STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

INVESTIGATIVE REPORT By KRIS MAYES ATTORNEY GENERAL July 14, 2025	No. 25-002 Re: Whether an Economic Development Agreement providing for City-directed donation of private land violates state law or Arizona Constitution

To: The Honorable Katie Hobbs, Governor
The Honorable Adrian Fontes, Secretary of State
The Honorable Warren Petersen, President of the Arizona State Senate
The Honorable Steve Montenegro, Speaker of the Arizona House of Representatives
The Honorable Joseph Chaplik, Member of the Arizona Legislature

I. Summary

Pursuant to A.R.S. § 41-194.01, the Attorney General's Office (the "Office") has investigated whether a February 20, 2024 Economic Development Agreement between the City of Peoria and Amkor Technology Arizona, Inc. ("Amkor Agreement")[1] violates A.R.S. §§ 9-402(B) and 9-403(F) and/or article 9, section 7 of the Arizona Constitution, commonly known as the "Gift Clause."

Through the Amkor Agreement, the City directed a private developer, Vistancia Development, LLC, to deed to Amkor 50 acres of land owned by Vistancia for Amkor's use in developing at least one "semiconductor packaging and testing" facility (the "Parcel"). The City

[1] Available at https://www.azag.gov/sites/default/files/docs/complaints/sb1487/25-002/2024-02-20%20Economic%20Development%20Agreement%20-%20Amkor.pdf.

acquired the right to direct Vistancia's disposition of the Parcel as part of a 2012 Development Agreement between the City and another Vistancia affiliate (the "Vistancia Development Agreement").[2]

The Office concludes that the City did not violate A.R.S. §§ 9-402(B) and 9-403(F) because the City is a "charter city" that is not bound to comply with these state statutes governing the sale of City-owned property. *City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon*, 67 Ariz. 330, 336 (1948) (charter cities not required to comply with A.R.S. § 9-402's predecessor because "the sale or disposition of property by charter cities is not a matter of general or public concern").

The Gift Clause provides that the City cannot "give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation." Ariz. Const. art IX, § 7. Even though the City did not own the donated Parcel, the City forfeited something of value as part of its consideration for the Amkor Agreement: the City's right to direct Vistancia to donate the Parcel to another qualified designee of the City's choosing. Amkor Agreement, § 4.1. In exchange for the City exercising that right in favor of Amkor, Amkor agreed (1) to "develop one or more facilities for the general assembly, testing, probing, bumping, or packaging of semiconductors" according to specific construction milestones and (2) to meet certain capital expenditure and job creation metrics. Amkor Agreement, Recital C. Amkor also agreed to pay the City liquidated damages and other monetary penalties up to $15 million in the event that Amkor does not meet the milestones and deadlines set forth in the Agreement. Amkor Agreement, § 3.5.

[2] Available at https://www.azag.gov/sites/default/files/docs/complaints/sb1487/25-002/2012-05-01%20Vistancia%20Development%20Agreement.pdf.

Representative Chaplik contends that the Amkor Agreement violates the Gift Clause because the City's taxpayers "were robbed of the competitive opportunity for the highest and best use and return on investment." Request at p. 4.[3] However, the Arizona Supreme Court recently clarified that "the Gift Clause does not require public entities to maximize profit at the cost of other considerations." *Neptune Swimming Foundation v. City of Scottsdale*, 256 Ariz. 551, 561 ¶ 35 (2024). In other words, "the Gift Clause does not prevent a public entity from considering nonpecuniary factors in deciding what arrangement terms are most advantageous, even if more financially profitable deals exist." *Id*. at ¶ 36.

Although the City contributed something of value to Amkor by directing Vistancia to convey the Parcel, we do not find that City residents were "disproportionately short-changed" by the Amkor Agreement. *Neptune*, 256 Ariz. 561 ¶ 35. The Amkor Agreement contains ample bargained-for deliverables which provide an economic development benefit to the City and the liquidated damages provisions ensure that the City will recoup up to $15 million in the event that Amkor cannot timely perform. In this way, the Amkor Agreement is materially distinct from the agreements at issue in *Schires v. Carlat*, which the Arizona Supreme Court found to be lacking in economic development metrics or other concrete deliverables other than "anticipated indirect benefits" incident to the private entities' normal business operations. 250 Ariz. 371, 377 ¶ 16 (2021). We therefore conclude that the City-directed disposition of the Parcel does not violate the Gift Clause.

[3] Available at https://www.azag.gov/sites/default/files/docs/complaints/sb1487/25-002/Offical%20Letter%20Request.pdf.

II. The Office's Investigation

Arizona law provides that "[a]t the request of one or more members of the legislature, the attorney general shall investigate any ordinance . . . or other official action adopted or taken by the governing body of a . . . city . . . that the member alleges violates state law or the Constitution of Arizona." A.R.S. § 41-194.01(A). Upon completing its investigation, the Office must "make a written report of findings and conclusions" determining that the challenged ordinance "[v]iolates" state law or the Arizona Constitution, "[m]ay violate" state law or the Constitution, or "[d]oes not violate" state law or the Constitution. *Id*. at § 41-194.01(B).

On June 13, 2025, Representative Joseph Chaplik requested that the Office investigate whether the Amkor Agreement violates A.R.S. §§ 9-402(B) and 9-403(F) and/or article 9, section 7 of the Arizona Constitution (the "Request").[4] The City contends that the Request was "premature" because Representative Chaplik did not provide the City with "written notification of the alleged violations" or "60 days to resolve the violation," as required by A.R.S. § 41-194.01(C). However, subsection C only applies to requests for investigation "of any written policy, written rule, or written regulation adopted by any agency, department or other entity of a county, city or town[.]" The Request pertains to the City Council's approval of the Amkor Agreement, which is an "official action adopted or taken by the governing body" of the City that is not subject to the

[4] Representative Chaplik's request also asserts that the Amkor Agreement "is not in compliance with" the Loop 303 Specific Area Plan. However, A.R.S. § 41-194.01 requires the Office to investigate only alleged violations of "state law or the Constitution of Arizona." The City's General Plan and other zoning ordinances are not "state law" matters. Thus, any allegations regarding the City's failure to comply with applicable zoning requirements are outside the scope of A.R.S. § 41-194.01 and this investigation.

notice-and-cure provision of subsection C. *See* A.R.S. § 41-194.01(A). The Request is, therefore, timely.[5]

Thus, in accordance with its statutory duty, the Office undertook an investigation in which it analyzed the Amkor Agreement, the Vistancia Development Agreement and related documents, the City's response to the Office's request for information,[6] correspondence from City residents, and controlling Arizona statutes and case law.

III. Background

A. The Vistancia Development Agreement

In 2012, the City entered into an Amended and Restated Development Agreement with Vistancia. The Vistancia Development Agreement memorialized one phase of a multi-phase master-planned community project in the City dating back to 2001. *See* Vistancia Development Agreement, Recitals B, F. One purpose of the Vistancia Development Agreement was to provide for "the development of the Vistancia Commercial Core," by preparing an approximately 320-acre site for "build-to-suit economic development opportunities." Vistancia Development Agreement, § 18. Vistancia agreed to donate "either to the City or with the City's prior written approval, directly to one or more targeted end users, up to 50 acres of buildable land located in the Vistancia Commercial Core." *Id*., § 18.1.1. In exchange, the City agreed to allocate $6.7 million "to be used for the development of backbone infrastructure which the Parties agree is necessary and useful to open the Vistancia Commercial Core to economic development opportunities." *Id*. § 18.2. Though

[5] A.R.S. § 41-194.01(C) has also been enjoined. *See City of Phoenix. v. State,* No. CV 2021-012955, 2021 WL 7279673, at *9 (Ariz. Super. Nov. 03, 2021) (enjoining section 18 of HB 2893 which added, among other modifications, A.R.S. § 41.194.01(C)).

[6] The City's Response is available at https://www.azag.gov/sites/default/files/docs/complaints/sb1487/25-002/Peoria%20Resp.%20Letter%20w_%20attachments%20(07_03_2025).pdf.

the Vistancia Development Agreement does not use this term, the City essentially purchased an option to direct the conveyance of the Parcel to any "targeted end user" of the City's choosing. The price of that option was the City's contribution of $6.7 million worth of "backbone infrastructure" supporting the entire Vistancia Commercial Core site.

A few years later,[7] the City and Vistancia amended the Vistancia Development Agreement to, among other changes, better define the phrase "targeted end user." The 2015 Amendment clarified that a targeted end user is a "long-term end user" that will "generate significant commercial, office, and/or industrial employment," or "significantly further economic development" within either the Vistancia Commercial Core or the City generally. 2015 Amendment, § 2. The 2015 Amendment also imposed a "Payment Obligation" pursuant to which Vistancia agreed to repay (with interest) the City's "design costs" and "construction costs" incurred under the Vistancia Development Agreement in the event that Vistancia failed to timely satisfy its own deliverables, including the "donation obligation" set forth in the Section 18.1.2. of the Agreement. 2015 Amendment, § 6.

Vistancia executed a Deed of Trust in favor of the City.[8] This Deed of Trust secured Vistancia's Payment Obligation under Section 6 of the 2015 Amendment. Thus, in the event of

[7] The parties executed a First Amendment to the Vistancia Development Agreement on March 5, 2014. However, that First Amendment was itself amended and restated on September 14, 2015. Because September 2015 Amendment expressly supersedes the March 2014 Amendment, this report references only the September 2015 Amendment. The September 2015 Amended and Restated First Amendment to Amended and Restated Development Agreement for Vistancia is available at https://www.azag.gov/sites/default/files/docs/complaints/sb1487/25-002/2015-09-14%20Amended%20and%20Restated%20First%20Amendment%20to%20Vistancia%20Development%20Agreement.pdf.

[8] The Deed of Trust was executed and recorded in June 2014, pursuant to the March 5, 2014 First Amendment to the Vistancia Development Agreement. The appropriate Vistancia entity then ratified the Deed of Trust after the 2015 Amendment. *See* 2015 Amendment, § 6(b).

Vistancia's default, the City could force a sale of the Parcel and use the proceeds to recover some or all of the City's $6.7 million infrastructure investment.

For ease of reference, this Report refers to the Vistancia Development Agreement and any amendments thereto simply as the "Vistancia Development Agreement."

B. The Amkor Agreement

Eventually, the City identified Amkor as an entity meeting the requirements of a "Targeted End User" under the Vistancia Development Agreement. On February 20, 2024, the City and Amkor entered into an Economic Development Agreement pursuant to which the City agreed to direct Vistancia to convey the Parcel to Amkor. Amkor Agreement, § 4.1. Vistancia did so, and released the Deed of Trust benefiting the City on March 4, 2024.

The purpose of the Amkor Agreement was to direct Amkor's development of at least one semiconductor facility on the Parcel (the "Project"). Vistancia and Amkor simultaneously executed a Purchase and Sale Agreement memorializing the conveyance of the 50-acre Parcel as well as an additional 6.31-acre parcel which Amkor purchased from Vistancia. *Id*., Recital G.

In addition to agreeing to direct Vistancia to convey the Parcel to Amkor, the City agreed to take certain steps to facilitate Amkor's development of the Project, like providing a designated building inspector and a project Ombudsman to facilitate City Approvals and inspections during the construction period. Amkor Agreement, § 4.2. The City also agreed to pay for certain "Public Infrastructure Investments" that have a public benefit beyond just servicing the Parcel (Amkor Agreement, § 4.3) and to ensure specified water and wastewater services. Amkor Agreement, § 5. In exchange for the City's commitments, Amkor agreed do two things.

First, Amkor agreed to complete construction of the Project according to specified deadlines or "Milestones." Amkor Agreement, § 3.3.1. Milestone 7 requires Amkor to complete

construction of phase one of the manufacturing facility by September 30, 2027. *Id*. § 3.3.1.7. In the event that Amkor fails to meet Milestone 7, Amkor must pay the City $5,000 per day beginning on the 121st day of non-completion until construction is complete (or the payments reach $15 million). Amkor Agreement, § 3.3.2.2. The Amkor Agreement refers to this as the "Construction Payment." *Id*.

Second, Amkor agreed to undertake two types of economic development activities: "Capital Expenditures" and "Job Creation."

Capital expenditures are "all expenditures to design and construct the Project" including infrastructure. Amkor Agreement, § 3.4.1.2. Amkor agreed to "make a minimum expenditure of $350,000,000" by each of two investment deadlines for a total investment of $700 million in capital expenditures by September 30, 2034. If Amkor fails to meet its capital expenditure minimum within 90 days of either of the deadlines, Amkor must pay the City a portion of the shortfall not to exceed $6.3 million per deadline ($12.6 million total). Amkor Agreement, § 3.4.1.3.

Amkor also agreed to create a certain number of "Full-Time Jobs" by each of four "Job Deadlines" set forth in the Agreement. Amkor Agreement, § 3.4.2.[9] If Amkor fails to meet any of the four Job Deadlines within 90 days of the deadline, Amkor must pay the City $5,000 for each

[9] The Amkor Agreement defines "Full-Time job" as "any full-time job position filled by [Amkor], that is new to the City and located at the Project site, that is reasonably expected to exist for a period of more than one (1) year from the date such position is created and first becomes available to a prospective employee and which position is continuously filled by [Amkor] . . . and has an average annual pay of no less than $60,000[.]" Amkor Agreement, § 3.4.2.1.

unfilled position, up to $2.4 million. Amkor's total liability for the construction, capital expenditure, and job creation penalties is $15 million.

Aside from monetary penalties, the Amkor Agreement also sets forth conditions under which the City can gain ownership of the Parcel. Either Amkor or the City can terminate the Agreement, if after a prescribed notice-and-cure period, Amkor fails to commence construction on the Project by September 30, 2025 (for reasons other than force majeure). Amkor Agreement, § 3.3.2.1. And if either Amkor or the City terminates the Agreement under Section 3.3.2.1, Amkor must convey the Parcel to the City.

IV. Legal Analysis

A. The City of Peoria is not bound by state statutes governing the sale of city-owned property.

A.R.S. § 9-402 provides that a city "may sell and convey all or any part of its real or personal property" provided that "[t]he sale shall not be made until an invitation for bids for the purchase of the property" has been properly published and noticed." A.R.S. § 9-402(A), (B). In addition, real property of a city that is sold pursuant to A.R.S. § 9-403 "shall be sold at not less than the appraised value of the property." A.R.S. § 9-403(F). Representative Chaplik contends that the City violated A.R.S. §§ 9-402(B) and 9-403(F) because it "dispose[d] of public property" without first engaging in a "competitive bid process" or "obtaining a market rate appraisal."

Peoria has a city charter.[10] A.R.S. § 9-284 provides that a city charter supersedes any applicable law "in force at the time of the adoption and approval of the charter" while requiring that the charter be "consistent with and subject to the state constitution, and not in conflict with the constitution and laws relating to the exercise of the initiative and referendum and other general

[10] The Peoria City Charter is available at https://www.peoriaaz.gov/government/departments/city-attorney/city-charter (last accessed July 14, 2025).

laws of the state not relating to cities." *See also* Ariz. Const. art. XIII, § 2 (permitting the adoption of city charters by cities whose population exceeds 3,500). This means that a city's charter supersedes state laws to the extent those laws "relate to purely municipal affairs" and not to matters of statewide concern. *Strode v. Sullivan*, 72 Ariz. 360, 365 (1951). The Arizona Supreme Court has held that "the sale or disposition of property by charter cities is not a matter of general or public concern." *City of Tucson*, 67 Ariz. at 336; *see also* Ariz. Atty. Gen. Op. 57-25 ("[C]harter government cities are governed in the matter of acquisition and disposition of property by provisions within their respective charters.").

Section 3(1) of the Peoria City Charter provides: "The city may lease, sell, convey and otherwise dispose of any real or personal property owned by the city in the manner, for such consideration, and upon such conditions as may be determined by the council."[11] The Peoria City Charter therefore controls, and neither A.R.S. § 9-402 nor § 9-403 governs the City's disposition of its real property.

Because the statutes identified in the Request do not apply to the City, we need not determine whether the City-directed conveyance of the Parcel from Vistancia to Amkor constitutes a sale or conveyance of the City's "real or personal property." The City cannot violate statutes that do not apply to it.

B. The Amkor Agreement does not violate the Gift Clause.

The Gift Clause exists to "prevent depletion of the public treasury or inflation of public debt by a public entity engaging in non-public enterprises or by giving advantages to special interests." *Neptune*, 256 Ariz. at 559 ¶ 24 (quoting *Schires*, 250 Ariz. at 374 ¶ 6) (cleaned up).

[11] Whether the Amkor Agreement complied with any applicable provisions of the Peoria City Charter is beyond the scope of this investigation, which is limited to alleged violations of "state law or the Constitution of Arizona." A.R.S. § 41-194.01(A).

Arizona courts apply a two-pronged test to assess whether a public expenditure complies with the Gift Clause.

First, the expenditure must serve a "public purpose." *Schires*, 250 Ariz. at 374 ¶ 7 (citing *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 349 (1984)). If a public purpose exists, we must then determine "whether the value to be received by the public is far exceeded by the consideration being paid by the public." *Schires*, 250 Ariz. at 375 ¶ 7. If the value to be received by the public is "grossly disproportionate" to the value of the public's consideration, the public entity violates the Gift Clause by "providing a subsidy to the private entity." *Id*. In other words, "[t]he Gift Clause is triggered only when the chosen arrangement either serves no public purpose or the public is disproportionately short-changed." *Neptune*, 256 Ariz. at 551 ¶ 36. The party alleging a Gift Clause violation bears the burden of proving it. *Wistuber*, 141 Ariz. at 350.

We address both prongs in turn.

1. The Amkor Agreement serves a permissible public purpose.

Generally speaking, an expenditure has a public purpose if it "promotes the public welfare or enjoyment." *Schires*, 250 Ariz. at 375 ¶ 8. "Significant deference" is given to elected officials in determining whether a specific purpose constitutes a "public purpose." *Id*. at ¶ 9 (*citing Turken v. Gordon*, 223 Ariz. 342, 349 ¶ 28 (2010)). Thus, a public purpose is lacking "only in those rare cases in which the governmental body's discretion has been unquestionably abused." *Turken*, 223 Ariz. at 349 ¶ 28 (internal quotations omitted).

In *Schires*, the Arizona Supreme Court affirmed that "government expenditures for industrial development serve a public purpose." 250 Ariz. at 376 ¶ 12. And, in concluding that other economic development agreements between the City and a private university satisfied the public purpose requirement, *Schires* specifically rejected the challengers' argument that a

government expenditure must produce "direct benefits to the public" to have a permissible public purpose. *Id*. at 375 ¶ 10. Thus, indirect benefits like "increasing the city's tax base" and "increasing employment opportunities for residents" can be sufficient to establish a permissible public purpose. *Schires*, 250 Ariz. at 376 ¶ 11 (*citing Turken*, 223 Ariz. at 348 ¶ 24).

The Amkor Agreement reflects the City's economic development goal of "promot[ing] employment opportunities" within "targeted industries." Amkor Agreement, Recital H. The City contends that expansion of employment opportunities within the City "promote[s] the health, safety, and welfare of City residents by stimulating economic activity citywide, diversifying [the City's] economic base, increasing overall economic growth, and generating tax and other income for the City." *Id*. The Amkor Agreement also contains enforceable capital expenditure and job creation requirements that are consistent with this economic development purpose. Amkor Agreement § 3.4.

Applying the requisite deference to the City's determination that the Amkor Agreement furthers the City's economic development goals, we conclude that the Amkor Agreement has a permissible public purpose.

2. The Amkor Agreement does not "disproportionately short-change" City residents.

Because we conclude that the Amkor Agreement's economic development aims serve a permissible public purpose, we move to the second prong of the Gift Clause inquiry: the "consideration prong." *Neptune*, 256 Ariz. at 550 ¶ 27. Under this prong, the City "must receive a bargained-for benefit as part of the private party's performance, and the payment of public funds

must not be grossly disproportionate to the fair market value of that benefit." *Schires*, 250 Ariz. at 378 ¶ 24.

In his Request, Representative Chaplik does not seem to dispute that the Amkor Agreement provides some value to the City. Instead, he (like some of the Peoria residents who have submitted comments in support of the Request) questions whether the City could have (1) found a better deal by utilizing a "competitive bid process" or (2) better leveraged its option to "a more qualified economic development project." Request at p. 3. But *Neptune* instructs that we are to evaluate the proportionality of the deal chosen, not of a hypothetical "better" deal forgone. 256 Ariz. at 550 ¶ 32. With that in mind, we consider the value of the City's "give" and "get" under the Amkor Agreement without regard for whether the City could have negotiated a "better deal." *Id*.

a. The City-directed donation of the Parcel is a public expenditure for Gift Clause purposes.

As an initial matter, the City's decision to exercise its option in favor of Amkor is a public expenditure for Gift Clause purposes even though the City did not own or convey the Parcel to Amkor. The Gift Clause is "not limited to monetary expenditures or debt forgiveness." *Neptune*, 256 Ariz. at 560 ¶ 28. For example, "[g]ranting a private enterprise exclusive use of City-owned property . . . constitutes an expenditure for Gift Clause purposes" even if the property access rights did not "cost" the public entity any additional out-of-pocket expense. *Id.*

Here, the City "paid" $6.7 million (in the form of infrastructure improvement benefiting the Vistancia Commercial Core) to acquire something of value: the right to "[c]ause to be donated, either to the City or, with the City's prior written approval, directly to one or more targeted end users, up to 50 acres of buildable land located in the Vistancia Commercial Core." Vistancia Development Agreement, § 18.1.2. Like the exclusive property access rights at issue in *Neptune*, the City then deployed its right to direct Vistancia's conveyance of the Parcel in favor of one

Targeted End User, Amkor, by entering into the Amkor Agreement. Thus, we conclude that the City's exercise of its option on the Parcel constitutes a "public expenditure" for Gift Clause purposes.

b. The City received a "bargained-for benefit."

The adequacy of consideration for the second prong of the Gift Clause analysis "focuses on the value of what the private party has promised to provide in return for the public entity's payment." *Schires*, 250 Ariz. at 377 ¶ 16 (citing *Turken*, 223 Ariz. at 350 ¶ 33). In *Schires*, the City was party to two agreements pursuant to which a property owner agreed to make improvements to its own building and a private university agreed to (1) spend money to open a campus in landlord's space, (2) temporarily refrain from opening another campus in Arizona, and (3) "help" the City with undefined "economic development activities." 250 Ariz. at 377 ¶ 19. The Arizona Supreme Court concluded these promises were not adequate consideration under the Gift Clause. *Id*. at ¶ 16. The Court explained that, in order for an economic development benefit to "count" as consideration, the private entity must agree to undertake specific economic development activities and the entity's required performance must amount to more than a promise to engage in its normal business activities, like paying taxes or making investments in physical plant. *Id*. at ¶¶ 16-18.

Here, Amkor agreed to undertake two types of economic development activity: (1) making a $700 million capital investment in the Vistancia Commercial Core and (2) creation of 850 new full-time jobs. Amkor Agreement, § 3.4. Amkor must deliver these benefits according to specific milestones and deadlines set forth in the Agreement, and must complete performance of the Agreement by September 2034. *Id*. If Amkor fails to meet the required milestones, the City is entitled to liquidated damages of up to $15 million. Amkor Agreement, § 3.5.

This makes the Amkor Agreement distinguishable from the economic development agreements at issue in *Schires,* for two reasons. First, the Amkor Agreement clearly articulates the economic development activities that Amkor must perform for the benefit of the City. *See* Amkor Agreement, § 3.4. Second, while Amkor's performance under the Agreement is consistent with Amkor's existing business as a "semiconductor supply-chain manufacturer," Amkor agreed to engage in its "respective private business" in a very particular way—according to the City's timeline—and agreed to pay damages for its non-performance. We, therefore, conclude that City received a bargained-for benefit under the Amkor Agreement.

c. The City's expenditure was not grossly disproportionate to the value of the City's benefit.

The value of the City's expenditure is the value of whatever the City gave up by exercising its option. The City contends that the option is worth approximately $9 million to the City because "under the Vistancia Development Agreement, if the City did not identify a "Targeted End User" by the Deadline Date, i.e., September 14, 2030, Vistancia must pay for the Project Site as reimbursement to the City for the public infrastructure previously paid for by the City" which is $6.7 million plus interest. Response at p. 7 n.2; *see also* 2015 Amendment, § 6(b). Representative Chaplik, however, contends that the value of the City's "give" is closer to $33 million, which he calculates by extrapolating the price that Amkor paid Vistancia to acquire the remaining 6.31 acres needed for the Project. Request at p. 3. But, as the City explains, the City did not own fee simple to the Parcel and did not convey the Parcel to Amkor. All the City owned was the right to direct Vistancia's conveyance to the Parcel. Thus, even assuming that $33 million is the approximate fair market value of the Parcel, the Parcel itself was not the City's consideration, and the fair market

value of a fee simple interest in the Parcel is not an appropriate valuation of the City's consideration.

The value that the City gets under the Amkor Agreement is explicit: the City gets the value of a $700 million capital expenditure, 850 new full-time jobs, and a functional facility operating in Arizona's growing semiconductor industry. These benefits to the City are specific and substantial, even if the Amkor Agreement does not specifically quantify the total value of the Agreement to the City. Moreover, the fact that the City is entitled to up to $15 million in liquidated damages payments if Amkor fails to fulfill those specific obligations helps illustrate the magnitude value of the Amkor Agreement to the City. The liquidated damages provisions ensure that the City will receive substantial value in exchange for its contribution to the Agreement, even if Amkor is ultimately unable to timely perform. We therefore find that the value that the City will receive under the Amkor Agreement is comparable to the City's $9 million "give" and—at a minimum—certainly not "grossly disproportionate." *Schires*, 250 Ariz. at 378 ¶ 24.

The City's consideration was its agreement to exercise its option and direct Vistancia to convey the Parcel to Amkor. By exercising the option, the City forfeited the right to be paid $6.7 million plus 2% annual interest, or approximately $9 million in 2030. We find that the City's $9 million "give" is not "grossly disproportionate" to the value it will "get" under the Amkor Agreement. Thus, we conclude that the Amkor Agreement does not violate the Gift Clause.

V. Conclusion

The Office concludes that the Amkor Agreement does not violate A.R.S. § 9-402(B), A.R.S. § 9-403(F), or article 9, section 7 of the Arizona Constitution.

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