

AGREEMENT FOR PROFESSIONAL SERVICES

INSERT PROJECT NAME
CITY PROJECT NO.

This Agreement for **Professional Services** ("Agreement") is made by and between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and _____, a[n] _____ (the "Consultant") as of the date last noted below.

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A** hereto (the "Project.");
- B. City desires to retain the professional services of Consultant to perform those specific duties and produce the specific work product as set forth in the Scope of Work, attached hereto as **Exhibit B** (the "Scope");
- C. Consultant desires to provide City with professional services, consistent with best engineering practices that the standards set forth in this Agreement, in order to complete the Project ("Professional Services"); and
- D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Consultant agree as follows:

1. Professional Services and Key Personnel; Sub-consultants.

1.1 Services. The Professional Services that Consultant must provide will consist of all services necessary to assure the Project is completed timely and efficiently consistent with the Scope, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants, retained by City.

1.2 Project Team.

(A) Project Manager.

- (1) Consultant will designate a professional employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, complete the project and handle all aspects of the Scope such that the work product produced by Consultant is consistent with applicable professional standards as detailed in this Agreement
- (2) The City must approve the designated Project Manager; and
- (3) To assure the Project schedule is met, Project Manager may be required devote no less than a specific amount of time to the Project as set forth in the Scope.

(B) Project Team.

- (1) The Project manager and all other employees assigned to the project by Consultant will comprise the "Project Team".
- (2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Consultant.
- (3) The City must approve the other personnel of Consultant assigned to the Project.

(C) Discharge, Reassign, Replacement.

- (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as identified in their response to the project's Request For Qualifications.
- (2) Consultant will not discharge, reassign or replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

- (3) Consultant will change any of the members of the Project Team at the City's request if the employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties or if the acts or omissions of that person are detrimental to the development of the Project.

(D) Sub-consultants.

- (1) Consultant may engage specific technical consultant (each a "Sub-consultant") to furnish certain of the Professional Services,
- (2) Consultant will remain fully responsible for Sub-consultants' services.
- (3) Sub-consultants must be approved by the City, unless the Sub-consultant was previously mentioned in the response to Request for Qualifications.
- (4) Consultant shall certify by letter that contracts with Sub-consultants have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Professional Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project Schedule, which is attached as **Exhibit C** (the "Schedule") and within the City budget for the Scope.

3. **Consultant's Work Product.**

3.1 Standard. Consultant must perform the Professional Services in accordance with the standards of professional due diligence, care, and quality prevailing among professionals having substantial experience with the successful furnishing of services for projects that are equivalent in size, scope, quality, and other criteria to the Professional Services and the Project identified in this Agreement.

3.2 Licensing. Consultant warrants that:

- (A) Consultant and Sub-consultants will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of the Professional Services ("Approvals"); and
- (B) Neither Consultant nor any Sub-consultant has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Consultant's contracting ability.
 - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 Compliance. Professional Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

3.4 Coordination; Interaction.

- (A) For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with the other professionals retained by City on the Project ("Coordinating Project Professionals").
- (B) Subject to any limitations expressly stated in the Project Budget and Scope, Consultant will meet to review the Project, Schedule, Project Budget, and in-progress work product with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work product delivery and Project completion.
- (C) For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other consultants when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- (A) Ownership. Upon receipt of payment for services furnished, Consultant grants to City, and will cause its Sub-consultants to grant to the City, the exclusive ownership of and all copyrights to

evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et. seq.*, and other intellectual work product ("Work Product").

- (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- (B) Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- (C) City Use.
- (1) City may reuse the work product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
 - (3) In such case, City shall also remove the Consultant's seal and title block from the Work Product.

4. Compensation for Professional Services.

4.1 Compensation. Consultant's compensation for the Professional Services, including those furnished by its Sub-consultants and Allowances (as defined below), will not exceed _____, as specifically detailed in **Exhibit D** (the "Compensation").

4.2 Change in Scope. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Scope is significantly modified.

- (A) Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.
- (B) Additional services which are outside the scope of basic services contained in this agreement may not be performed by the Consultant without prior written authorization from the City.

4.3 Allowances. An "Allowance" may be identified in Exhibit D only for work that is required by the Scope and the value of which cannot be reasonably be quantified at the time of this Agreement.

- (A) As stated in § 4.1, the Compensation must incorporate all Allowance amounts identified in Exhibit B and any unused allowance at the completion of the Project will remain with City.
- (B) Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Sub-consultant.
- (C) Consultant will not use any portion of an Allowance without prior written authorization from the City.
- (D) Examples of Allowance items include but are not limited to subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies, material testing.

4.4 Expenses. City will reimburse Consultant for certain out of pocket expenses necessarily incurred by Consultant in connection with this Agreement, without markup (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following;

- (A) Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and, which policies and procedures will be furnished to Consultant;
- (B) The Reimbursable Expenses in (A) above are approved in advance by City in writing; and

- (C) The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

5. Billings and Payment.

5.1 Applications.

- (A) Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- (B) The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- (A) After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- (B) Payment may be subject to or conditioned upon City's receipt of:
 - (1) All drawings, reports and other Work Product generated by Consultant and its Sub-consultants, and
 - (2) Unconditional waivers and releases on final payment from Sub-consultants as City may reasonably request to assure the Project will be free of claims arising from the Professional Services..

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- (A) If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- (B) City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- (A) Consultant will be equitably compensated for the Professional Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- (B) Consultant will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- (A) Consultant will not be entitled to further payment until after City has determined its damages.
 - (1) If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Professional Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of § 5.
- (B) If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. Conflicts. Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. Insurance .

8.1 Requirements. Consultant must obtain and maintain the following insurance (“Required Insurance”):

- (A) Consultant and Sub-consultants. Consultant, and each Sub-consultant performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "**Consultant's Policies**"), until each Parties' obligations under this Agreement are completed.
- (B) General Liability.
 - (1) Consultant must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$5,000,000 per occurrence and \$5,000,000 annual aggregate.
 - (2) Sub-consultants must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- (C) Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Consultant and \$1,000,000 per accident for Sub-consultants and covering owned, non-owned and hired automobiles.
- (D) Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law and employer's liability with limits not less than \$1,000,000 for each accident.
- (E) Professional Liability. A professional errors and omissions liability policy providing at least minimum limits of \$5,000,000 each claim.
- (F) Notice of Changes. Consultant's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Consultant or Sub-consultant's Policies,
 - (2) Reduction of the coverage limits of any of Consultant or and Sub-consultant's Policies, and
 - (3) Any other material modification of Consultant or Sub-consultant's Policies related to this Agreement.
- (G) Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Consultant must deliver to City Representative certificates of insurance for each of Consultant and Sub-consultant's Policies, which will confirm the existence or issuance of Consultant and Sub-consultant's Policies in accordance with the provisions of this Exhibit, and copies of the endorsements of Consultant and Sub-consultant's Policies in accordance with the provisions of this Exhibit.
 - (2) City of Glendale is and will be under no obligation either to ascertain or confirm the existence or issuance of Consultant and Sub-consultant's Policies, or to examine Consultant and Sub-consultant's Policies, or to inform Consultant or Sub-consultant in the event that any coverage does not comply with the requirements of this section.
 - (3) Consultant's failure to secure and maintain Consultant Policies and to assure Sub-consultant's policies as required will constitute a material default under the Agreement.

- (H) Other Contractors or Vendors.
 - (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
 - (2) This insurance coverage must comply with the requirements set forth above for Consultant's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- (I) Policies. Except with respect to workers' compensation, employer's liability and professional liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this Exhibit.
 - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
 - (2) All insurance policies obtained pursuant to this Exhibit must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties

8.2 Sub-Consultants.

- (A) Consultant must also cause its Sub-consultants to obtain and maintain the Required Insurance.
- (B) City may consider waiving these insurance requirements for a specific Sub-consultant if City is satisfied the amounts required are not commercially available to the Sub-consultant and the insurance the Sub-consultant does have is appropriate for the Sub-consultant's undertaking under this Agreement.
- (C) Consultant and Sub-Consultants must provide to the City proof of the Required Insurance whenever requested.

8.3 Indemnification.

- (A) To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party", collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e.: a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by or Consultant's negligent actions, errors or omissions (including any Sub-consultant or other person or firm employed by Consultant), whether sustained before or after completion of the Professional Services furnished in connection with the Project.
- (B) This indemnity and hold harmless applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- (C) Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

- 9.1** Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. §41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as

compliance with A.R.S. §23-214(A) which requires registration and participation with the E-Verify Program.

- 9.2** Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3** City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.
- 9.4** City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section 9.
- 9.5** Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 9.6** Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 9.7** The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

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

11. Notices.

- 11.1** A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- (A) The Notice is in writing, and
 - (B) Delivered in person or by private express overnight delivery service (delivery charges prepaid), certified or registered mail (return receipt requested).
 - (1) A Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if
 - (2) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. mail, hand delivery, or overnight courier on or before 5:00 p.m.; or
 - (3) As of the next business day after receipt, if received after 5:00 p.m.
 - (C) The burden of proof of the place and time of delivery is upon the Party giving the Notice.
 - (D) Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

(A) **Consultant.** Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

(B) **City.** City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City Engineer
Engineering Department
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

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

(C) **Concurrent Notices.**

(1) All notices to City's representative must be given concurrently to City Manager and City Attorney.

(2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.

(3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

(D) **Changes.** Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. Financing; Assignment. City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

13. Entire Agreement; Survival; Counterparts; Signatures.

13.1 Integration. This Agreement contains the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

(A) Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.

(B) Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

13.2 Interpretation.

(A) The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

(B) The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.

(C) The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and

responsibility of a Party, will survive completion of the Professional Services, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform to applicable law.

13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. Dispute Resolution. Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit E**. In such case when Exhibit E is not made part of this Agreement, a dispute escalation process will be utilized to resolve questions of fact during the course of this contract. The final determination will be made by the City.

15. Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation
Exhibit E	Dispute Resolution

[Remainder of page intentionally left blank. Signatures appear on following page.]

The parties enter into this Agreement for Professional Services as of the last date shown below.

CITY OF GLENDALE,
an Arizona municipal corporation

Ed Beasley, City Manager

APPROVED AS TO FORM:

Craig Tindall, City Attorney

ATTESTATION:

City Clerk (SEAL)

Date: _____

’,
a[n]

By: _____

Printed Name: _____

Its: _____

Professional Services Agreement – Exhibit A

PROJECT DESCRIPTION

[*Cover Sheet*]

PROFESSIONAL SERVICES AGREEMENT – EXHIBIT B

SCOPE OF WORK

[*Cover Sheet*]

PROFESSIONAL SERVICES AGREEMENT – EXHIBIT C

SCHEDULE

[see attached]

PROFESSIONAL SERVICES AGREEMENT – EXHIBIT D

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Consultant for full completion of all work required by the Scope during the entire term of the project must not exceed .

DETAILED PROJECT COMPENSATION

PROFESSIONAL SERVICES AGREEMENT – EXHIBIT E

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement—including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - (A) The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible.
 - (B) The parties senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - (C) The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - (A) The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - (B) The arbitrator selected must be an attorney with at least 15 years experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The nonprevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of the Professional Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.

4. **Exceptions.**

4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Consultant.

4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.