-Con V350SHA/850 Combination Vacuum Truck on Freightliner Chassis (herein the “Equipment”); and

WHEREAS, the City hereby determines that it would be in the best economic interest of the City to enter into a Lease-Purchase Agreement with Leasing 2, Inc. for the acquisition of the Equipment; and

WHEREAS, the City has determined that the Equipment will be used solely for central governmental functions and not for private business use; and

WHEREAS, the City has complied with all public bidding requirements for the acquisition of the Equipment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA:

SECTION 1. The recitals contained in the preamble to the Resolution are incorporated by reference herein.

SECTION 2. It is hereby ascertained, determined and declared that, in light of the City’s need to upgrade its solid waste disposal equipment, the attractiveness of the terms offered by Leasing 2, Inc., and the nature of the Lease-Purchase Agreement, it is in the best interest of the City to enter into the Lease-Purchase Agreement with Leasing 2, Inc. on a negotiated basis pursuant to the terms and conditions of this Resolution.

SECTION 3. The City hereby approves the terms and conditions of the Lease-Purchase Agreement, attached as Exhibit “A” hereto. The City Council hereby authorizes the Mayor or Deputy Mayor, City Administrator, City Finance Director and Systems Supervisor to execute and deliver any and all documents and instruments and to

do and cause to be done, any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution.

SECTION 4. If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA,
in regular session this 1st day of April, 2014.

ATTEST:

CITY OF ARCADIA, FLORIDA

Penny Delaney, City Clerk

Alice Frierson, Mayor

APPROVED AS TO FORM:

Thomas J. Wohl, City Attorney

EXHIBIT "A"
Lease-Purchase Agreement

LEASE-PURCHASE AGREEMENT

LESSEE:
City of Arcadia
23 N. Polk Avenue
Arcadia, FL 34265

LESSOR:
Leasing 2, Inc.
1720 West Cass Street
Tampa, FL 33606-1230

Dated as of April 1, 2014

This Lease-Purchase Agreement (the "Agreement") dated as of April 1, 2014 by and between Leasing 2, Inc. ("Lessor"), and City of Arcadia ("Lessee"), a body corporate and politic duly organized and existing under the laws of the State of Florida ("State").

WITNESSETH:

WHEREAS, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Lease-Purchase Agreement, including the Exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Commencement Date" is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which shall be the commencement date shown on the Exhibit E Payment Schedule.

"Equipment" means the property described in Exhibit D and which is the subject of this Agreement.

"Lease Term" means the Original Term and all Renewal Terms provided for in this Agreement under Section 4.01.

"Lessee" means the entity which is described in the first paragraph of this Agreement and which is leasing the Equipment from Lessor under the provisions of this Agreement.

"Lessor" means (i) Leasing 2, Inc., acting as Lessor hereunder; (ii) any surviving resulting or transferee corporation; and (iii) except where the context requires otherwise, any assignee(s) of Lessor.

"Original Term" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

"Purchase Price" means the amount indicated with respect to any date after payment of all Rental Payments (defined below) due through such date, all as set forth in Exhibit E hereto, or Supplemental Exhibit E hereto, as the case may be.

"Renewal Terms" means the renewal terms of this Agreement as provided for in Article IV of this Agreement, each having a duration of one year and a term co-extensive with the Lessee's fiscal year, except the last of such automatic renewal terms which shall end on the due date of the last Rental Payment set forth in Exhibit E to this Agreement.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to the provisions of this Agreement during the Lease Term, payable in consideration of the right of Lessee to use the Equipment during the then current portion of the Lease Term. Rental Payments shall be payable by Lessee to the Lessor or its assignee in the amounts and at the times during the Lease Term, as set forth in Exhibit E of this Agreement.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessee has purchased or is purchasing the Equipment.

ARTICLE II COVENANTS OF LESSEE

Section 2.01 Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

(a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.

(b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body, corporate and politic.

(c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby, and to perform all of its obligations hereunder. (d) Lessee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolution of its governing body, attached hereto as Exhibit A, or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of this Agreement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder. Lessee shall cause to be executed and delivered to Lessor an opinion of its counsel substantially in the form attached hereto as Exhibit B.

(e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than the Lessee.

(f) During the period this Agreement is in force, Lessee will annually provide Lessor with such current financial statements, budgets, proof of appropriation for ensuing fiscal year or such other financial information relating to the decision of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee.

(g) The Equipment will have a useful life in the hands of the Lessee that is substantially in excess of the Original Term and all Renewal Terms.

(h) The Equipment is, and during the period this Agreement is in force will remain, personal property and when subjected to use by the Lessee under this Agreement, will not be or become fixtures.]

(i) Lessee shall not voluntarily or involuntarily create, incur, assume or suffer to exist any lien, security interest or other encumbrance or attachment of any kind whatsoever on, affecting or with respect to the Equipment.

(j) Lessee shall not give up possession or control of the Equipment.

(k) Lessee shall not change the location of the Equipment without giving prior written notice of the proposed new location to the Lessor and provided that Lessee shall obtain and deliver to Lessor any landlord waivers reasonably requested by Lessor so as to protect Lessor's right, title and interest in and to the Equipment and Lessor's ability to exercise its remedies with regard to the Equipment.

(l) Lessee shall not alter or modify the Equipment in any manner which would reduce the value or the marketability thereof.

(m) Lessee will take no action that will cause the interest portion of any Rental Payment to become includable in gross income of the recipient for purposes of federal income taxation under the Code, and Lessee will take, and will cause its officers, employees and agents to take, all affirmative action legally within its power to prevent such interest from being includable in gross income for purposes of federal income taxation under Section 103(a) of the United States Internal Revenue Code of 1986 as amended (the "Code"). Lessee represents and warrants that the Lease is to be treated as an obligation of a political subdivision of a state within the meaning of Section 103(c)(1) of the Code.

ARTICLE III LEASE OF EQUIPMENT

Section 3.01 Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

ARTICLE IV LEASE TERM

Section 4.01. Commencement of Lease Term. The Original Term of this Agreement shall commence on the Commencement Date and shall terminate on the last day of Lessee's fiscal year then in effect. Lessee may renew this Agreement beyond the expiration of the Original Term, or beyond the expiration of any Renewal Term then in effect, up to the number of additional fiscal years provided in Exhibit E of this Agreement by appropriating sufficient funds to make scheduled Rental Payments for the ensuing fiscal year (each a "Renewal Term"). Terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in Exhibit E of this Agreement.

Section 4.02. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

(a) The expiration of the Original Term or any Renewal Term of this Agreement and the non-renewal of this Agreement in the event of non-appropriation of funds pursuant to Section 6.07;

(b) The exercise by Lessee of the option to purchase the Equipment before expiration of this Agreement granted under the provisions of Articles IX or XI of this Agreement;

(c) A default by Lessee and Lessor's election to terminate this Agreement under Article XIII; or

(d) Payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder through the full lease term.

Section 4.03. Return of Equipment on Termination. Upon expiration or earlier termination of the Original Term or any Renewal Term under any provision of this Agreement at a time when Lessee does not exercise its option to purchase the Equipment granted under the provisions of Articles IX or XI of this Agreement, Lessee hereby agrees to deliver the Equipment

to Lessor packaged or otherwise prepared in a manner suitable for shipment by truck or rail common carrier to a location specified by Lessor. All expenses resulting from the return of Equipment on termination will be borne by Lessee.

ARTICLE V ENJOYMENT OF EQUIPMENT

Section 5.01. Provided that no default or event of default shall have occurred hereunder, Lessor hereby covenants that during the Lease Term Lessor will not interfere with Lessee's quiet use and enjoyment of the Equipment.

Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

ARTICLE VI RENTAL PAYMENTS

Section 6.01. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee.

Section 6.02. Payment of Rental Payments. During the Original Term and during each Renewal Term elected by Lessee, Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in Exhibit E hereto. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due. The Rental Payment amounts set forth in Exhibit E are based on the Equipment Cost to be paid by Lessor being the amount set forth in Exhibit E. Lessor shall have no obligation to pay or disburse any amount greater than the amount set forth as the Equipment Cost. Lessee shall not amend any purchase contract, purchase order, or any other agreement that would have the effect of increasing the cost of the Equipment above set forth in Exhibit E as the Equipment Cost without the prior written consent of Lessor. In the event that the actual cost of the Equipment is greater than the amount set forth in Exhibit E, Lessee shall be solely responsible for and hereby agrees to promptly pay such excess to the vendor (s), provided that Lessee may request that Lessor finance such excess, which Lessor may, in its sole discretion elect to do or decline to do. Lessee shall indemnify and hold Lessor harmless from and against any loss, damages, costs and expenses resulting from or relating to any increase in the Equipment Cost. If Lessor, in its sole discretion, elects to finance such excess the amount of each installment of rent will be increased to provide the same yield to Lessor as would have been obtained if the actual cost had been the same as the stated Equipment Cost. In such event, Lessee shall at the request of Lessor execute and deliver an amendment reflecting the increase in the Equipment Cost and the Rental Payments.

Section 6.03. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of principal. Exhibit E hereto sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

Section 6.04. Additional Interest in the Event the Interest is Taxable. Lessee acknowledges that Lessor's yield with respect to this Agreement is dependent upon the full amount of each Rental Payment being excluded from Lessor's income pursuant to the Code. Accordingly, if at any time, as a result of a determination that Lessee has breached a representation or covenant contained herein, or as a result of any change in the Code, any payment of either the interest component or the principal component of any Rental Payment is, in the opinion of counsel for the Lessor, subject to or affected by any income, preference, excess profits, minimum or other federal tax, Lessee shall pay, as additional interest, an amount which is necessary to provide to Lessor the same net income as Lessor would have received but for such event. Lessor's calculations of such additional interest shall be binding upon Lessee in the absence of manifest error.

Section 6.05. Rental Payments to be Unconditional. During the Original Term and during each Renewal Term elected by Lessee, the obligations of Lessee to make payment of the Rental Payments required under this Article VI and other sections hereof and to perform and observe the covenants and agreements contained herein shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person, Lessee agrees to pay all Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments when required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then current Renewal Term elected by Lessee shall not be abated through accident or unforeseen circumstances.

Section 6.06. Continuation of Lease Term by Lessee. Lessee intends, subject to the provisions of Section 6.07, to continue the Lease Term through the Original Term and all the Renewal Terms hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The officer of Lessee responsible for budget preparation shall do all things lawfully within his/her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such payments to the extent necessary in each annual budget submitted and adopted in accordance with applicable provisions of State law, to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds is within the discretion of Lessee's governing body.

Section 6.07. Termination by Nonappropriation. In the event Lessee does not appropriate sufficient funds for the payment of the Rental Payments scheduled to be paid in the next occurring Renewal Term, then Lessee may terminate this Agreement at the end of the then current Original Term or Renewal Term, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement beyond the end of the then current Original or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original or Renewal Term.

Section 6.08. Late Charges. If any Rental Payment is not paid in full to Lessor within fifteen (15) days after the payment first became due and payable, Lessee shall immediately pay to Lessor an additional one time late charge equal to five (5%) percent or, if less the maximum rate permitted by law, of each such amount past due along with the Rental Payment. If any Rental Payment remains unpaid beyond 45 days after it first became due and payable, or if Lessor has elected to exercise any remedies following an event or default, interest shall accrue on past due amounts at the rate of 1% per month or the highest rate allowed by law, whichever is less. Partial payments by Lessee shall be applied first to the accrued interest component of past due Rental Payments and the balance to the remaining principal component of past due Rental Payments.

Section 6.09. Prepayment. Lessee shall have the right to prepay principal components of Rental Payments in whole on any date set forth in Exhibit E by paying the then applicable Purchase Price set forth in Exhibit E on such date.

ARTICLE VII TITLE TO EQUIPMENT

Section 7.01. Title to the Equipment. During the term of this Agreement, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement. In the event of default as set forth in Section 13.01 or nonappropriation as set forth in Section 6.07, Lessee agrees to surrender possession of the Equipment to Lessor. Lessee and Lessor intend for federal income tax purposes under the Internal Revenue Code of 1986, as amended, that this Agreement constitutes a financing lease or an installment sale contract rather than a true lease.

ARTICLE VIII MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES

Section 8.01. Maintenance of Equipment by Lessee. Lessee agrees that at all times during the Lease Term Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for the making of improvements or additions to the Equipment.

Section 8.02. Taxes, Other Governmental Charges and Utility Charges. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay during the Lease Term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the time this Agreement is in effect.

Section 8.03. Provisions Regarding Insurance. At its own expense, Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lessor that adequate self-insurance is provided with respect to the Equipment, sufficient to protect the Full Insurable Value (as that term is hereinafter defined) of the Equipment, and to protect Lessor from liability in all events. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. Alternatively, Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but other properties. If Lessee insures similar properties by self-insurance and upon approval by Lessor, Lessee may insure the Equipment by means of an adequate insurance fund.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment.

Any insurance policy pursuant to this Section 8.03 shall be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. The Net Proceeds (as defined in Section 9.01) of the insurance required in this Section 8.03 shall be applied as provided in Article IX hereof. Each insurance policy provided for in this Section 8.03 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation.

Section 8.04. Advances. In the event Lessee shall fail to perform any of its obligations hereunder Lessor may (but shall be under no obligation to) take such action as may be necessary to cure such failure, including, without limitation, the advancement of money; and all amounts so advanced by Lessor shall become additional rent for the then current Original Term or Renewal Term, which amounts, together with interest thereon at the rate of 12% per annum, or if less the maximum rate permitted by law, Lessee agrees to pay.

ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS

Section 9.01. Damage, Destruction and Condemnation. If prior to the termination of the Lease Term (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of the Equipment or any part thereof or the estate of Lessee or Lessor in the Equipment or any part thereof shall be

taken under the exercise of the power eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.

Section 9.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01 hereof, Lessee shall either (a) complete the work and pay any cost in excess of the amount of Net Proceeds, and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds, Lessee shall make any payments pursuant to the provisions of this Section 9.02, Lessee shall not be entitled to any reimbursement therefrom from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI hereof or (b) if Lessee is not in default hereunder, Lessee shall pay to Lessor the amount of the then applicable Purchase Price, and, upon such payment, the Lease Term shall terminate and Lessor's interest in the Equipment shall terminate as provided in Article XI of this Agreement. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Lessee.

ARTICLE X DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF EQUIPMENT

Section 10.01. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item of Equipment.

Section 10.02. Vendor's Warranties. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, if any which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against the Lessor, nor shall such matter have any effect whatsoever on the rights of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

Section 10.03. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the estate of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

ARTICLE XI OPTION TO PURCHASE

Section 11.01 At the request of Lessee, Lessor's interest in the Equipment and additional Rental Payments will be terminated and this Agreement shall terminate:

- (a) At the end of the final Renewal Term, upon payment by Lessee of all Rental Payments scheduled as set forth in Exhibit E to this Agreement; or
- (b) if the Lease Term is terminated pursuant to Article IX of this Agreement, in the event of total damage, destruction or condemnation of the Equipment; or
- (c) any time when Lessee is not on such date in default under this Agreement, upon payment by Lessee of the then applicable Purchase Price to Lessor.

Upon the occurrence of any of such events, Lessor shall, if requested by Lessee, deliver a Bill of Sale of its remaining interest in the Equipment to Lessee "AS IS - WHERE IS" without additional cost or payment by Lessee.

ARTICLE XII ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING

Section 12.01. Assignment by Lessor. This Agreement, and the rights of Lessor hereunder, may be assigned and reassigned in whole or in part to one or more assignees and subassignees by Lessor at any time subsequent to its execution, without the necessity of obtaining the consent of Lessee; provided, however, that no such assignment or reassignment shall be effective unless and until (i) Lessee shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee, and (ii) in the event that such assignment is made to a bank or trust company as trustee for holders of certificates representing interests in this Agreement, such bank or trust company agrees to maintain, or cause to be maintained, a book-entry system by which a record of names and addresses of such holders as of any particular time is kept and agrees, upon request of the Lessee, to furnish such information to Lessee. Upon receipt of notice of assignment, Lessee agrees to keep a written record thereof, and to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the assignee. Lessee agrees to execute all documents which may be reasonably requested by Lessor or its assignee to protect their interests in this Agreement.

Section 12.02. No Sale, Assignment or Subleasing by Lessee. This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

Section 12.03. Lessee Negligence. To the extent permitted by the laws and Constitution of the State, Lessee shall protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death of any person, to the extent that such liability, obligation, loss, claim or damage arises out of or is proximately caused by the negligent conduct of Lessee, its officers, employees or agents. The obligation of Lessee arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Agreement or the termination of the Lease Term for any reason.

ARTICLE XIII EVENTS OF DEFAULT AND REMEDIES

Section 13.01. Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events.

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01 (a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to the expiration, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.
- (c) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment, or attachment of such consequence as would impair the ability of Lessee to carry on its governmental function or adjudication of Lessee as a bankrupt or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The foregoing provisions of this Section 13.01 are subject to (i) the provisions of Section 6.07 hereof with respect to nonappropriation; and (ii) if by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other employee relations disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority, insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

Section 13.02. Remedies on Default. Whenever any event of default referred to in Section 13.01 hereof shall have happened and be continuing, Lessee agrees to return the equipment to Lessor and Lessor shall have the right at its sole option without any further demand or notice, to take either one or both of the following remedial steps:

- (a) Accept surrender from Lessee of the equipment for sale or release by Lessor in a commercially reasonable manner. All proceeds of such sale or re-letting shall inure to Lessor, provided, however, if such proceeds after deduction of Lessor's reasonable costs and expenses, including attorneys' fees, incurred to recover possession, restore or clean-up and sell or release the equipment, exceed an amount equal to the sum of the past due but unpaid Rental Payments and an amount equal to the then applicable purchase price, Lessor shall remit the amount of such excess to Lessee; or
 - (b) Institute an action in a court of competent jurisdiction to recover Lessor's compensatory damages resulting from Lessee's default.
- Lessor agrees that it shall not have a right to seek any remedy of specific performance nor shall Lessor have any "self-help" right to take possession of the equipment absent Lessee's voluntary surrender thereof.

Section 13.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy give under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver hereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE XIV MISCELLANEOUS

Section 14.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 14.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.04. Amendments. The terms of the Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

Section 14.05. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.06. Delayed Closing. In the event of a delayed closing, Lessor shall receive as additional compensation any amount that accrues between the Commencement Date and the Closing Date.

Section 14.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State

Section 14.08. Captions. The captions or headings in this Agreement are for convenience only and do not define, limit or describe the scope or intent of any provisions of sections of this Agreement.

Section 14.09. Entire Agreement. This Agreement and the executed Exhibits attached hereto constitute the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein, regarding this Agreement or the equipment leased hereunder.

Section 14.10. Execution of Facsimile. In the interest of time, each party agrees that execution of signature pages of this Agreement by such party followed by transmission of such pages by facsimile/Telecopier will be legally binding upon such party. After each party has executed and transmitted such signature pages, each party agrees to execute hard copies of this Agreement and to promptly forward originals to the other party hereto.

Section 14.11. Correction of Documents. Lessee agrees to execute and deliver, or provide, as required by Lessor, any documents and information, from time to time, that may be necessary for the purpose of correcting any errors or omissions in this Lease or to reflect the true intent of Lessor in this transaction. All such documents and information must be satisfactory to Lessor.

Section 14.12 WAIVER OF JURY TRIAL. Lessee and Lessor hereby irrevocably waive any right to a jury trial with respect to any matter arising under or in connection with this Lease and agree that any dispute shall be determined by a court sitting without a jury.

Section 14.13. Performance Bonds. If requested by Lessor to facilitate payments to vendors in advance of delivery and acceptance, Lessee agrees to require the Equipment manufacturer, and all other contractors and/or subcontractors (collectively, "Contractors") with whom Lessee has contracted for the acquisition of the Equipment, to provide performance bond satisfactory to Lessor conditioned upon the construction of the Equipment as expeditiously as reasonably possible from the date of execution of such Lease and also conditioned upon delivery of possession of the Equipment to the Lessee free and clear of all liens and encumbrances, except the security interest granted to Lessor under the Lease-Purchase Agreement. Each such bond shall be in a form and with a surety acceptable to Lessor and shall name Lessor as a dual obligee. The Lessee shall proceed promptly to pursue diligently any remedies available against a Contractor that is in default under any agreement relating to the acquisition and construction of the Equipment and/or against each surety on any bond securing the performance of such Contractor's obligations with respect to the acquisition and construction of the Equipment. The Lessee and Lessor shall cause the net proceeds recovered by way of the foregoing to be applied, at Lessor's option, to (i) the completion of the Equipment, or (ii) the payment of all rent payments then due plus the then applicable Termination Balance. Any balance of net proceeds remaining after completion of Equipment construction or payment of the outstanding balance owed under the applicable Lease shall be paid promptly to Lessee.

Section 14.14. Time is of the Essence. Lessor and Lessee agree that time is of the essence of all provisions of each Lease entered into under this Agreement.

Any terms and conditions of any purchase order or other document submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name and by its duly authorized officer, and Lessee has caused this Agreement to be executed in its corporate name and by its duly authorized officer. All of the above occurred as of the date first written below; this Agreement shall be binding on Lessee beginning on the date it is accepted and executed by Lessor.

LESSOR: Leasing 2, Inc.

Execute:

By: _____

Title: _____

Date: _____

LESSEE: City of Arcadia

Execute:

By: _____
Fred Lewis

Title: _____
Systems Supervisor

Date: _____

EXHIBIT A

RESOLUTION OF GOVERNING BODY
EXTRACT OF MINUTES

LESSEE: City of Arcadia

At a duly called meeting of the governing body of Lessee held on the _____ day of _____, 20____, the following resolution was introduced and adopted.

RESOLVED, whereas the governing body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment described in the Lease-Purchase Agreement by and between Lessee and **Leasing 2, Inc.** dated as of **April 1, 2014** and presented to this meeting; and has further determined that the Equipment will be used solely for essential governmental functions and not for private business use.

WHEREAS, Lessee has taken the necessary steps, including, without limitation to compliance with legal bidding requirements, under applicable law to arrange for the acquisition of such Equipment.

BE IT RESOLVED, by the governing body of Lessee that the terms of said Lease-Purchase Agreement and Escrow Agreement are in the best interest of Lessee for the acquisition of such Equipment, and the governing body of Lessee designates and confirms the following person to execute and deliver, the Lease-Purchase Agreement and Escrow Agreement and any related documents necessary to the consummation of the transactions contemplated by the Lease-Purchase Agreement and Escrow Agreement.

(Signature of Party to Execute
Lease-Purchase Agreement and Escrow Agreement)

Fred Lewis, Systems Supervisor
(Print Name and Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect and further certifies that the above and foregoing Lease-Purchase Agreement and Escrow Agreement is the same as presented at said meeting of the governing body of Lessee.

(SEAL)

Secretary/Clerk

Date

{LETTERHEAD OF LESSEE'S COUNSEL}

EXHIBIT B

OPINION OF LESSEE'S COUNSEL

LESSEE: **City of Arcadia**

DATE OF AGREEMENT: **April 1, 2014**

**Leasing 2, Inc.
1720 West Cass Street
Tampa, FL 33606-1230**

[Ladies and]Gentlemen:

As counsel for **City of Arcadia** ("Lessee"), I have examined duly executed originals of the Lease-Purchase Agreement and Escrow Agreement (the "Agreement"), between Lessee and Leasing 2, Inc. ("Lessor"), dated as of **April 1, 2014** and the proceedings taken by Lessee to authorize and execute the Agreement. Based upon such examination and upon such other examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of the State of **Florida**.
2. The Agreement has been duly authorized, executed and delivered by Lessee, pursuant to Constitutional, statutory and/or home rule provisions which authorize this transaction and Resolution No. _____, attached as Exhibit A to the Agreement.
3. The Agreement is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms. In the event the Lessor obtains a judgment against Lessee in money damages, as a result of an event of default under the Agreement, Lessee will be obligated to pay such judgment.
4. Applicable public bidding requirements have been complied with.
5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, which questions or affects the validity of the Agreement.
6. The signature of the officer of Lessee which appears on the Agreement is true and genuine; I know said officer and know him/her to hold the office set forth below his/her names.
7. The Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.
8. The leasing of the Equipment pursuant to the Agreement is exempt from all sales and use taxes against either the Lessor or the Lessee during the term of the Lease and the Equipment will be exempt from any state and local personal property or other ad valorem taxes during the term of the Lease.

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Lease, but only with regard to matters specifically set forth herein.

Sincerely,

EXHIBIT C
CERTIFICATE AS TO ARBITRAGE

I, **Fred Lewis**, hereby certify that I am duly qualified and acting **Systems Supervisor**, of **City of Arcadia** (the "Lessee"), and that in my official capacity as such officer, I am responsible for executing and delivering, on behalf of the Lessee, the Lease-Purchase Agreement dated **April 1, 2014** (the "Agreement"), by and between Leasing 2, Inc. ("Lessor") and the Lessee. This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder (the "Regulations"). The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter.

1. The Lease provides for the acquisition and financing of certain equipment described therein (the "Equipment") Pursuant to the Agreement, the Lessor is required to lease the Equipment to the Lessee and the Lessee is required to make rental payments with respect thereto, comprising principal and interest, on the dates and in the amounts set forth therein (the "Rental Payments").
2. On the date hereof, Lessor will deposit into escrow to be held for the benefit of Lessee the amount of **\$250,000.00**, which, together with interest earned thereon until disbursed if necessary, will be used to pay the costs of the Equipment in the amount of **\$250,000.00**. In the event any interest income remains in escrow after payment of such Equipment cost, such amount shall be retained by Lessor as additional fee income.
3. The Lessee has entered into or will within six (6) months of the date hereof enter into contracts for the acquisition of the Equipment, which contracts will obligate the payment of all amounts held in escrow.
4. The Equipment will be acquired with due diligence and will be fully acquired on or before _____.
5. In any event, all of the spendable proceeds of the Agreement will be expended on the Equipment within three (3) years from the date of execution of the Agreement. No proceeds of the Agreement will be used to reimburse the Lessee for expenditures made prior to the date of the issuance of the Agreement, unless Lessee shall have complied with the requirements of Section 1.150-2 of the Regulations. If applicable, a copy of Lessee's official intent with respect to such reimbursement is attached hereto as attachment 1.
6. The original proceeds of the Agreement, and the interest to be earned thereon, do not exceed the amount necessary for the governmental purpose for which the Agreement is issued.
7. The interest of the Lessee in the Equipment has not been, and is not expected during the term of the Agreement, to be sold or otherwise disposed of by the Lessee.
8. No sinking fund will be maintained by the Lessee with respect to the Rental Payments.
9. The Agreement is not a "hedge bond" within the meaning of Section 149(g) of the Code. The Lessee expects to spend not less than 85% of the spendable proceeds of the Agreement within three years after the date hereof and less than 50% of the proceeds of the Agreement is invested in Nonpurpose investments having a substantially guaranteed yield for four years or more.
10. In the Agreement the Lessee has covenanted to take all actions necessary to ensure that the interest paid under the Agreement remains excludable from gross income under the Code. Such covenant includes, without limitation, the requirement to comply with the requirements of the Code relating to the rebate of arbitrage profit to the United States Government.
11. To the best of the knowledge and belief of the undersigned, the expectations of the Lessee as set forth above, are reasonable; and there are no present facts, estimates and circumstances which would damage the foregoing expectations.

WITNESS my hand this _____ day of _____, 20_____.

LESSEE: **City of Arcadia**

By: _____
Fred Lewis

Title: _____
Systems Supervisor

EXHIBIT D
DESCRIPTION OF EQUIPMENT

The Equipment which is the subject of the attached Lease-Purchase Agreement is as follows:

Vac-Con V350SHA/850 Combination Vacuum Truck on a Freightliner Chassis, VIN: _____

together with all additions, accessions and replacements thereto.

Lessee hereby certifies that the description of the personal property set forth above constitutes an accurate description of the "Equipment", as defined in the attached Lease-Purchase Agreement.

LOCATION OF THE EQUIPMENT:

645 Turner Avenue

Arcadia, FL 34265

After Lessee signs this Agreement, Lessee authorizes Lessor to insert any missing information or change any inaccurate information (such as the model year of the Equipment or its serial number or VIN) into the Description of Equipment.

LESSEE: **City of Arcadia**

By: _____
Fred Lewis

Title: _____
Systems Supervisor

Date: _____

EXHIBIT E
PAYMENT SCHEDULE

LESSEE: City of Arcadia
 LEASE AMOUNT: \$250,000.00
 COMMENCEMENT DATE: April 1, 2014
 INTEREST RATE: 3.20%

PAYMENT					PURCHASE
<u>NO.</u>	<u>DATE</u>	<u>PAYMENT</u>	<u>INTEREST</u>	<u>PRINCIPAL</u>	<u>PRICE*</u>
1	10/1/2014	\$45,756.31	\$4,093.61	\$41,662.70	\$215,545.38
2	10/1/2015	\$45,756.31	\$6,674.49	\$39,081.82	\$174,143.09
3	10/1/2016	\$45,756.31	\$5,422.43	\$40,333.88	\$131,904.47
4	10/1/2017	\$45,756.31	\$4,130.26	\$41,626.05	\$88,812.63
5	10/1/2018	\$45,756.31	\$2,796.68	\$42,959.63	\$44,850.34
6	10/1/2019	\$45,756.31	\$1,420.39	\$44,335.92	\$0.00
Grand Totals		\$274,537.86	\$24,537.86	\$250,000.00	

LESSEE: **City of Arcadia**

By: _____
Fred Lewis

Title: _____
Systems Supervisor

Date: _____

* After payment of Rental Payment due on such date.

EXHIBIT F
ACCEPTANCE CERTIFICATE

The undersigned, as Lessee under the Lease-Purchase Agreement (the "Agreement") dated April 1, 2014, with Leasing 2, Inc. ("Lessor"), hereby acknowledges:

1. _____ **Equipment delivered and accepted:** Lessee has received in good condition all of the Equipment described in the Agreement and in Exhibit D thereto and accepts the Equipment for all purposes this _____ day of _____, 20_____.
2. _____ **Equipment delivery has not yet taken place:** The Equipment described in the Agreement and in Exhibit D thereto, has not been delivered, but is scheduled to be delivered on/or before _____. Lessor has agreed to deposit into an escrow account an amount sufficient to pay the total cost of the Equipment identified in Exhibit D of the Agreement. Exhibit E accurately reflects the Lease Amount. Lessee agrees to execute an Acceptance Certificate and Payment Request Form authorizing payment of the cost of the Equipment, or a portion thereof, for each withdrawal of funds from the Escrow Account. Lessee's obligation to commence Rental Payments as set forth in Exhibit E-Payment Schedule is absolute and unconditional as of the Commencement Date, subject to the terms and conditions of the Agreement. Lessee further acknowledges that the Agreement is not subject to the successful delivery of the Equipment, and that in the event of non-performance by the Vendor, Lessee will retain all responsibility for performance under the Agreement.
3. _____ **Vendor will be paid in full prior to delivery of equipment:** A 100% pre-funding will be made by Lessor to Vendor of the lease amount identified as "Equipment Cost" on the Exhibit E – Payment Schedule of the Agreement. Lessee agrees to indemnify and hold Lessor harmless from and against any and all claims, costs and expenses incurred (including Lessor's attorneys' fees). Lessee further acknowledges that the Agreement is not subject to the successful delivery of the Equipment, and that in the event of non-performance by the Vendor, Lessee will retain all responsibility for performance under the Agreement.

Lessee certifies that Lessor has fully and satisfactorily performed all of its covenants and obligations required under the Agreement, and confirms that the Agreement will commence as defined by "Commencement Date" in the attached Agreement, and it will commence payments in accordance with Article VI of the Agreement.

The undersigned officer of the Lessee hereby reaffirms on behalf of the Lessee in all respects the covenants of the Lessee set forth in Article II of the Agreement and represents that, to the best of his or her knowledge, information and belief, the expectations therein expressed were reasonable as of the Commencement Date, and that there were, and are as of the date on which they were made, and are reasonable as of the Commencement Date, no facts, estimates or circumstances other than those expressed therein that would materially affect the expectations expressed therein.

LESSEE: **City of Arcadia**

By: _____
Fred Lewis

Title: _____
Systems Supervisor

Date: _____

EXHIBIT G

ESSENTIAL USE/SOURCE OF FUNDS LETTER

TO: **Leasing 2, Inc.**

RE: Lease-Purchase Agreement Dated **April 1, 2014**.

Gentlemen:

Reference is made to certain Lease-Purchase Agreement dated **April 1, 2014**, between **Leasing 2, Inc.** and **City of Arcadia**, leasing the personal property described in Exhibit D to such Agreement. This confirms and affirms that such Equipment is essential to the functions of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. **Specifically, the Equipment was selected by us to be used as follows:**

Please describe USE of equipment:

Sincerely,

Fred Lewis, Systems Supervisor

Date

EXHIBIT H

DESIGNATION OF BANK QUALIFICATION

In consideration of the mutual covenants of the Lessor and Lessee pursuant to the Lease-Purchase Agreement dated **April 1, 2014**, (the "Agreement") between **Leasing 2, Inc.** ("Lessor") and **City of Arcadia** ("Lessee"), such Agreement is modified as follows:

Lessee certifies that it reasonably anticipates that it and all of its subordinate entities will not issue more than \$10,000,000 of "qualified tax-exempt obligations" (as that term is defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986 ("the Code") during the current calendar year .

Further, lessee hereby designates the Agreement as a "qualified tax-exempt obligation" in accordance with Section 265 (b)(3)(B) of the Code so that it is eligible for the exception contained in Section 265 (b)(3) of the Code and further certifies for the purpose of the overall limitation of Section 265 (b)(3)(D) of the Code that it and its subordinate entities have not as of this calendar year issued more than \$10,000,000 of obligations which it has designated for these purposes.

All terms contained herein not otherwise defined shall have the same meaning as such terms are used and defined in the Lease.

Attached hereto is a completed Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Bond Issues, completed on behalf of the Lessee (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC).

IN WITNESS WHEREOF, the Lessee has caused this Agreement to be executed by its duly authorized officer on this the _____ day of _____
20_____

LESSEE: **City of Arcadia**

By: _____
Fred Lewis

Title: _____
Systems Supervisor

Date: _____

EXHIBIT I

NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT

Leasing 2, Inc. ("Lessor") hereby gives notice to the **City of Arcadia** ("Lessee") that Lessor has assigned all rights to payments under the Lease-Purchase Agreement and Escrow Agreement dated as of **April 1, 2014**, between **Leasing 2, Inc.** ("Lessor") and **City of Arcadia** ("Lessee"). **Leasing 2, Inc.** ("Lessor") hereby requests, gives notice and instructs **City of Arcadia** ("Lessee") that payments that hereafter come due pursuant to the Lease-Purchase Agreement be paid to **Santander Bank, N.A.** or its Assignee.

Santander Bank, N.A.
P. O. Box 14565
Reading, PA 19612

LESSEE: City of Arcadia

By: _____
Fred Lewis

Title: _____
Systems Supervisor

Date: _____

EXHIBIT J
VENDOR TERMS

LESSEE: City of Arcadia

Lessor shall have funds not immediately paid to [Vendor(s)] at closing deposited in an "Escrow Account" in order to facilitate payment to [Vendors] for equipment deliveries that are scheduled to occur according to the following schedule:

EQUIPMENT DESCRIPTION	AMOUNT	PAYMENT NO EARLIER THAN
Vac-Con V350SHA/850 Combination Vacuum Truck on a Freightliner Chassis	\$250,000.00	Delivery & Acceptance

Lessee acknowledges and is in agreement with this schedule and the "Payment No Earlier Than" dates as indicated.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20 _____.

LESSEE: City of Arcadia

By: _____
Fred Lewis

Title: _____
Systems Supervisor

INSURANCE COVERAGE REQUIREMENT

**TO: Leasing 2, Inc. and/or its Assigns
1720 West Cass Street
Tampa, FL 33606-1230**

**FROM: City of Arcadia
23 N. Polk Avenue
Arcadia, FL 34265**

RE: INSURANCE COVERAGE REQUIREMENTS (Check one):

_____ 1. In accordance with Section 8.03 of the Agreement, we have instructed the insurance agent named below (please fill in name, address and telephone number)

NAME: _____

ADDRESS: _____

CITY/ ST/ ZIP: _____

TELEPHONE: _____

to issue:

a. All Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming **Leasing 2, Inc. and/or its Assigns** as Loss Payee.

Coverage Required: Full Replacement Value

b. Public Liability Insurance evidenced by a Certificate of Insurance naming **Leasing 2, Inc. and/or its Assigns** as an Additional Insured.

Minimum Coverage Required:

\$500,000.00 per person

\$1,000,000.00 aggregate bodily injury liability

\$1,000,000.00 property damage liability

_____ 2. Pursuant to Section 8.03 of the Agreement, we are self insured for all risk, physical damage, and public liability and will provide proof of such self insurance in letterform together with a copy of the statute authorizing this form of insurance.

By: _____
Fred Lewis

Title: _____
Systems Supervisor

Date: _____

BILLING INFORMATION

Please indicate below how you would like us to bill you for the lease payments due under this Agreement, including a contact name, if applicable:

Contact Name: _____

Company: _____

Street Address or Box #: _____

City, State, Zip: _____

County: _____

Telephone: _____ ()

Fax: _____ ()

Email Address: _____

**CUSTOMER IDENTIFICATION PROGRAM
ORGANIZED ENTITY**

Notice: To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (individuals or businesses) who opens an account.

What this means for you: When you open an account or add any additional service, we will ask you for your name, address, federal employer identification number and other information that will allow us to identify you. We may also ask to see other identifying documents.

CUSTOMER NAME: City of Arcadia

CUSTOMER IDENTIFICATION

Taxpayer ID Number: 59-6000266

Business Structure (check one): City Government: _____ County Government: _____ Tax District: _____ Corporation: _____

Other, description: _____

We may request certified copies of your organizational documents as part of the identification procedure.

PRIMARY ADDRESS AND REGISTRATION

Address: _____

Address: _____

City: _____

State: _____

Zip Code: _____

State of Registration/Organization: _____

MAILING ADDRESS (if different from above)

Address: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Acknowledgment: The information contained herein is true and correct.

City of Arcadia

By: _____
Fred Lewis

Its: _____
Systems Supervisor

Internal Escrow Letter

April 1, 2014

Santander Bank, N. A.
3 Huntington Quadrangle, Suite 101N
Melville, NY 11747

Re: Lease Purchase Agreement dated **April 1, 2014** (the "Lease") by and between **City of Arcadia** ("Lessee") and Leasing 2, Inc. ("Lessor"), concurrently assigned to Santander Bank, N.A.. ("Assignee").

Ladies and Gentlemen:

We have entered into the above referenced Lease for the purpose of financing a **Vac-Con V350SHA/850 Combination Vacuum Truck on a Freightliner Chassis** (the "Equipment") in the amount of **\$250,000.00** (the "Financed Amount"). Lessee hereby requests that Assignee retain **\$250,000.00** (the "Retained Amount"). Lessee further requests that Assignee hold the Retained Amount in an internal escrow pending Assignee's receipt of confirmation from Lessee that the Equipment has been delivered, inspected and accepted for all purposes by the Lessee and that payment can be remitted to the vendor of such Equipment. There will be no separate escrow fee charged Lessee for internally escrowing the Retained Amount.

Lessee understands and agrees that interest shall accrue on the entire Financed Amount as of the date hereof, and further understands and agrees that any interest earned on the Retained Amount shall be paid to Assignee in consideration of managing the internal escrow account.

Lessee acknowledges that Assignee may commingle the Retained Amount held by Assignee for the benefit of Lessee with other funds held by Assignee for its own account, so long as Assignee maintains segregation of such amounts on the books and records of Assignee.

Sincerely,

LESSEE: **City of Arcadia**

By: _____
Fred Lewis

Title: _____
Systems Supervisor

Date: _____

AGENDA No. 5



CITY COUNCIL AGENDA ITEM
Requested Council Meeting Date: April 1, 2014

DEPARTMENT: Sanitation

SUBJECT: Resolution No. 2014-04

RECOMMENDED MOTION: Council Approval

SUMMARY: Authorization of Lease Purchase Agreement with Leasing 2, Inc. regarding a Kann Front Loader Garbage Truck and a Pac-Man Rear Loader Garbage Truck

FISCAL IMPACT: _____
 Capital Budget
 Operating
 Other

ATTACHMENTS: Ordinance Resolution Budget Other

Department Head: _____ Date: _____

Finance Director (As to Budget Requirements) _____ Date: _____

City Attorney (As to Form and Legality) _____ Date: _____

City Administrator: Tom Slaughter _____ Date: _____

COUNCIL ACTION: Approved as Recommended Disapproved
 Tabled Indefinitely Tabled to Date Certain _____ Approved with Modifications

RESOLUTION 2014- 04

A RESOLUTION OF THE CITY OF ARCADIA, FLORIDA, CITY COUNCIL, AUTHORIZING A LEASE-PURCHASE AGREEMENT WITH LEASING 2, INC. FOR THE PURPOSE OF ACQUIRING ONE (1) KANN FRONT LOADER GARBAGE TRUCK AND ONE (1) PAC-MAN REAR LOADER GARBAGE TRUCK; DETERMINING THAT SUCH LEASE-PURCHASE AGREEMENT IS IN THE BEST INTEREST OF THE CITY; AUTHORIZING THE PROPER OFFICIALS, OFFICERS AND EMPLOYEES OF THE CITY TO DO ALL THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH SUCH LEASE-PURCHASE AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (“City Council”) of the City of Arcadia, Florida (the “City”) has determined that there exists a need for the acquisition of one (1) Kann Front Loader Garbage Truck and one (1) Pac-Man Rear Loader Garbage Truck (herein collectively the “Equipment”); and

WHEREAS, the City hereby determines that it would be in the best economic interest of the City to enter into a Lease-Purchase Agreement with Leasing 2, Inc. for the acquisition of the Equipment; and

WHEREAS, the City has determined that the Equipment will be used solely for central governmental functions and not for private business use; and

WHEREAS, the City has complied with all public bidding requirements for the acquisition of the Equipment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA:

SECTION 1. The recitals contained in the preamble to the Resolution are incorporated by reference herein.

SECTION 2. It is hereby ascertained, determined and declared that, in light of the City’s need to upgrade its solid waste disposal equipment, the attractiveness of the terms offered by Leasing 2, Inc., and the nature of the Lease-Purchase Agreement, it is in the best interest of the City to enter into the Lease-Purchase Agreement with Leasing 2, Inc. on a negotiated basis pursuant to the terms and conditions of this Resolution.

SECTION 3. The City hereby approves the terms and conditions of the Lease-Purchase Agreement, attached as Exhibit “A” hereto. The City Council hereby authorizes the Mayor or Deputy Mayor, City Administrator, City Finance Director and Public Works Director to execute and deliver any and all documents and instruments and

to do and cause to be done, any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution.

SECTION 4. If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA,
in regular session this 1st day of April, 2014.

ATTEST:

CITY OF ARCADIA, FLORIDA

Penny Delaney, City Clerk

Alice Frierson, Mayor

APPROVED AS TO FORM:

Thomas J. Wohl, City Attorney

EXHIBIT "A"
Lease-Purchase Agreement

LEASE-PURCHASE AGREEMENT

LESSEE:
City of Arcadia
23 N. Polk Avenue
Arcadia, FL 34265

LESSOR:
Leasing 2, Inc.
1720 West Cass Street
Tampa, FL 33606-1230

Dated as of April 1, 2014

This Lease-Purchase Agreement (the "Agreement") dated as of April 1, 2014 by and between Leasing 2, Inc. ("Lessor"), and City of Arcadia ("Lessee"), a body corporate and politic duly organized and existing under the laws of the State of Florida ("State").

WITNESSETH:

WHEREAS, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Lease-Purchase Agreement, including the Exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Commencement Date" is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which shall be the commencement date shown on the Exhibit E Payment Schedule.

"Equipment" means the property described in Exhibit D and which is the subject of this Agreement.

"Lease Term" means the Original Term and all Renewal Terms provided for in this Agreement under Section 4.01.

"Lessee" means the entity which is described in the first paragraph of this Agreement and which is leasing the Equipment from Lessor under the provisions of this Agreement.

"Lessor" means (i) Leasing 2, Inc., acting as Lessor hereunder; (ii) any surviving resulting or transferee corporation; and (iii) except where the context requires otherwise, any assignee(s) of Lessor.

"Original Term" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

"Purchase Price" means the amount indicated with respect to any date after payment of all Rental Payments (defined below) due through such date, all as set forth in Exhibit E hereto, or Supplemental Exhibit E hereto, as the case may be.

"Renewal Terms" means the renewal terms of this Agreement as provided for in Article IV of this Agreement, each having a duration of one year and a term co-extensive with the Lessee's fiscal year, except the last of such automatic renewal terms which shall end on the due date of the last Rental Payment set forth in Exhibit E to this Agreement.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to the provisions of this Agreement during the Lease Term, payable in consideration of the right of Lessee to use the Equipment during the then current portion of the Lease Term. Rental Payments shall be payable by Lessee to the Lessor or its assignee in the amounts and at the times during the Lease Term, as set forth in Exhibit E of this Agreement.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessee has purchased or is purchasing the Equipment.

ARTICLE II COVENANTS OF LESSEE

Section 2.01 Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

(a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.

(b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body, corporate and politic.

(c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby, and to perform all of its obligations hereunder.

(d) Lessee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolution of its governing body, attached hereto as Exhibit A, or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of this Agreement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder. Lessee shall cause to be executed and delivered to Lessor an opinion of its counsel substantially in the form attached hereto as Exhibit B.

(e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than the Lessee.

(f) During the period this Agreement is in force, Lessee will annually provide Lessor with such current financial statements, budgets, proof of appropriation for ensuing fiscal year or such other financial information relating to the decision of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee.

(g) The Equipment will have a useful life in the hands of the Lessee that is substantially in excess of the Original Term and all Renewal Terms.

(h) The Equipment is, and during the period this Agreement is in force will remain, personal property and when subjected to use by the Lessee under this Agreement, will not be or become fixtures.]

(i) Lessee shall not voluntarily or involuntarily create, incur, assume or suffer to exist any lien, security interest or other encumbrance or attachment of any kind whatsoever on, affecting or with respect to the Equipment.

(j) Lessee shall not give up possession or control of the Equipment.

(k) Lessee shall not change the location of the Equipment without giving prior written notice of the proposed new location to the Lessor and provided that Lessee shall obtain and deliver to Lessor any landlord waivers reasonably requested by Lessor so as to protect Lessor's right, title and interest in and to the Equipment and Lessor's ability to exercise its remedies with regard to the Equipment.

(l) Lessee shall not alter or modify the Equipment in any manner which would reduce the value or the marketability thereof.

(m) Lessee will take no action that will cause the interest portion of any Rental Payment to become includable in gross income of the recipient for purposes of federal income taxation under the Code, and Lessee will take, and will cause its officers, employees and agents to take, all affirmative action legally within its power to prevent such interest from being includable in gross income for purposes of federal income taxation under Section 103(a) of the United States Internal Revenue Code of 1986 as amended (the "Code"). Lessee represents and warrants that the Lease is to be treated as an obligation of a political subdivision of a state within the meaning of Section 103(c)(1) of the Code.

ARTICLE III LEASE OF EQUIPMENT

Section 3.01 Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

ARTICLE IV LEASE TERM

Section 4.01. Commencement of Lease Term. The Original Term of this Agreement shall commence on the Commencement Date and shall terminate on the last day of Lessee's fiscal year then in effect. Lessee may renew this Agreement beyond the expiration of the Original Term, or beyond the expiration of any Renewal Term then in effect, up to the number of additional fiscal years provided in Exhibit E of this Agreement by appropriating sufficient funds to make scheduled Rental Payments for the ensuing fiscal year (each a "Renewal Term"). Terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in Exhibit E of this Agreement.

Section 4.02. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

(a) The expiration of the Original Term or any Renewal Term of this Agreement and the non-renewal of this Agreement in the event of non-appropriation of funds pursuant to Section 6.07;

(b) The exercise by Lessee of the option to purchase the Equipment before expiration of this Agreement granted under the provisions of Articles IX or XI of this Agreement;

(c) A default by Lessee and Lessor's election to terminate this Agreement under Article XII; or

(d) Payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder through the full lease term.

Section 4.03. Return of Equipment on Termination. Upon expiration or earlier termination of the Original Term or any Renewal Term under any provision of this Agreement at a time when Lessee does not exercise its option to purchase the Equipment granted under the provisions of Articles IX or XI of this Agreement, Lessee hereby agrees to deliver the Equipment

to Lessor packaged or otherwise prepared in a manner suitable for shipment by truck or rail common carrier to a location specified by Lessor. All expenses resulting from the return of Equipment on termination will be borne by Lessee.

ARTICLE V ENJOYMENT OF EQUIPMENT

Section 5.01. Provided that no default or event of default shall have occurred hereunder, Lessor hereby covenants that during the Lease Term Lessor will not interfere with Lessee's quiet use and enjoyment of the Equipment.

Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

ARTICLE VI RENTAL PAYMENTS

Section 6.01. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee.

Section 6.02. Payment of Rental Payments. During the Original Term and during each Renewal Term elected by Lessee, Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in Exhibit E hereto. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due. The Rental Payment amounts set forth in Exhibit E are based on the Equipment Cost to be paid by Lessor being the amount set forth in Exhibit E. Lessor shall have no obligation to pay or disburse any amount greater than the amount set forth as the Equipment Cost. Lessee shall not amend any purchase contract, purchase order, or any other agreement that would have the effect of increasing the cost of the Equipment above set forth in Exhibit E as the Equipment Cost without the prior written consent of Lessor. In the event that the actual cost of the Equipment is greater than the amount set forth in Exhibit E, Lessee shall be solely responsible for and hereby agrees to promptly pay such excess to the vendor (s), provided that Lessee may request that Lessor finance such excess, which Lessor may, in its sole discretion elect to do or decline to do. Lessee shall indemnify and hold Lessor harmless from and against any loss, damages, costs and expenses resulting from or relating to any increase in the Equipment Cost. If Lessor, in its sole discretion, elects to finance such excess the amount of each installment of rent will be increased to provide the same yield to Lessor as would have been obtained if the actual cost had been the same as the stated Equipment Cost. In such event, Lessee shall at the request of Lessor execute and deliver an amendment reflecting the increase in the Equipment Cost and the Rental Payments.

Section 6.03. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of principal. Exhibit E hereto sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

Section 6.04. Additional Interest in the Event the Interest is Taxable. Lessee acknowledges that Lessor's yield with respect to this Agreement is dependent upon the full amount of each Rental Payment being excluded from Lessor's income pursuant to the Code. Accordingly, if at any time, as a result of a determination that Lessee has breached a representation or covenant contained herein, or as a result of any change in the Code, any payment of either the interest component or the principal component of any Rental Payment is, in the opinion of counsel for the Lessor, subject to or affected by any income, preference, excess profits, minimum or other federal tax, Lessee shall pay, as additional interest, an amount which is necessary to provide to Lessor the same net income as Lessor would have received but for such event. Lessor's calculations of such additional interest shall be binding upon Lessee in the absence of manifest error.

Section 6.05. Rental Payments to be Unconditional. During the Original Term and during each Renewal Term elected by Lessee, the obligations of Lessee to make payment of the Rental Payments required under this Article VI and other sections hereof and to perform and observe the covenants and agreements contained herein shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person, Lessee agrees to pay all Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments when required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then current Renewal Term elected by Lessee shall not be abated through accident or unforeseen circumstances.

Section 6.06. Continuation of Lease Term by Lessee. Lessee intends, subject to the provisions of Section 6.07, to continue the Lease Term through the Original Term and all the Renewal Terms hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The officer of Lessee responsible for budget preparation shall do all things lawfully within his/her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such payments to the extent necessary in each annual budget submitted and adopted in accordance with applicable provisions of State law, to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds is within the discretion of Lessee's governing body.

Section 6.07. Termination by Nonappropriation. In the event Lessee does not appropriate sufficient funds for the payment of the Rental Payments scheduled to be paid in the next occurring Renewal Term, then Lessee may terminate this Agreement at the end of the then current Original Term or Renewal Term, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement beyond the end of the then current Original or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original or Renewal Term.

Section 6.08. Late Charges. If any Rental Payment is not paid in full to Lessor within fifteen (15) days after the payment first became due and payable, Lessee shall immediately pay to Lessor an additional one time late charge equal to five (5%) percent or, if less the maximum rate permitted by law, of each such amount past due along with the Rental Payment. If any Rental Payment remains unpaid beyond 45 days after it first became due and payable, or if Lessor has elected to exercise any remedies following an event or default, interest shall accrue on past due amounts at the rate of 1% per month or the highest rate allowed by law, whichever is less. Partial payments by Lessee shall be applied first to the accrued interest component of past due Rental Payments and the balance to the remaining principal component of past due Rental Payments.

Section 6.09. Prepayment. Lessee shall have the right to prepay principal components of Rental Payments in whole on any date set forth in Exhibit E by paying the then applicable Purchase Price set forth in Exhibit E on such date.

ARTICLE VII TITLE TO EQUIPMENT

Section 7.01. Title to the Equipment. During the term of this Agreement, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement. In the event of default as set forth in Section 13.01 or nonappropriation as set forth in Section 6.07, Lessee agrees to surrender possession of the Equipment to Lessor. Lessee and Lessor intend for federal income tax purposes under the Internal Revenue Code of 1986, as amended, that this Agreement constitutes a financing lease or an installment sale contract rather than a true lease.

ARTICLE VIII MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES

Section 8.01. Maintenance of Equipment by Lessee. Lessee agrees that at all times during the Lease Term Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for the making of improvements or additions to the Equipment.

Section 8.02. Taxes, Other Governmental Charges and Utility Charges. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay during the Lease Term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the time this Agreement is in effect.

Section 8.03. Provisions Regarding Insurance. At its own expense, Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lessor that adequate self-insurance is provided with respect to the Equipment, sufficient to protect the Full Insurable Value (as that term is hereinafter defined) of the Equipment, and to protect Lessor from liability in all events. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. Alternatively, Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but other properties. If Lessee insures similar properties by self-insurance and upon approval by Lessor, Lessee may insure the Equipment by means of an adequate insurance fund.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment.

Any insurance policy pursuant to this Section 8.03 shall be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. The Net Proceeds (as defined in Section 9.01) of the insurance required in this Section 8.03 shall be applied as provided in Article IX hereof. Each insurance policy provided for in this Section 8.03 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation.

Section 8.04. Advances. In the event Lessee shall fail to perform any of its obligations hereunder Lessor may (but shall be under no obligation to) take such action as may be necessary to cure such failure, including, without limitation, the advancement of money; and all amounts so advanced by Lessor shall become additional rent for the then current Original Term or Renewal Term, which amounts, together with interest thereon at the rate of 12% per annum, or if less the maximum rate permitted by law, Lessee agrees to pay.

ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS

Section 9.01. Damage, Destruction and Condemnation. If prior to the termination of the Lease Term (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of the Equipment or any part thereof or the estate of Lessee or Lessor in the Equipment or any part thereof shall be

taken under the exercise of the power eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.

Section 9.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01 hereof, Lessee shall either (a) complete the work and pay any cost in excess of the amount of Net Proceeds, and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds, Lessee shall make any payments pursuant to the provisions of this Section 9.02, Lessee shall not be entitled to any reimbursement therefore from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI hereof or (b) if Lessee is not in default hereunder, Lessee shall pay to Lessor the amount of the then applicable Purchase Price, and, upon such payment, the Lease Term shall terminate and Lessor's interest in the Equipment shall terminate as provided in Article XI of this Agreement. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Lessee.

ARTICLE X DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF EQUIPMENT

Section 10.01. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item of Equipment.

Section 10.02. Vendor's Warranties. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, if any which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against the Lessor, nor shall such matter have any effect whatsoever on the rights of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

Section 10.03. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the estate of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

ARTICLE XI OPTION TO PURCHASE

Section 11.01 At the request of Lessee, Lessor's interest in the Equipment and additional Rental Payments will be terminated and this Agreement shall terminate:

- (a) At the end of the final Renewal Term, upon payment by Lessee of all Rental Payments scheduled as set forth in Exhibit E to this Agreement; or
- (b) if the Lease Term is terminated pursuant to Article IX of this Agreement, in the event of total damage, destruction or condemnation of the Equipment; or
- (c) any time when Lessee is not on such date in default under this Agreement, upon payment by Lessee of the then applicable Purchase Price to Lessor.

Upon the occurrence of any of such events, Lessor shall, if requested by Lessee, deliver a Bill of Sale of its remaining interest in the Equipment to Lessee "AS IS - WHERE IS" without additional cost or payment by Lessee.

ARTICLE XII ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING

Section 12.01. Assignment by Lessor. This Agreement, and the rights of Lessor hereunder, may be assigned and reassigned in whole or in part to one or more assignees and subassignees by Lessor at any time subsequent to its execution, without the necessity of obtaining the consent of Lessee; provided, however, that no such assignment or reassignment shall be effective unless and until (i) Lessee shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee, and (ii) in the event that such assignment is made to a bank or trust company as trustee for holders of certificates representing interests in this Agreement, such bank or trust company agrees to maintain, or cause to be maintained, a book-entry system by which a record of names and addresses of such holders as of any particular time is kept and agrees, upon request of the Lessee, to furnish such information to Lessee. Upon receipt of notice of assignment, Lessee agrees to keep a written record thereof, and to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the assignee. Lessee agrees to execute all documents which may be reasonably requested by Lessor or its assignee to protect their interests in this Agreement.

Section 12.02. No Sale, Assignment or Subleasing by Lessee. This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

Section 12.03. Lessee Negligence. To the extent permitted by the laws and Constitution of the State, Lessee shall protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death of any person, to the extent that such liability, obligation, loss, claim or damage arises out of or is proximately caused by the negligent conduct of Lessee, its officers, employees or agents. The obligation of Lessee arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Agreement or the termination of the Lease Term for any reason.

ARTICLE XIII EVENTS OF DEFAULT AND REMEDIES

Section 13.01. Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01 (a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to the expiration, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.
- (c) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment, or attachment of such consequence as would impair the ability of Lessee to carry on its governmental function or adjudication of Lessee as a bankrupt or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The foregoing provisions of this Section 13.01 are subject to (i) the provisions of Section 6.07 hereof with respect to nonappropriation; and (ii) if by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other employee relations disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority, insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

Section 13.02. Remedies on Default. Whenever any event of default referred to in Section 13.01 hereof shall have happened and be continuing, Lessee agrees to return the equipment to Lessor and Lessor shall have the right at its sole option without any further demand or notice, to take either one or both of the following remedial steps:

- (a) Accept surrender from Lessee of the equipment for sale or release by Lessor in a commercially reasonable manner. All proceeds of such sale or re-letting shall inure to Lessor, provided, however, if such proceeds after deduction of Lessor's reasonable costs and expenses, including attorneys' fees, incurred to recover possession, restore or clean-up and sell or release the equipment, exceed an amount equal to the sum of the past due but unpaid Rental Payments and an amount equal to the then applicable purchase price, Lessor shall remit the amount of such excess to Lessee; or
- (b) Institute an action in a court of competent jurisdiction to recover Lessor's compensatory damages resulting from Lessee's default.

Lessor agrees that it shall not have a right to seek any remedy of specific performance nor shall Lessor have any "self-help" right to take possession of the equipment absent Lessee's voluntary surrender thereof.

Section 13.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy give under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver hereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE XIV MISCELLANEOUS

Section 14.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 14.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.04. Amendments. The terms of the Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

Section 14.05. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.06. Delayed Closing. In the event of a delayed closing, Lessor shall receive as additional compensation any amount that accrues between the Commencement Date and the Closing Date.

Section 14.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State

Section 14.08. Captions. The captions or headings in this Agreement are for convenience only and do not define, limit or describe the scope or intent of any provisions of sections of this Agreement.

Section 14.09. Entire Agreement. This Agreement and the executed Exhibits attached hereto constitute the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein, regarding this Agreement or the equipment leased hereunder.

Section 14.10. Execution of Facsimile. In the interest of time, each party agrees that execution of signature pages of this Agreement by such party followed by transmission of such pages by facsimile/Telecopier will be legally binding upon such party. After each party has executed and transmitted such signature pages, each party agrees to execute hard copies of this Agreement and to promptly forward originals to the other party hereto.

Section 14.11. Correction of Documents. Lessee agrees to execute and deliver, or provide, as required by Lessor, any documents and information, from time to time, that may be necessary for the purpose of correcting any errors or omissions in this Lease or to reflect the true intent of Lessor in this transaction. All such documents and information must be satisfactory to Lessor.

Section 14.12 WAIVER OF JURY TRIAL. Lessee and Lessor hereby irrevocably waive any right to a jury trial with respect to any matter arising under or in connection with this Lease and agree that any dispute shall be determined by a court sitting without a jury.

Section 14.13. Performance Bonds. If requested by Lessor to facilitate payments to vendors in advance of delivery and acceptance, Lessee agrees to require the Equipment manufacturer, and all other contractors and/or subcontractors (collectively, "Contractors") with whom Lessee has contracted for the acquisition of the Equipment, to provide performance bond satisfactory to Lessor conditioned upon the construction of the Equipment as expeditiously as reasonably possible from the date of execution of such Lease and also conditioned upon delivery of possession of the Equipment to the Lessee free and clear of all liens and encumbrances, except the security interest granted to Lessor under the Lease-Purchase Agreement. Each such bond shall be in a form and with a surety acceptable to Lessor and shall name Lessor as a dual obligee. The Lessee shall proceed promptly to pursue diligently any remedies available against a Contractor that is in default under any agreement relating to the acquisition and construction of the Equipment and/or against each surety on any bond securing the performance of such Contractor's obligations with respect to the acquisition and construction of the Equipment. The Lessee and Lessor shall cause the net proceeds recovered by way of the foregoing to be applied, at Lessor's option, to (i) the completion of the Equipment, or (ii) the payment of all rent payments then due plus the then applicable Termination Balance. Any balance of net proceeds remaining after completion of Equipment construction or payment of the outstanding balance owed under the applicable Lease shall be paid promptly to Lessee.

Section 14.14. Time is of the Essence. Lessor and Lessee agree that time is of the essence of all provisions of each Lease entered into under this Agreement.

Any terms and conditions of any purchase order or other document submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name and by its duly authorized officer, and Lessee has caused this Agreement to be executed in its corporate name and by its duly authorized officer. All of the above occurred as of the date first written below; this Agreement shall be binding on Lessee beginning on the date it is accepted and executed by Lessor.

LESSOR: Leasing 2, Inc.

Execute:

By: _____

Title: _____

Date: _____

LESSEE: City of Arcadia

Execute:

By: _____
Steve Underwood

Title: _____
Public Works Director

Date: _____

EXHIBIT A

**RESOLUTION OF GOVERNING BODY
EXTRACT OF MINUTES**

LESSEE: City of Arcadia

At a duly called meeting of the governing body of Lessee held on the _____ day of _____, 20_____, the following resolution was introduced and adopted.

RESOLVED, whereas the governing body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment described in the Lease-Purchase Agreement by and between Lessee and **Leasing 2, Inc.** dated as of **April 1, 2014** and presented to this meeting; and has further determined that the Equipment will be used solely for essential governmental functions and not for private business use.

WHEREAS, Lessee has taken the necessary steps, including, without limitation to compliance with legal bidding requirements, under applicable law to arrange for the acquisition of such Equipment.

BE IT RESOLVED, by the governing body of Lessee that the terms of said Lease-Purchase Agreement and Escrow Agreement are in the best interest of Lessee for the acquisition of such Equipment, and the governing body of Lessee designates and confirms the following person to execute and deliver, the Lease-Purchase Agreement and Escrow Agreement and any related documents necessary to the consummation of the transactions contemplated by the Lease-Purchase Agreement and Escrow Agreement.

(Signature of Party to Execute
Lease-Purchase Agreement and Escrow Agreement)

Steve Underwood, Public Works Director
(Print Name and Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect and further certifies that the above and foregoing Lease-Purchase Agreement and Escrow Agreement is the same as presented at said meeting of the governing body of Lessee.

(SEAL)

Secretary/Clerk

Date

{LETTERHEAD OF LESSEE'S COUNSEL}

EXHIBIT B

OPINION OF LESSEE'S COUNSEL

LESSEE: **City of Arcadia**

DATE OF AGREEMENT: **April 1, 2014**

**Leasing 2, Inc.
1720 West Cass Street
Tampa, FL 33606-1230**

[Ladies and]Gentlemen:

As counsel for **City of Arcadia** ("Lessee"), I have examined duly executed originals of the Lease-Purchase Agreement and Escrow Agreement (the "Agreement"), between Lessee and Leasing 2, Inc. ("Lessor"), dated as of **April 1, 2014** and the proceedings taken by Lessee to authorize and execute the Agreement. Based upon such examination and upon such other examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of the State of **Florida**.
2. The Agreement has been duly authorized, executed and delivered by Lessee, pursuant to Constitutional, statutory and/or home rule provisions which authorize this transaction and Resolution No. _____, attached as Exhibit A to the Agreement.
3. The Agreement is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms. In the event the Lessor obtains a judgment against Lessee in money damages, as a result of an event of default under the Agreement, Lessee will be obligated to pay such judgment.
4. Applicable public bidding requirements have been complied with.
5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, which questions or affects the validity of the Agreement.
6. The signature of the officer of Lessee which appears on the Agreement is true and genuine; I know said officer and know him/her to hold the office set forth below his/her names.
7. The Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.
8. The leasing of the Equipment pursuant to the Agreement is exempt from all sales and use taxes against either the Lessor or the Lessee during the term of the Lease and the Equipment will be exempt from any state and local personal property or other ad valorem taxes during the term of the Lease.

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Lease, but only with regard to matters specifically set forth herein.

Sincerely,

EXHIBIT C
CERTIFICATE AS TO ARBITRAGE

I, **Steve Underwood**, hereby certify that I am duly qualified and acting **Public Works Director**, of **City of Arcadia** (the "Lessee"), and that in my official capacity as such officer, I am responsible for executing and delivering, on behalf of the Lessee, the Lease-Purchase Agreement dated **April 1, 2014** (the "Agreement"), by and between Leasing 2, Inc. ("Lessor") and the Lessee. This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986 as amended (the "Code"), and the Treasury Regulations promulgated thereunder (the "Regulations"). The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter.

1. The Lease provides for the acquisition and financing of certain equipment described therein (the "Equipment") Pursuant to the Agreement, the Lessor is required to lease the Equipment to the Lessee and the Lessee is required to make rental payments with respect thereto, comprising principal and interest, on the dates and in the amounts set forth therein (the "Rental Payments").

2. On the date hereof, Lessor will deposit into escrow to be held for the benefit of Lessee the amount of **\$348,362.00**, which, together with interest earned thereon until disbursed if necessary, will be used to pay the costs of the Equipment in the amount of **\$348,362.00**. In the event any interest income remains in escrow after payment of such Equipment cost, such amount shall be retained by Lessor as additional fee income.

3. The Lessee has entered into or will within six (6) months of the date hereof enter into contracts for the acquisition of the Equipment, which contracts will obligate the payment of all amounts held in escrow.

4. The Equipment will be acquired with due diligence and will be fully acquired on or before _____.

5. In any event, all of the spendable proceeds of the Agreement will be expended on the Equipment within three (3) years from the date of execution of the Agreement. No proceeds of the Agreement will be used to reimburse the Lessee for expenditures made prior to the date of the issuance of the Agreement, unless Lessee shall have complied with the requirements of Section 1.150-2 of the Regulations. If applicable, a copy of Lessee's official intent with respect to such reimbursement is attached hereto as attachment 1.

6. The original proceeds of the Agreement, and the interest to be earned thereon, do not exceed the amount necessary for the governmental purpose for which the Agreement is issued.

7. The interest of the Lessee in the Equipment has not been, and is not expected during the term of the Agreement, to be sold or otherwise disposed of by the Lessee.

8. No sinking fund will be maintained by the Lessee with respect to the Rental Payments.

9. The Agreement is not a "hedge bond" within the meaning of Section 149(g) of the Code. The Lessee expects to spend not less than 85% of the spendable proceeds of the Agreement within three years after the date hereof and less than 50% of the proceeds of the Agreement is invested in Nonpurpose investments having a substantially guaranteed yield for four years or more.

10. In the Agreement the Lessee has covenanted to take all actions necessary to ensure that the interest paid under the Agreement remains excludable from gross income under the Code. Such covenant includes, without limitation, the requirement to comply with the requirements of the Code relating to the rebate of arbitrage profit to the United States Government.

11. To the best of the knowledge and belief of the undersigned, the expectations of the Lessee as set forth above, are reasonable; and there are no present facts, estimates and circumstances which would damage the foregoing expectations.

WITNESS my hand this _____ day of _____, 20_____.

LESSEE: **City of Arcadia**

By: _____
Steve Underwood

Title: _____
Public Works Director

EXHIBIT D
DESCRIPTION OF EQUIPMENT

The Equipment which is the subject of the attached Lease-Purchase Agreement is as follows:

(1) Kann Front Loader, S/N: _____

(1) Pac-Man Rear Loader, S/N: _____

together with all additions, accessions and replacements thereto.

Lessee hereby certifies that the description of the personal property set forth above constitutes an accurate description of the "Equipment", as defined in the attached Lease-Purchase Agreement.

LOCATION OF THE EQUIPMENT:

After Lessee signs this Agreement, Lessee authorizes Lessor to insert any missing information or change any inaccurate information (such as the model year of the Equipment or its serial number or VIN) into the Description of Equipment.

LESSEE: **City of Arcadia**

By: _____
Steve Underwood

Title: _____
Public Works Director

Date: _____

EXHIBIT E
PAYMENT SCHEDULE

LESSEE: City of Arcadia
 LEASE AMOUNT: \$348,362.00
 COMMENCEMENT DATE: April 1, 2014
 INTEREST RATE: 3.15%

PAYMENT					PURCHASE
<u>NO.</u>	<u>DATE</u>	<u>PAYMENT</u>	<u>INTEREST</u>	<u>PRINCIPAL</u>	<u>PRICE*</u>
1	4/1/2015	\$76,392.52	\$10,973.41	\$65,419.11	\$290,740.87
2	4/1/2016	\$76,392.52	\$8,912.70	\$67,479.82	\$220,221.32
3	4/1/2017	\$76,392.52	\$6,787.09	\$69,605.43	\$148,277.27
4	4/1/2018	\$76,392.52	\$4,594.52	\$71,798.00	\$74,879.95
5	4/1/2019	\$76,392.52	\$2,332.88	\$74,059.64	\$0.00
Grand Totals		\$381,962.60	\$33,600.60	\$348,362.00	

LESSEE: City of Arcadia

By: _____
 Steve Underwood

Title: _____
 Public Works Director

Date: _____

* After payment of Rental Payment due on such date.

EXHIBIT F
ACCEPTANCE CERTIFICATE

The undersigned, as Lessee under the Lease-Purchase Agreement (the "Agreement") dated **April 1, 2014**, with **Leasing 2, Inc.** ("Lessor"), hereby acknowledges:

1. _____ **Equipment delivered and accepted:** Lessee has received in good condition all of the Equipment described in the Agreement and in Exhibit D thereto and accepts the Equipment for all purposes this _____ day of _____, 20_____.
2. _____ **Equipment delivery has not yet taken place:** The Equipment described in the Agreement and in Exhibit D thereto, has not been delivered, but is scheduled to be delivered on/or before _____. Lessor has agreed to deposit into an escrow account an amount sufficient to pay the total cost of the Equipment identified in Exhibit D of the Agreement. Exhibit E accurately reflects the Lease Amount. Lessee agrees to execute an Acceptance Certificate and Payment Request Form authorizing payment of the cost of the Equipment, or a portion thereof, for each withdrawal of funds from the Escrow Account. Lessee's obligation to commence Rental Payments as set forth in Exhibit E-Payment Schedule is absolute and unconditional as of the Commencement Date, subject to the terms and conditions of the Agreement. Lessee further acknowledges that the Agreement is not subject to the successful delivery of the Equipment, and that in the event of non-performance by the Vendor, Lessee will retain all responsibility for performance under the Agreement.
3. _____ **Vendor will be paid in full prior to delivery of equipment:** A 100% pre-funding will be made by Lessor to Vendor of the lease amount identified as "Equipment Cost" on the Exhibit E – Payment Schedule of the Agreement. Lessee agrees to indemnify and hold Lessor harmless from and against any and all claims, costs and expenses incurred (including Lessor's attorneys' fees). Lessee further acknowledges that the Agreement is not subject to the successful delivery of the Equipment, and that in the event of non-performance by the Vendor, Lessee will retain all responsibility for performance under the Agreement.

Lessee certifies that Lessor has fully and satisfactorily performed all of its covenants and obligations required under the Agreement, and confirms that the Agreement will commence as defined by "Commencement Date" in the attached Agreement, and it will commence payments in accordance with Article VI of the Agreement.

The undersigned officer of the Lessee hereby reaffirms on behalf of the Lessee in all respects the covenants of the Lessee set forth in Article II of the Agreement and represents that, to the best of his or her knowledge, information and belief, the expectations therein expressed were reasonable as of the Commencement Date, and that there were, and are as of the date on which they were made, and are reasonable as of the Commencement Date, no facts, estimates or circumstances other than those expressed therein that would materially affect the expectations expressed therein.

LESSEE: **City of Arcadia**

By: _____
Steve Underwood

Title: _____
Public Works Director

Date: _____

EXHIBIT G

ESSENTIAL USE/SOURCE OF FUNDS LETTER

TO: **Leasing 2, Inc.**

RE: Lease-Purchase Agreement Dated April 1, 2014.

Gentlemen:

Reference is made to certain Lease-Purchase Agreement dated April 1, 2014, between Leasing 2, Inc. and City of Arcadia, leasing the personal property described in Exhibit D to such Agreement. This confirms and affirms that such Equipment is essential to the functions of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. Specifically, the Equipment was selected by us to be used as follows:

Please describe USE of equipment:

Sincerely,

Steve Underwood, Public Works Director

Date

EXHIBIT H

DESIGNATION OF BANK QUALIFICATION

In consideration of the mutual covenants of the Lessor and Lessee pursuant to the Lease-Purchase Agreement dated April 1, 2014, (the "Agreement") between Leasing 2, Inc. ("Lessor") and City of Arcadia ("Lessee"), such Agreement is modified as follows:

Lessee certifies that it reasonably anticipates that it and all of its subordinate entities will not issue more than \$10,000,000 of "qualified tax-exempt obligations" (as that term is defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986 ("the Code") during the current calendar year .

Further, lessee hereby designates the Agreement as a "qualified tax-exempt obligation" in accordance with Section 265 (b)(3)(B) of the Code so that it is eligible for the exception contained in Section 265 (b)(3) of the Code and further certifies for the purpose of the overall limitation of Section 265 (b)(3)(D) of the Code that it and its subordinate entities have not as of this calendar year issued more than \$10,000,000 of obligations which it has designated for these purposes.

All terms contained herein not otherwise defined shall have the same meaning as such terms are used and defined in the Lease.

Attached hereto is a completed Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Bond Issues, completed on behalf of the Lessee (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC).

IN WITNESS WHEREOF, the Lessee has caused this Agreement to be executed by its duly authorized officer on this the _____ day of _____
20_____

LESSEE: **City of Arcadia**

By: _____
Steve Underwood

Title: _____
Public Works Director

Date: _____

EXHIBIT I

NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT

Leasing 2, Inc. ("Lessor") hereby gives notice to the **City of Arcadia** ("Lessee") that Lessor has assigned all rights to payments under the Lease-Purchase Agreement and Escrow Agreement dated as of **April 1, 2014**, between **Leasing 2, Inc.** ("Lessor") and **City of Arcadia** ("Lessee"). **Leasing 2, Inc.** ("Lessor") hereby requests, gives notice and instructs **City of Arcadia** ("Lessee") that payments that hereafter come due pursuant to the Lease-Purchase Agreement be paid to **Santander Bank, N.A.** or its Assignee.

Santander Bank, N.A.
P. O. Box 14565
Reading, PA 19612

LESSEE: City of Arcadia

By: _____
 Steve Underwood

Title: _____
 Public Works Director

Date: _____

EXHIBIT J
VENDOR TERMS

LESSEE: City of Arcadia

Lessor shall have funds not immediately paid to [Vendor(s)] at closing deposited in an "Escrow Account" in order to facilitate payment to [Vendors] for equipment deliveries that are scheduled to occur according to the following schedule:

EQUIPMENT DESCRIPTION	AMOUNT	PAYMENT NO EARLIER THAN
(1) Kann Front Loader and (1) Pac-Man Rear Loader	\$348,362.00	Delivery & Acceptance

Lessee acknowledges and is in agreement with this schedule and the "Payment No Earlier Than" dates as indicated.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20_____.

LESSEE: City of Arcadia

By: _____
Steve Underwood

Title: _____
Public Works Director

INSURANCE COVERAGE REQUIREMENT

**TO: Leasing 2, Inc. and/or its Assigns
1720 West Cass Street
Tampa, FL 33606-1230**

**FROM: City of Arcadia
23 N. Polk Avenue
Arcadia, FL 34265**

RE: INSURANCE COVERAGE REQUIREMENTS (Check one):

_____ 1. In accordance with Section 8.03 of the Agreement, we have instructed the insurance agent named below (please fill in name, address and telephone number)

NAME: _____

ADDRESS: _____

CITY/ ST/ ZIP: _____

TELEPHONE: _____

to issue:

a. All Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming **Leasing 2, Inc. and/or its Assigns** as Loss Payee.

Coverage Required: Full Replacement Value

b. Public Liability Insurance evidenced by a Certificate of Insurance naming **Leasing 2, Inc. and/or its Assigns** as an Additional Insured.

Minimum Coverage Required:
\$500,000.00 per person
\$1,000,000.00 aggregate bodily injury liability
\$1,000,000.00 property damage liability

_____ 2. Pursuant to Section 8.03 of the Agreement, we are self insured for all risk, physical damage, and public liability and will provide proof of such self insurance in letterform together with a copy of the statute authorizing this form of insurance.

By: _____
Steve Underwood

Title: _____
Public Works Director

Date: _____

AGENDA No. 6



City of Arcadia, Florida
Community Development

MEMORANDUM

TO: City Council
FROM: Carl McQuay, City Planner
DATE: April 1, 2014
SUBJECT: Vacation of an Unimproved Public Right-of-Way
FILE NO.: 13-02VR

I. Project Information

Petitioner: Roy and Judy Kilpatrick, Desoto Land Surveying

Business Address: 3300 NW Coker Street, Arcadia, FL 34266

Parcel. ID No.: 25-3724-0012-0390-0010 25-3724-0012-0390-0040 25-3724-0012-0390-0070
25-3724-0012-0390-0080 25-3724-0012-0390-0090

Request: Petition for resolution closing and vacating in accordance with the notice to be heard by City Council.

DESCRIPTION OF ALLEYS TO BE VACATED: ALL THAT PART OF A 16.00 FEET WIDE PLATTED ALLEY LYING SOUTH OF LOTS 7 AND 8 AND NORTH OF LOTS 9, 10, 11, 12, 13 AND 14, BLOCK 31, ORIGINAL SURVEY OF THE TOWN OF ARCADIA, FLORIDA, AS RECORDED IN PLAT BOOK 1, PAGE 67, DESOTO COUNTY, FLORIDA.

If any person decides to appeal any decision made by the Council with respect to any matter considered at this meeting or hearing, he will need a record of the proceedings and, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

RESOLUTION NO. 2014- 05

A RESOLUTION OF THE CITY OF ARCADIA, FLORIDA, GRANTING A VACATION OF RIGHT-OF-WAY FOR A PLATTED BUT UNDEVELOPED ALLEYWAY, AS PROVIDED FOR WITHIN CHAPTER 86, ARCADIA CODE OF ORDINANCES, ON PROPERTY LOCATED WITHIN BLOCK 31, TOWN OF ARCADIA PLAT, PER PLAT BOOK 1, PAGE 67, DESOTO COUNTY PUBLIC RECORDS, ARCADIA, FLORIDA.

WHEREAS, Desoto Land Surveying, Inc., (hereinafter referred to as the 'Applicant') has requested Vacation of Public Right-of-Way (hereinafter referred to as the 'Vacation') approval to allow the closure and transfer of public ownership of an unimproved alleyway to private property owners owning property abutting said unimproved alleyway within Block 31, Town of Arcadia Plat (see Exhibit A); and

WHEREAS, the Applicant represents property owners (hereinafter referred to as the 'property owners') James H. McAnly, Martha S. Royo and John Degelleke, whose properties are adjacent to and directly abutting the unimproved alleyway which is the subject of the Vacation request; and

WHEREAS, the property owners are identified through Desoto County Property Appraiser's Office as having ownership and control of lands which will be effected by City Council action taken in regards to the Vacation; and

WHEREAS, the Applicant has provided proof of ownership and control of all private properties and has identified the public lands to be vacated through a property survey conducted by Desoto Land Surveying, Inc. and have provided the City with the following legal description for the proposed Vacation:

All that part of a 16.00 feet wide platted alley lying South of Lots 7 and 8 and North of Lots 9, 10, 11, 12, 13 and 14, Block 31, original survey of the Town of Arcadia, Florida as recorded in Plat Book 1, Page 67; and

WHEREAS, the Applicant represents certain property owners through other professional service relationships, and has discovered numerous zoning setback infringements and numerous building encroachments within the public right-of-way which have had a negative effect on private real estate transactions at the title search stage of said real estate transaction; and

WHEREAS, in an attempt to overcome known parcel specific zoning setback infringements and known building structure encroachments into said public right of ways, the re-assignment of the subject public property to private ownership through a Vacation request will provide relief and consistency with zoning setback standards and will expunge existing public right of way encroachments; and

WHEREAS, Article II, Chapter 86; Vacation Of Roads, Alleys, Streets And Easements, Arcadia Code of Ordinances, establishes permissibility for property owners to petition the local

government for Vacating certain public properties, and establishes the rules, requirements, processes, and legal notice requirements to renounce and disclaim any right of the City of Arcadia and the public in and to and land for streets, alleyways, roads or easements within the City of Arcadia; and

WHEREAS, Chapter 86, Code of Ordinances; establishes rules, regulations, and processes for filing of petition, providing for contents of petition; establishing the payment of costs, and establishing determination of sufficiency of petition; and

WHEREAS, City staff, through its development review authorities and responsibilities, have reviewed the Applicant's petition to ensure that the filing, contents, payment of costs, and determination of petition sufficiency do meet and are in compliance with the standards and regulations contained in Chapter 86, Code of Ordinances;

WHEREAS, City staff have reviewed the Applicant's letters of "no objection" from all private utility providers which currently service this subdivision and have made formal renouncement and disclaim any right for private utilities to be located with the subject public right of way; and

WHEREAS, City staff have examined existing and future utility and infrastructure needs of the City for said public right of way and provide "no objection" to the Vacation petition request and hereby renounce and disclaim any right for public use and utilities to be located with the subject public right of way; and

WHEREAS, the Planning and Zoning Board, conducted a public meeting on the Vacation petition (File No.13-02VR) and after due consideration and necessary findings did make a favorable and unanimous motion of approval to recommend to the City Council the granting of the Vacation approval; and

WHEREAS, Consistent with Chapter 86, Code of Ordinances, public notice of the City Council Public Hearing for the consideration of the Vacation request was advertised in the Arcadia Sun Herald; and

WHEREAS, based on the evidence, testimony, exhibits, comments of the City of Arcadia City Council, and comments from all interested parties and the Planning and Zoning Board input and recommendation, this Council finds as follows:

1. That the public notice of this hearing was provided as required by law.
2. The City confirms that private utility providers and essential services provided by the City have reviewed the request and have provided "no objection" to the vacation request.
3. The City Council, in abandoning subject property, disclaims any rights to land delineated on the recorded plat map for future use, and the title of the fee owner shall be freed and released there from and granted to the property owners included in the petition, consistent with the legal description provided herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA

Section 1. The right of way vacation request is hereby granted for those public lands identified in Exhibit A, as attached hereto, and more particularly described as follows:

All that part of a 16.00 feet wide platted alley lying South of Lots 7 and 8 and North of Lots 9, 10, 11, 12, 13 and 14, Block 31, original survey of the Town of Arcadia, Florida as recorded in Plat Book 1, Page 67

Section 2. Effective Date. This Resolution shall become effective immediately upon its passage.

Section 3. The proof of publication of notice of the public hearing, the Resolution as adopted, and the proof of publication of the notice of the adoption of such resolution shall be recorded in the Public Records of Desoto County, Florida by the City Clerk.

INTRODUCED AND PASSED by the City Council of the City of Arcadia, Florida, in regular session, this 1st day of April, 2014.

CITY OF ARACDIA

By:

Alice Frierson, Mayor

ATTEST:

Penny Delaney, City Clerk

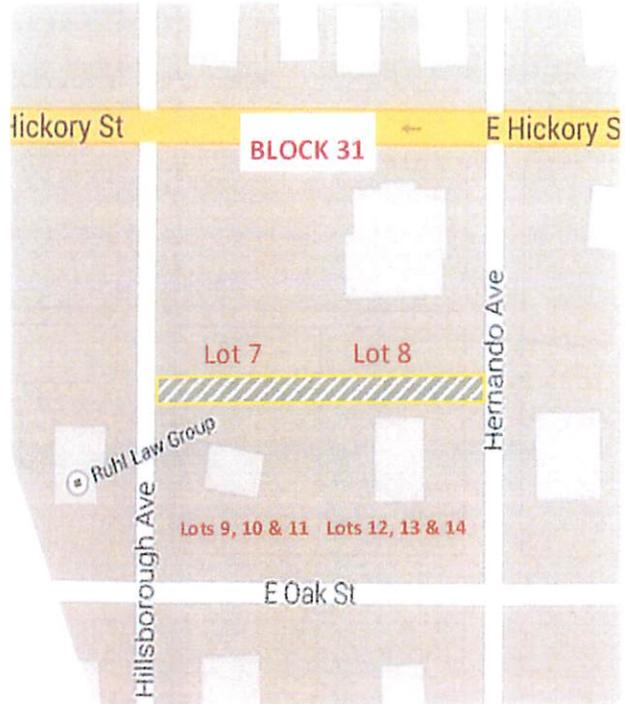
Approved as to form:

Thomas J. Wohl, City Attorney

Aerial:



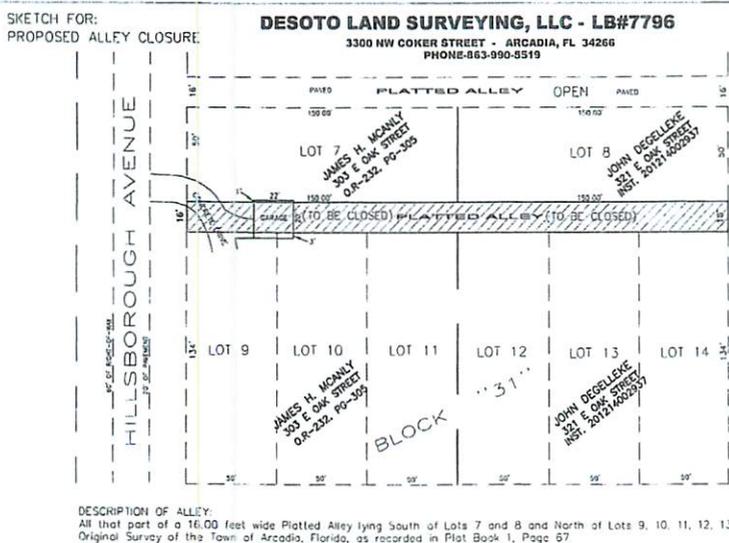
Subdivision Plat Map:



II. Petition Overview:

Roy and Judy Kilpatrick, Desoto Land Surveying, on behalf of the two property owners request consideration of a vacation of two platted alleyways which bisect a single-family residential block. The property owners represent the entire ownership group of Block 31 of the Original Survey of the Town of Arcadia, a subdivision plat recorded in the Public Records of Desoto County.

The subject property proposed for vacating (see Figure below) from the subdivision plat is a unimproved right-of-way which is 16 feet wide by approximately 300' in length. While included in the original plat of the City, the companion right-of-way was never improved for vehicular use as an alleyway or utilized by the City for potable water and sanitary sewer utility systems.



The property owner's agents have provided application materials in support of the vacation request. These include application (No. 13-02VR), project narrative and code consistency analysis, listing of property owners and agent authorization letters, legal description depicting existing ownership patterns, property survey depicting ownership and all existing private building structures and other private improvements, and proposed subdivision plat (re-plat with new ownership lines) plan that may be used in recording City approval with the Desoto

BILLING INFORMATION

Please indicate below how you would like us to bill you for the lease payments due under this Agreement, including a contact name, if applicable:

Contact Name: _____

Company: _____

Street Address or Box #: _____

City, State, Zip: _____

County: _____

Telephone: _____ () _____

Fax: _____ () _____

Email Address: _____

**CUSTOMER IDENTIFICATION PROGRAM
ORGANIZED ENTITY**

Notice: To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (individuals or businesses) who opens an account.

What this means for you: When you open an account or add any additional service, we will ask you for your name, address, federal employer identification number and other information that will allow us to identify you. We may also ask to see other identifying documents.

CUSTOMER NAME: City of Arcadia

CUSTOMER IDENTIFICATION

Taxpayer ID Number: 59-6000266

Business Structure (check one): City Government: _____ County Government: _____ Tax District: _____ Corporation: _____

Other, description: _____

We may request certified copies of your organizational documents as part of the identification procedure.

PRIMARY ADDRESS AND REGISTRATION

Address: _____

Address: _____

City: _____

State: _____

Zip Code: _____

State of Registration/Organization: _____

MAILING ADDRESS (if different from above)

Address: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Acknowledgment: The information contained herein is true and correct.

City of Arcadia

By: _____
Steve Underwood

Its: _____
Public Works Director

Internal Escrow Letter

April 1, 2014

Santander Bank, N. A.
3 Huntington Quadrangle, Suite 101N
Melville, NY 11747

Re: Lease Purchase Agreement dated **April 1, 2014** (the "Lease") by and between **City of Arcadia** ("Lessee") and Leasing 2, Inc. ("Lessor"), concurrently assigned to Santander Bank, N.A.. ("Assignee").

Ladies and Gentlemen:

We have entered into the above referenced Lease for the purpose of financing **(1) Kann Front Loader and (1) Pac-Man Rear Loader** (the "Equipment") in the amount of **\$348,362.00** (the "Financed Amount"). Lessee hereby requests that Assignee retain **\$348,362.00** (the "Retained Amount"). Lessee further requests that Assignee hold the Retained Amount in an internal escrow pending Assignee's receipt of confirmation from Lessee that the Equipment has been delivered, inspected and accepted for all purposes by the Lessee and that payment can be remitted to the vendor of such Equipment. There will be no separate escrow fee charged Lessee for internally escrowing the Retained Amount.

Lessee understands and agrees that interest shall accrue on the entire Financed Amount as of the date hereof, and further understands and agrees that any interest earned on the Retained Amount shall be paid to Assignee in consideration of managing the internal escrow account.

Lessee acknowledges that Assignee may commingle the Retained Amount held by Assignee for the benefit of Lessee with other funds held by Assignee for its own account, so long as Assignee maintains segregation of such amounts on the books and records of Assignee.

Sincerely,

LESSEE: **City of Arcadia**

By: _____
Steve Underwood

Title: _____
Public Works Director

Date: _____



CITY COUNCIL AGENDA ITEM
Requested Council Meeting Date: April 1, 2014

DEPARTMENT Administration

SUBJECT City Director

PROPOSED ACTION

AGENDA No. 7

SUMMARY The City Administrator Search Committee has provided City Council with their top five candidates for the position of City Administrator. Staff requests direction from City Council as to the next steps to take regarding the interview process.

FISCAL IMPACT

Capital Budget

Operating

Other

ATTACHMENTS

Ordinance

Resolution

Budget

Other

Department Head

Date

Finance Director (As to Budget Requirements)

Date

City Attorney (As to Form and Legality)

Date

City Administrator: Tom Slaughter

Date

COUNCIL ACTION Approved as Recommended

Disapproved

Tabled Indefinitely Tabled to Date Certain

Approved with Modifications



CITY COUNCIL AGENDA ITEM
Requested Council Meeting Date: April 1, 2014

DEPARTMENT: Administration

SUBJECT: Provide Direction to Staff on City Administration Recruitment

RECOMMENDED MOTION: Council Direction

SUMMARY: The City Administrator Search Committee has provided City Council with their top five (5) candidates for the position of City Administrator. Staff requests direction from City Council as to the next steps to take regarding the interview process.

FISCAL IMPACT: _____
 Capital Budget
 Operating
 Other

ATTACHMENTS: Ordinance Resolution Budget Other

Department Head:

Date:

Finance Director (As to Budget Requirements)

Date:

City Attorney (As to Form and Legality)

Date:

City Administrator: Tom Slaughter

Date:

COUNCIL ACTION: Approved as Recommended Disapproved
 Tabled Indefinitely Tabled to Date Certain _____ Approved with Modifications

AGENDA No. 8



CITY COUNCIL AGENDA ITEM
Requested Council Meeting Date: April 1st, 2014

DEPARTMENT: Airport (Interim Administrator)

SUBJECT: Resolution 2014-06 SJPA

RECOMMENDED MOTION: Approve

SUMMARY: Amendment to Resolution 2014-01. Project 433003-1-94-1 Increasing total project cost of \$90.00

FISCAL IMPACT: \$90.00

Capital Budget

Operating

Other

ATTACHMENTS: Ordinance Resolution Budget Other

Department Head:

Date:

Finance Director (As to Budget Requirements)

Date:

City Attorney (As to Form and Legality)

Date:

City Administrator: Tom Slaughter

Date:

COUNCIL ACTION: Approved as Recommended

Disapproved

Tabled Indefinitely Tabled to Date Certain _____

Approved with Modifications

RESOLUTION 2014- 06

A RESOLUTION OF THE CITY OF ARCADIA, FLORIDA, FOR APPROVAL OF AND AUTHORITY TO EXECUTE SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT FOR AVIATION PROJECTS.

WHEREAS, the City of Arcadia entered into a Joint Participation Agreement dated February 28, 2013 with the Florida Department of Transportation to undertake a Runway and Taxiway Lighting and Electrical Vault project at the Arcadia Municipal Airport ("the Project"), as authorized by Chapter 332, Florida Statutes, and Florida Administrative Code 14-60; and

WHEREAS, the City of Arcadia entered into a Supplemental Joint Participation Agreement dated January 27, 2014 (SJPA #1) with the Florida Department of Transportation to amend the Project description; and

WHEREAS, the City of Arcadia and the Florida Department of Transportation wish to further amend the Project description by entering into a second Supplemental Joint Participation Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ARCADIA, FLORIDA:

1. That the Second SJPA for Airfield Lighting 433003-1-94-01 is approved.
2. The City Administrator or Interim City Administrator is authorized to enter into, modify or terminate the Second SJPA with the Florida Department of Transportation, unless specifically rescinded.

DULY PASSED AND ADOPTED THIS April 1, 2014.

ATTEST:

CITY OF ARCADIA, FLORIDA

Penny Delaney, City Clerk

By _____
Joseph E. Fink, Deputy Mayor



Florida Department of Transportation

RICK SCOTT
GOVERNOR

801 North Broadway Avenue
Bartow, Florida 33830

ANANTH PRASAD, P.E.
SECRETARY

March 12, 2014

Mr. Tom Slaughter
Interim City Administrator
City of Arcadia
23 North Polk Avenue
Arcadia, Florida 34266

Re: Supplemental Agreement
Financial Project Number: 433003-1-94-01; Contract Number: AQU78
Project Description: Runway and Taxiway Lights and Electrical Vault
City of Arcadia
Arcadia Municipal Airport

Dear Mr. Slaughter:

Attached is one (1) copy of the Supplemental Agreement providing Department participation in a runway and taxiway lights and electrical vault project at Arcadia Municipal Airport. Please execute and return three (3) copies of the agreement in accordance with the attached check list. Do not date the agreements.

If you require additional information or have any questions, please feel free to contact me via email at kristi.smith@dot.state.fl.us or by phone at 863-519-2265.

Sincerely,

A handwritten signature in blue ink that reads "Kristi A. Smith".

Kristi A. Smith
Senior Modal Project Manager

Attachments

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

725-030-07
PUBLIC TRANSPORTATION
06/11
Page 1 of 5

Number Two

Financial Project No.: <u>433003-1-94-01</u> (Item-segment-phase-sequence)	Fund: <u>DDR, DPTO</u> Function: <u>215</u> Federal No.: <u>N/A</u> DUNS No.: <u>80-939-7102</u>	FLAIR Category: <u>088719</u> Object Code: <u>750004</u> Org. Code: <u>55012020129</u> Vendor No.: <u>F 596000266021</u>
Catalog of Federal Domestic Assistance Number: <u>N/A</u> Catalog of State Financial Assistance Number: <u>55.004</u>		

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and City of Arcadia
23 North Polk Avenue, Arcadia, Florida 34266
hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Department and the Agency heretofore on the 28th day of February, 2013, entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of \$742,657.00.

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

1.00 Project Description: The project description is amended
no change

2.00 Project Cost:

Paragraph 3.00 of said Agreement is increased / decreased by \$90.00
bringing the revised total cost of the project to \$742,657.00.

Paragraph 4.00 of said Agreement is increased / decreased by \$499,695.00
bringing the Department's revised total cost of the project to \$742,657.00.

3.00 Amended Exhibits:

Exhibit(s) A, B, and D of said Agreement is amended by Attachment "A".

4.00 Contract Time:

Paragraph 18.00 of said Agreement July 1, 2018.

5.00 E-Verify:

Vendors/Contractors:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

Financial Project No. 433003-1-94-01

Contract No. AQU78

Agreement Date _____

Except as hereby modified, amended or changed, all other terms of said Agreement dated 2/28/2013
and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first
above written.

AGENCY

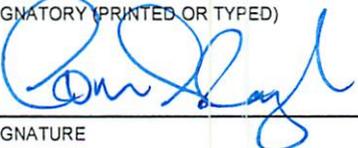
FDOT

City of Arcadia
AGENCY NAME

See attached Encumbrance Form for date of Funding
Approval by Comptroller

Thomas P. Slaughter
SIGNATORY (PRINTED OR TYPED)

LEGAL REVIEW
DEPARTMENT OF TRANSPORTATION


SIGNATURE

CHRIS SMITH
DEPARTMENT OF TRANSPORTATION

Interim City Administrator
TITLE

Director of Transportation Development
TITLE

Financial Project No. 433003-1-94-01

Contract No. AQU78

Agreement Date _____

**ATTACHMENT "A"
 SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT**

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and City of Arcadia
23 North Polk Avenue, Arcadia, Florida 34266
 dated 2/28/2013.

DESCRIPTION OF SUPPLEMENT (Include justification for cost change):
 State funding advanced into fiscal year 2014. Cost increase of \$90.00 based on project completion costs.

I. Project Cost:	As Approved	As Amended	Net Change
	\$742,567.00	\$742,657.00	\$90.00
Total Project Cost	\$742,567.00	\$742,657.00	\$90.00
II. Fund Participation:	As Approved	As Amended	Net Change
Department:	\$242,962.00	\$742,657.00	\$499,695.00
Agency:	\$499,605.00	\$0.00	(\$499,605.00)
Other:			
Total Project Cost	\$742,567.00	\$742,657.00	\$90.00

Comments:

Phased Airport Project: An Aviation Development Project already under a Joint Participation Agreement (JPA), where additional funding may be allocated or project funding shares revised by the Department in subsequent fiscal years or Work Program Development cycles up to the allowed maximum Department share for the final project cost.

III. MULTI-YEAR OR DEFERRED REIMBURSEMENT PROJECT FUNDING

If a project is a multi-year or prequalified project subject to paragraphs 4.10 and 17.20 of this agreement, funds are programmed in the Department's Work program in the following fiscal year(s):

FY	2013	\$180,000.00	FY
FY	2014	\$562,657.00	FY
FY			FY

Project years may be advanced or deferred subject to Legislative appropriation or availability of funds.

EXHIBIT "A"
PROJECT DESCRIPTION AND RESPONSIBILITIES

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and the City of Arcadia, 23 North Polk Avenue, Arcadia, Florida 34266 dated _____ and referenced by the above financial project number.

PROJECT LOCATION: Arcadia Municipal Airport

PROJECT DESCRIPTION: *Runway and taxiway lighting and electrical vault*

SPECIAL CONSIDERATIONS BY AGENCY:

The audit report(s) required in paragraph 7.60 of the Agreement shall include a schedule of project assistance that will reflect the Department's contract number, Financial Project Number and the Federal Identification number, where applicable, and the amount of state funding action (receipt and disbursement of funds) and any federal or local funding action and the funding action from any other source with respect to the project.

The plans and specifications review required in paragraph 15.00 of the Agreement shall include an Engineer Certification and compliance with Department requirements as outlined in Exhibit "C."

SPECIAL CONSIDERATIONS BY DEPARTMENT:

Effective July 1, 2010, Section 215.971 of the Florida Statutes, requires agreements with the State to contain a scope of work that clearly establishes quantifiable and measurable deliverables. Each deliverable must specify the required level of service to be performed and the Department's criteria for evaluating successful completion. The items must be submitted and approved through the Florida Aviation Database <http://www.florida-aviation-database.com/> filed under the appropriate Financial Management (FM) number to meet the deliverable requirements. The deliverables must be received and accepted by the Department prior to the payment of services. The Department of Financial Services Internet link below provides guidance on clear and comprehensive scopes and deliverables development. The scope of work and deliverables are specifically addressed in chapter 3:

<http://www.myfloridacfo.com/aadir/docs/ContractandGrantManagementUserGuide.pdf>

Narrative: Reconstruct runway lights, taxiway lights and electrical vault

Justification: Arcadia X06 runway 05/23 has malfunctioning lights and electric panel. The electrical wiring is direct bury and shorts out during high humidity and rain causing the electrical panel to overload and burn wiring or trip the breaker. The electrical vault was pieced back together after hurricane Charlie and it leaks, causing additional overloads to the circuit and shorting out of the lights.

SCOPE OF SERVICES

Design Phase

1. The Agency must submit a signed copy of an agreement between the Agency and its third-party consultant, incorporating the scope of services and schedule of values which have been approved by the Department. The scope of services must include or incorporate by reference a schedule of values that will be used to approve payments to the third-party consultant. The scope of services and schedule of values must be approved in writing by the Department before the Agency enters into an agreement with its third-party consultant. The schedule of values shall be a complete and detailed itemization describing each subcategory of work and related pay items and their associated total value, quantity, unit of measurement and unit price/cost. The consultant should invoice the Agency on a regular basis using the approved schedule of values and one of the following methods:
 - a. Percentage Completed. For this method the consultant's invoice should list a detailed description of each task in the approved scope of services and schedule of values, the dollar value amount for the item, the percentage completed for the item, and the dollar value for the percentage completed.
 - b. Completed Tasks. For this method the consultant's invoice should list a detailed description of each task in the approved scope of services and schedule of values, the dollar value amount for each item, indicate which task have been completed, and the dollar value for each task completed.
2. The Agency shall sign each invoice submitted to the Department and certify thereon that the Agency has verified that the percentages of and/or task completions are correct and that the amounts indicated on the invoice are correct.

3. Any change(s) to the approved scope of services or schedule of values will require a change order approved by the Department, and signed by the Agency and the third-party consultant. Invoices incorporating unapproved changes cannot be submitted by the Agency or paid by the Department. Invoices submitted to the Department with any unapproved charges will be rejected by the Department.

Construction Phase

4. The Agency must submit a signed copy of an agreement between the Agency and its contractor, incorporating the scope of services and schedule of values which have been approved by the Department. The scope of services must include or incorporate by reference a schedule of values that will be used to approve payments to the contractor. The scope of services and schedule of values must be approved in writing by the Department before the Agency enters into an agreement with its contractor. The schedule of values shall be a complete and detailed itemization describing each subcategory of work and related pay items and their associated total value, quantity, unit of measurement and unit price/cost. The contractor should invoice the Agency on a regular basis using the approved schedule of values and one of the following methods:
 - a. Percentage Completed. For this method the contractor's invoice should list a detailed description of each task in the approved scope of services and schedule of values, the dollar value amount for the item, the percentage completed for the item, and the dollar value for the percentage completed.
 - b. Completed Tasks. For this method the contractor's invoice should list a detailed description of each task in the approved scope of services and schedule of values, the dollar value amount for each item, indicate which task have been completed, and the dollar value for each task completed.
5. The contractor should submit their pay request to the Agency's project inspector for approval using the standard "Application and Certificate for Payment" form. The Agency's project inspector will review and approve the contractor's pay request certifying the percentage of completion and/or quantities are correct.
6. The Agency shall sign each invoice submitted to the Department and certify thereon that the Agency has verified that the percentages of and/or task completions are correct and that the amounts indicated on the invoice are correct.

7. Any change(s) to the approved scope of services or schedule of values will require a change order approved by the Department, and signed by the Agency and the contractor. Invoices incorporating unapproved changes cannot be submitted by the Agency or paid by the Department. Invoices submitted to the Department with any unapproved charges will be rejected by the Department.

EXHIBIT "B"
PROJECT BUDGET
(Phased Airport Project)

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and the City of Arcadia, 23 North Polk Avenue, Arcadia, Florida 34266 dated _____ and referenced by the above financial project number.

Original JPA Date: February 28, 2013
Expiration Date: July 1, 2018

Project funds are programmed in the Department's Work Program in the following fiscal year(s):

State funding (DDR, DPTO)	(100%)	Fiscal year 2013 \$180,000.00
State funding (DDR, DPTO)	(100%)	Fiscal year 2014 <u>\$562,657.00</u>
	Total	\$742,657.00

Project years may be advanced or deferred subject to Legislative appropriation or availability of funds.

State funds programmed on this project must be expended and an invoice for their reimbursement to the agency submitted to the Department by the following date(s):

Fiscal year 2013 funds by May 1, 2018

Fiscal year 2014 funds by May 1, 2019

Such funds which are not expended and invoiced by the dates indicated shall be forfeited by the agency. Invoices shall be submitted at a minimum of every 12 months or the project funds are subject to deletion.

EXHIBIT "D"
PROJECT COMPLIANCES

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and the City of Arcadia, 23 North Polk Avenue, Arcadia, Florida 34266 dated _____ and referenced by the above financial project number.

State Agency: Florida Department of Transportation
CSFA Number & Title: 55.004, Aviation Development Grants
Amount: \$742,657.00

COMPLIANCES

ACTIVITIES ALLOWED

Airport Planning

Airport Planning Grants are to study options for airport development and operations. The Department funds airport master plans, airport layout plans (ALP), noise and environmental studies, economical impact, services development, and airport promotion. Examples of projects are:

- Master Plans and Airport Layout Plans (ALP);
- Master Drainage Plans;
- Environmental Assessments (EA);
- Development of Regional Impact (DRI);
- Operations and Emergency Response Plans (ERP);
- Federal Aviation Regulations (FAR) Part 150 noise studies;
- Environmental Impact Studies (EIS);
- Wildlife Hazard Studies;
- Feasibility and Site Selection Studies;
- Business plans;
- Airport management studies and training;
- Air services studies and related promotional materials.

Airport Improvement

These grants are to provide capital facilities and equipment for airports. Examples of projects are:

Air-side capital improvement projects

- Runways
- Taxiways
- Aprons
- T-hangers
- Fuel farms
- Maintenance Hangers
- Lighting
- Air Traffic Control Towers
- Instrument Approach Aids
- Automatic Weather Observation Stations

Land-side capital improvement projects

- Terminal Buildings
- Parking lots and structures
- Road and other access projects

Presentation projects

- Overlays
- Crack sealing
- Marking
- Painting buildings
- Roofing buildings
- Other approved projects

Safety equipment

- Airfield Rescue and Fire Fighting Vehicle (ARFF)
- Lighted Xs

Safety projects

- Tree clearing
- Land contouring on overrun areas
- Removing, lowering, moving, and marking, lighting hazards

Information technology equipment (used to inventory and plan airport facility needs)

Drainage improvements

Land Acquisition

This grant program protects Florida's citizens from airport noise and protects airport clear zones and runway approach areas from encroachment. Administrative Costs, appraisals, legal fees, surveys, closing costs and preliminary engineering fees are eligible costs. In the event the negotiation for a fair market value is unsuccessful, the court will be petitioned for "an Order of Taking" under the eminent domain laws of Florida. Examples of projects are:

- Land acquisition (for land in an approved Master Plan or ALP)
- Mitigation land (on or off airport)
- Aviation easements
- Right of way
- Approach clear zones

Airport Economic Development

This grant program is to encourage airport revenue. Examples of projects are:

- Any airport improvement and land purchase that will enhance economic impact
- Building for lease
- Industrial park infrastructure and buildings
- General aviation terminals that will be 100 percent leased out
- Industrial park marketing programs

Aviation Land Acquisition Loan Program

The Department provides interest free loans for 75 percent of the cost of airport land purchases for both commercial service and general aviation airports.

This is a general description of project types. A detail list of project types approved for these grant programs can be found in the Aviation Grant Program manual which can be accessed through the internet at www.dot.state.fl.us/Aviation/Public.htm.

ALLOWABLE COSTS

Entities are prohibited from using grant funds for lobbying the legislature. (*Section 216.347, Florida Statutes*). Also, restrictions of expenditures are summarized in the Reference Guide for State Expenditures of the Department of Financial Services. Other specific requirements for allowable costs are unique to each state project and are found in the laws, rules, and the provisions of contracts or grant agreements pertaining to the project. For projects listed in the Compliance Supplement, these specific requirements are in Part Four.

Audit Objectives

Determine whether expenditures of state financial assistance were for allowable costs.

Suggested Audit Procedures

1. Identify the types of costs that are either specifically allowed or prohibited by the laws, rules, and provisions of contracts or grant agreements pertaining to the project.
2. Select a sample of transactions and perform procedures to verify that the transactions were for an allowable cost and not for lobbying the legislature or other prohibited uses.

Cash Management

State agencies which are expressly authorized by law to make advances for project startup or contracted services in total or periodically, shall limit such advances to other governmental entities and nonprofit entities. The amount to be advanced may not exceed the expected cash needs of the recipient within the initial 3 months. Thereafter disbursements are to be made only on a reimbursement basis. The Chief Financial Officer, after consultation with the appropriations committee, may advance funds beyond a 3-month requirement if it is determined to be consistent with the intent of the approved operating budget. Any agreement that provides for advances may contain a clause that permits the recipient to temporarily invest the proceeds, provided that any interest income either be returned to the agency or applied against the agency's obligation to the pay the contract amount. (*Section 216.181, Florida Statutes*) Specific cash management requirements unique to a state project may be found in the laws, rules, and the provisions of contracts or grant agreements pertaining to the project. For projects listed in the Compliance Supplement, these specific requirements are in Part Four.

Audit Objectives

1. Determine that cash management procedures are in accordance with Section 216.181, Florida Statutes, and other laws, rules, and the provisions of contracts or grant agreements pertaining to the state project.
2. Determine that interest income, when allowable, is correctly recorded and returned to the state agency or applied against the contract or grant agreement.

Suggested Audit Procedures

1. Review reimbursement requests and trace to supporting documentation. Ensure that costs for which reimbursement was requested were paid prior to the date of the reimbursement request.
2. Determine whether any interest income was owed to the state agency and either remitted to the agency or applied against amounts owed by the state agency.

MATCHING

Commercial Service Airports

When no federal funding is available, the Department provides up to 50 percent of the project costs. When federal funding is available, the Department can provide up to 50 percent of the non-federal share.

General Aviation Airports

When no federal funding is available, the Department provides up to 80 percent of project costs. When federal funding is available, the Department can provide up to 80 percent of the non-federal share.

Economic Development

The Department provides up to 50 percent of airport economic development funds to build on-airport revenue-producing capital improvements. This program is for local match only.

Airport Loans

The Department provides a 75 percent loan program to fund the Aviation Land Acquisition Loan Program.

DEPARTMENT REPORTS

City Marshal
Matthew A. Anderson



State of Florida
City of Arcadia

**ARCADIA POLICE DEPARTMENT
COUNCIL REPORT**

**ARCADIA POLICE DEPARTMENT
COUNCIL REPORT**

TOTALS FOR THIS REPORT PERIOD: MAR 2014

ARREST ACTIVITIES

FELONY ARREST	17	MISDEMEANOR ARREST	2
JUVENILE ARREST	6	TRAFFIC ARREST	7
WARRANT ARREST	0		

TRAFFIC ACTIVITIES

ACCIDENT REPORTS	38	TRAFFIC CITATIONS	112
		WARNING CITATIONS	43

PATROL

COMPLAINTS	945
CITY ORDINANCE VIOLATIONS	4

CRIMINAL INVESTIGATIONS

CASES TOTAL	13
CASES UNDER INVESTIGATION	6
CASES CLOSED	7

A handwritten signature in cursive script that reads "Matthew A. Anderson".

CITY MARSHAL
3/25/2014