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#13

NOV - 8 2007

**MEMORANDUM**

**Management Services Memo No. 08-030**

**DATE:** NOVEMBER 8, 2007

**TO:** MAYOR AND COUNCIL

**THRU:** W. MARK PENTZ, CITY MANAGER  
RICH DLUGAS, ASSISTANT CITY MANAGER *RD*

**FROM:** DENNIS STRACHOTA, MANAGEMENT SERVICES DIRECTOR *Dennis Strachota* *DSB*

**SUBJECT:** AGREEMENT BETWEEN APS AND THE CITY OF CHANDLER FOR THE RENEWAL OF LEASED OFFICE SPACE IN THE BOYER BUILDING

RECOMMENDATION: Staff recommends approval to renew the sublease agreement between the City of Chandler and APS for office space in the Boyer Building, 55 N. Arizona Place, Suite 105, currently shared by APS and City of Chandler staff.

BACKGROUND/DISCUSSION: The City of Chandler has been sharing 2,413 square feet of office space with APS since July 1998. The space is used by both organizations in order to provide a convenient location for customers to pay both APS and City of Chandler bills. The shared space allows each of us some level of cost savings associated with the redundancy of operations, including access to a shared lobby, customer conference area, night payment drop, copy machine and fax machine, and storage space.

The City and APS have shared the rent and operating expenses equally, each paying ½ of the total costs. The term of the initial lease was five years, with options to renew for four years and three years. The initial lease expired December 31, 2003. The second amendment to the lease is due to expire on December 31, 2007. The third amendment renewal period would be for three years, through December 31, 2010 with no further option to extend the term. Year one would be at the rate of \$17.73 per square foot; years two and three would be at a rate of \$18.81 per square foot. APS and the City will equally share the lease costs as well as the operating cost, estimated at \$6.00 per square foot.

FINANCIAL IMPLICATIONS: For the 2,413 square feet of space, the City would incur an annual cost of \$28,631 for the first year and \$29,933 for the second and third years, for a total of \$88,497 plus applicable taxes. These totals include the City's portion of both the rent and the operating costs. This would be paid from the General Fund.

PROPOSED MOTION: Move to approve renewal of the sublease agreement for office space in the Boyer Building between APS and the City of Chandler.

Attachment: Third Amendment to Lease

**THIRD AMENDMENT TO LEASE**

THIS THIRD AMENDMENT TO LEASE ("Amendment") is made and entered into as of this \_\_\_\_\_ day of October, 2007, by and between **ARIZONA PUBLIC SERVICE COMPANY** ("Lessor") and **THE CITY OF CHANDLER** ("Lessee").

RECITALS:

- A. Lessor and Boyer Arizona Place, L.C. ("Master Lessor") entered into that certain Lease dated October 28, 1998, (the "Master Lease") and the First Lease Amendment dated August 19, 2003, and the Second Lease Amendment dated July 16, 2007 by and between Lessor and St. Paul Properties, Inc., A Delaware corporation as successor in interest for Boyer Arizona Place L.C., for office space located at 55 North Arizona Place in Chandler, Arizona, ("the Project").
- B. Lessor and Lessee executed a Sublease on July 29<sup>th</sup>, 1998, a First Amendment dated December 14, 1998, and a Second Amendment dated May 14, 2004, (collectively known as the "Lease") in which Lessee leases from Lessor an undivided 50% of the office space that Lessor has leased from the Master Lessor.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee do hereby amend the Lease and agree as follows:

- 1. Subject to the provisions of paragraph 3 of this Third Amendment, the term of the Lease is hereby extended to December 31, 2010, hereinafter known as the "Extension Period". Lessee shall have no further right or option to extend the term of the Lease and Section 2.6 of the Lease is hereby deleted.
- 2. Commencing on the first day of the Extension Period, Lessee shall pay the following monthly Base Rent to Lessor for the Leased Premises:

Jan 1, 2008 – Dec 31, 2008	\$17.73/sq.ft./yr
Jan 1, 2009 – Dec 31, 2009	\$18.81/sq.ft./yr
Jan 1, 2010 – Dec 31, 2010	\$18.81/sq.ft./yr
- 3. Any provision contained in this Third Amendment or the Lease to the contrary notwithstanding, and as a material part of the consideration hereunder to Lessor, Lessor shall have the right to terminate the Lease at any time (without payment of any termination fee or other payment) by giving not less than 260 days prior written notice to that effect to Lessee (the "Termination Notice"). The Termination Notice shall specify the date upon which this Lease shall terminate (the "Termination Date"). Effective as of the Termination Date, the term of the Lease shall be deemed to have expired and terminated and: (A) all

provisions of the Lease pertaining to Lessee's surrender of possession of the Premises to Lessor or vacating the Premises shall apply; and (B) Lessee shall remain responsible for performing all of its obligations under the Lease accruing prior to the Termination Date, including, but not limited to the payment to Lessor within five (5) days after receipt of an invoice or statement therefore, any rent or other charges payable under the Lease that accrued prior to, but were not paid or payable prior to the Termination Date.

4. A copy of the Second Lease Amendment to the Master Lease is hereby attached as Exhibit A to this document.
5. All capitalized terms used in this Third Amendment that are defined in the Lease shall have the same meaning in this Third Amendment as are ascribed to them in the Lease, unless the context otherwise specifically requires or unless such terms are amended in this Third Amendment.
6. All provisions of the Lease, including, but not limited to the exhibits thereto, are hereby amended to the extent necessary so as to be consistent with the provisions of this Third Amendment. In the event of any conflict between the provisions of the Lease and the provisions of this Third Amendment, the provisions of this Third Amendment shall govern and control. Except as specifically set forth in this Third Amendment, all of the terms and conditions of the Lease remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the Commencement date above.

LESSOR:  
**ARIZONA PUBLIC SERVICE COMPANY**

LESSEE:  
**THE CITY OF CHANDLER**

By: \_\_\_\_\_  
Nancy Lutey

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

**CITY ATTORNEY**



## EXHIBIT A

### SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("Second Amendment") is made as of this 16th day of July 2007 by and between St. Paul Properties, Inc., a Delaware corporation as successor in interest to Boyer Arizona Place, L.C. ("Landlord") and the Arizona Public Service Company, an Arizona Corporation ("Tenant").

#### RECITALS:

A. Landlord's predecessor in interest and Tenant entered into that certain Lease dated as of October 28, 1998 (the "Original Lease"), which pertains to certain premises leased by Landlord to Tenant at that certain property located in Chandler, Arizona commonly known as Suite 105 of the Chandler Office Building located at 55 North Arizona Place, Chandler, Arizona 85225 (the "Lease"). The Lease was amended by a "First Lease Amendment" dated as of June 23, 2003 (the "First Amendment"). The Original Lease and the First Amendment are hereinafter collectively referred to as the "Lease."

B. Pursuant to Section 2.5 of the Lease, Tenant was granted two options to renew the term of the Lease for the periods and upon the terms set forth therein.

C. Section 2.5 of the Lease required that Tenant give notice of its election to exercise its first option to renew the term of the Lease at least one year prior to the expiration of the original term of the Lease. Tenant failed to give Landlord such a notice within the specified time period. Accordingly, Tenant's options to renew the term of the Lease have terminated.

D. Notwithstanding Tenant's failure to give Landlord a timely notice to exercise its option to renew the term of the Lease as described above, Landlord is agreeable to extending the term of the Lease to December 31, 2010, but only on the terms and provisions set forth below.

NOW THEREFORE, for and in consideration of mutual promises herein contained, the parties hereto agree that the said Lease shall be and is hereby amended as follows:

1. Subject to the provisions of paragraph 3 of this Second Amendment, the term of the Lease is hereby extended to December 31, 2010, hereinafter known as the "Extension Period". Tenant shall have no further right or option to extend the term of the Lease and Section 2.5 of the Lease is hereby deleted.
2. Commencing on the first day of the Extension Period, Tenant shall pay the following monthly Base Rent to Landlord for the Leased Premises:

<u>Period</u>	<u>PSF</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
January 1, 2008 - December 31, 2008	\$17.73	\$3,565.21	\$42,782.49
January 1, 2009 - December 31, 2009	\$18.81	\$3,782.38	\$45,388.53
January 1, 2010 - December 31, 2010	\$18.81	\$3,782.38	\$45,388.53

All payments of the above rent shall be subject to all of the terms and provisions of the Lease regarding the payment of rent. In addition, during the Extension Period, Lessee shall continue to pay, in accordance with the provisions of the Lease, its proportionate share of Direct Expenses and real property taxes and any other charges provided for under the Lease.

3. Any provision contained in this Second Amendment or the Lease to the contrary notwithstanding, and as a material part of the consideration hereunder to Landlord, Landlord shall have the right to terminate the Lease at any time (without payment to Tenant of any termination fee or other payment) by giving not less than two hundred seventy (270) days prior written notice to that effect to Tenant (the "Termination Notice"). The Termination Notice shall specify the date upon which this Lease shall terminate (the "Termination Date"). Effective as of the Termination Date, the term of the Lease shall be deemed to have expired and terminated and: (A) all provisions of the Lease pertaining to Tenant's surrender of possession of the Premises to Landlord or vacating the Premises shall apply; and (B) Tenant shall remain responsible for performing all of its obligations under the Lease accruing prior

EXHIBIT A (CON'T)

to the Termination Date, including, but not limited to the payment to Landlord within five (5) days after receipt of an invoice or statement therefor, any rent or other charges payable under the Lease that accrued prior to, but were not paid or payable prior to the Termination Date.

4. All capitalized terms used in this Second Amendment that are defined in the Lease shall have the same meaning in this Second Amendment as are ascribed to them in the Lease, unless the context otherwise specifically requires or unless such terms are amended in this Second Amendment.

5. All provisions of the Lease, including, but not limited to the exhibits thereto, are hereby amended to the extent necessary so as to be consistent with the provisions of this Second Amendment. In the event of any conflict between the provisions of the Lease and the provisions of this Second Amendment, the provisions of this Second Amendment shall govern and control. Except as specifically set forth in this Second Amendment, all of the terms and conditions of the Lease remain unchanged and in full force and effect.

6. This Second Amendment may be executed in multiple counterparts and through the use of counterpart signature pages (which may be detached and affixed together on one or more counterparts of this Agreement), but all such counterparts shall constitute but one and the same agreement. Signature pages bearing facsimile signatures or in pdf format shall be effective for purposes of binding the parties to this Second Amendment.

7. This Second Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date and year set forth above.

**LANDLORD:**

St. Paul Properties, Inc., a Delaware corporation

By: 

Its: V.P.

**TENANT:**

Arizona Public Service Company, an Arizona Corporation

By: Nancy Ruteny 9/10/07

Its: Real Estate Section Leader