

**CITY CLERK
ORIGINAL**

TROJAN UV
WATER CONFIDENCE™

**C-7708-1
01/05/2015**

SERVICE CONTRACT AGREEMENT

BETWEEN

**TROJAN TECHNOLOGIES (“Trojan”)
AND**

CITY OF GLENDALE, AZ

FOR WORK AT

Arrowhead WRF Glendale

January 05, 2015

This Agreement is made and entered between Trojan Technologies ("Trojan"), acting through its offices located at 3020 Gore Road, London, Ontario, Canada, N5V 4T7, and the City of Glendale ("City"), acting through its Utilities offices located at 8180 West Union Hills Drive, Glendale, AZ, US.

Recitals

A. The City and Trojan have already entered into an Agreement (Glendale Contract No. C-7708 "C-7708") regarding the installation and maintenance of the UV System at the City's Arrowhead Water Reclamation Facility ("Arrowhead WRF");

B. This Service Agreement and its attachments are agreed to in furtherance of the original Agreement (C-7708) as Trojan's representations regarding maintenance influenced the City's decision to use Trojan's water treatment system;

Therefore, in consideration of receipt of one dollar, the mutual promises made, other good and sufficient consideration, including the Recital Statements, which form an integral part of this Agreement, (the receipt and sufficiency of which is acknowledged), the parties agree as follows:

1. In this Service Agreement, the City shall receive a five (5)-year contract, which includes ten (10) service visits performed bi-annually, which will be for a duration not to exceed five (5) working days for each site visit to perform an "inspection" of the entire system under attached Schedule "A' Activity List.". A comprehensive report will be provided to the City at the end of each of these visits, outlining the necessary maintenance requirements at the time of service and any recommendations required to achieve maximum efficiency of the equipment. Any parts recommended for replacement/maintenance/upgrade are not covered under this contract.
2. Trojan warrants that skilled technicians who are trained and qualified to keep your equipment operating properly, shall perform these services.
3. This Agreement assumes the equipment will be operated and maintained in strict accordance with the instructions specified in the Operation and Maintenance Manual and Product Bulletins. Operation other than as so specified may void manufacturer's warranties and additional service and maintenance required due to such operation is in addition to the services to be performed under this Agreement.
4. The maintenance requirements for your system can be found in the O&M Manual.
5. This Agreement shall commence on the first day of the month following receipt of signed agreement from City (the effective date) and shall remain in effect for 60 months (the renew date):

TOTAL SERVICE CONTRACT PRICE: \$ 55,000 + tax (the "Agreement Price")

The service contract shall be paid in regular, equal installments after each site visit.

6. **Insurance.** For the duration of the term of this Agreement, Trojan shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Trojan, its agent(s), representative(s), employee(s) and any subcontractors.

6.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- b. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
 - c. **Worker's Compensation:** Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

- 6.2 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:
 - a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Trojan or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Trojan. General liability coverage can be provided in the form of an endorsement to the Trojan's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
 - b. For any claims related to this Project, the **Trojan's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Trojan's insurance and shall not contribute with it.
 - c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

- 6.3 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Trojan has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

- 6.4 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Trojan shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Trojan's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Trojan's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Trojan to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

- 6.5 **Subcontractors.** Trojan shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

- 6.6 **Special Risk or Circumstances.** The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of

the risk, prior experience, insurer, coverage or other circumstances unique to the Trojan, the Project or the insurer.

7. Immigration Law Compliance.

- 7.1 Trojan, and on behalf of any Subcontractor, warrants to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 7.2 Any breach of warranty under this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 7.3 City retains the legal right to inspect the papers of Trojan, or any Subcontractor, or employee who performs work under this Agreement to ensure that the Trojan, or any subcontractor, or any employee, is compliant with the warranty under this Paragraph.
- 7.4 City may conduct random inspections, and upon request of City, Trojan will provide copies of its papers and records demonstrating continued compliance with the warranty under this Paragraph. Trojan 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.
- 7.5 Trojan agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Trojan and expressly accrue those obligations directly to the benefit of the City. Trojan 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.
- 7.6 Trojan'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.
- 7.7 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.

8. Conflict.

- 8.1 Trojan 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.
- 8.2 Notwithstanding the incorporation of the Exhibits or Attachments to this Agreement by reference, and this Service Contract Agreement, should any conflict arise between the provisions of this Agreement and the provisions found in C-7708, the provisions of C-7708 shall take priority and govern the conduct of the parties

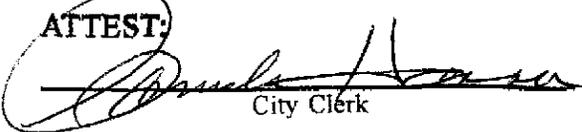
9. In addition to the binding terms and conditions of C-7708, Trojan Technologies and the City agree that the terms and conditions attached as Attachment #1 shall form a part of this Agreement and shall be binding upon the parties. Trojan Technologies invites the City to review the Terms and Conditions with a representative of Trojan Technologies.

CITY OF GLENDALE:
an Arizona municipal corporation

By: 
Brenda S. Fischer:
City Manager

TROJAN TECHNOLOGIES
3020 Gore Rd.
London, Ontario, Canada, N5V4T7
By: 

Trevor Noye
Senior Vice President, Trojan & GM Municipal Businesses

ATTEST:

Paula Hansen
City Clerk

Approved as to form


City Attorney

SCHEDULE "A" ACTIVITY LIST

Visual Inspection
Review site records, trended data and parameter settings
Recording of operational status
Review condition of quartz sleeves, electrical cables, intensity sensors and UVT probe
Replacement of Defective or Worn Components
Lamps
Ballasts
Wiper Rings
Confirm Instrumentation Functionality and Calibration
Software/ PLC
UVT Probe
Intensity Sensors
Level/Flow Ultrasonic Probes
Signal Isolators
Functional Testing
Software/PLC
UV Lamps/Ballasts
Check Operation in Manual and Auto Modes
Wiping System
Safety Interlocks
Local Operation
Documentation
O&M Updates
PLC Logic Updates
Equipment, Electrical, and Mechanical Drawings
Recommended Spare Parts List

**ATTACHMENT #1
TERMS AND CONDITIONS OF SERVICE**

- 1. GENERAL**
 - 1.1. Conditions part of offer**

All purchase orders shall be addressed by the purchaser and form part of the offer or agreement in which they are referred to or to which they are attached. A purchase order accepted by Trojan shall constitute an agreement between Trojan and the City, the terms and conditions of which are set out on the City's website and below.
 - 1.2. Construction and legal effect**

These terms and conditions are in addition to the terms and conditions of C-7708 regarding the Arrowhead WRF.
 - 1.3. Additional documentation or verbal matter to be confirmed**

No documentation, correspondence, verbal agreement or conversation shall form part of or affect or modify any aspect of the offer or contract unless accepted or confirmed by both Trojan and the City in writing.

- 2. OFFER AND ORDER**
 - 2.1. Acceptance and Order (Not applicable.)**
 - 2.2. Extent of offer**
 - 2.2.1. Not applicable; see Paragraph (2) of this Agreement.
 - 2.2.2. Trojan will supply the services originally proposed in C-7708.
 - 2.3. Responsibility for access, approvals**

It shall be the City's responsibility to obtain and provide any City approvals, City licenses or City permits as necessary for Trojan personnel to commence or continue any work required by the City.

- 3. CITY'S RESPONSIBILITY**
 - 3.1. Accident prevention**
 - 3.1.1. The City shall take all measures prescribed by law or by rules and regulations applicable to the site where any work is to be performed relating to safety and accident prevention. The City shall inform Trojan in writing in advance of the safety regulations in force, any safety hazards, the required safety information, training, and special apparatus that may be required to work at the City's site.
 - 3.1.2. The City shall advise the names of those people on site responsible for safety and accident prevention. The City shall provide, on site and at its expense, adequate first aid and access to medical facilities.
 - 3.2. Assistance and welfare**
 - 3.2.1. The City shall ensure that adequate, lockable facilities are available free of cost to Trojan and Trojan's personnel for the safekeeping of personnel's belongings and that rest room facilities with washing and toilet facilities are available in close proximity to the site. Under extreme climactic conditions, facilities are to be either heated or air conditioned, as appropriate in the circumstances.
 - 3.2.2. The City shall provide reasonable access to work areas and equipment. The City shall be responsible for removing, replacing, repairing, or refinishing any barrier or building structure obstructing the performance of Trojan's obligations.
 - 3.2.3. The City shall be responsible for all costs incurred to conduct any safety test or equipment modification required by any insurance company, laboratory or government authority.
 - 3.3. Replacement Parts**

All replacement parts used in Trojan service must be high quality proven Trojan replacement parts designed specifically for use with the Trojan equipment in accordance with the terms of C-7708. Using genuine Trojan parts ensures your system remains validated and operates at peak performance. It also maintains your safety certifications, regulatory compliance, and your Trojan Lifetime Performance Guarantee. Certified Service cannot provide service support to customers with a system where unknown replacement parts or parts other than parts approved by Trojan have been used.

- 4. WORKING HOURS**
 - 4.1. Work shall be performed in accordance with the terms and conditions of C-7708. If work is required to be performed in excess of forty four (44) hours per week, the City will obtain written approval from Trojan.

- 5. CHARGES AND METHODS OF INVOICING**
 - 5.1. The charges and methods of invoicing are already set forth in C-7708 (and Paragraph (5) of the attached Service Agreement) and shall not exceed \$55,000 during the life of the agreement without prior written approval by the City's authorized representative.

- 6. TERMS OF PAYMENT**
 - 6.1. Payment terms are set forth in Paragraph (5) of the Service Contract Agreement.

- 7. LIABILITY**
 - 7.1. Trojan shall be responsible for the careful selection of its personnel and for their delegation at the correct time. Such personnel shall, for the purpose of this agreement, be deemed to work under City's control, order and instruction. Trojan shall not be liable for delays in delegation if such delay is caused by reasons of strike, lockouts, war, mobilization or any other reason beyond the reasonable control of Trojan.
 - 7.2. Subject to the foregoing paragraph, the City agrees to indemnify Trojan and Trojan personnel in respect of all losses, damage or injuries to person or property which may occur and against all actions, suits, demands costs, charges and expenses arising in connection therewith and attributable to the City, whether occasioned by negligence or otherwise.

7.3. Trojan shall indemnify, defend, save and hold harmless the City and its officers, agents, contractors, volunteers, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses including court costs, attorneys' fees, and costs of claim processing, investigation and litigation (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss of damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Trojan or any of its owners, officers, directors, agents, employees, invitees or contractors, arising out of or related to work performed under this agreement. It is the specific intention of the Parties that the City shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Trojan from and against any and all claims. It is agreed that Trojan will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

8. STATUTORY AND OTHER OBLIGATIONS

8.1. Trojan shall not be responsible for verifying that the agreement is in compliance with all applicable laws, ordinances, regulations, codes and orders relating to it and/or the supply of Services under it. City shall be and remain solely responsible for ensuring that the agreement, and any services to be performed hereunder, is in compliance with all applicable laws, ordinances, regulations, codes and orders relating to it and/or the supply of Services under it. If the City fails to notify Trojan in writing that the agreement or such supply is not in compliance with any applicable law, ordinance, regulation, code or order, the City shall be responsible for and hereby agrees to indemnify Trojan against all claims, demands, losses, liabilities, costs and expenses incurred by it as a result of such non-compliance.

9. CONFIDENTIALITY

9.1 The City is an Arizona municipal corporation, subject to the Arizona Public Records Law, and cannot guarantee the confidentiality of any agreements, processes, or information regarding Trojan. In the event a public records request is received regarding Trojan, this Agreement, or anything else related to Trojan through the City's contractual relationship, Trojan is free to oppose, at its sole expense and cost, including all attorneys' fees, any public records request and indemnify the City against all claims, costs, fees, expert witness fees, attorneys' fees, or any other charge relating to the refusal or failure to disclose Trojan information.

9.2. Subject to A.R. S. § 39-121, *et seq.*, all technical information, specifications, drawings, documentation and knowhow of every kind and description disclosed by Trojan to the City shall be deemed to constitute "Confidential Information" of Trojan unless such information:

- 9.2.1. becomes part of the public domain through no fault of the City,
- 9.2.2. is disclosed to the City by a third party without breach of any obligation or other restriction,
- 9.2.3. is known to the City at the time of disclosure and has been documented as such, or
- 9.2.4. is required to be disclosed by law; or said legal, judicial, or administrative proceeding.

9.3. Subject to A.R. S. § 39-121, *et seq.*, all Confidential Information shall be owned by, and remain the exclusive property of, Trojan.

9.4. Subject to A.R. S. § 39-121, *et seq.*, all Confidential Information shall be held in confidence by the City and, if in any form of physical media, returned by the City to Trojan upon request. The City shall not:

- 9.4.1. reproduce the Confidential Information without the written consent of Trojan, or
- 9.4.2. use the Confidential Information for any purpose other than in connection with the operation and maintenance of the Equipment.

10. SEVERABILITY

10.1. Should any part of these Conditions be deemed unenforceable by a court of competent jurisdiction, it is the intention of the parties that all remaining portions of these Conditions shall remain and shall constitute the Conditions, with such amendments as may be required in the circumstances.

11. WAIVERS

11.1. None of the conditions or provisions of this Agreement shall be deemed to have been waived by any act or knowledge on the part of either party, unless expressly waived by instrument in writing signed by a duly authorized representative of the party waiving same. Further, the waiver by either party of any right hereunder, or the failure to enforce at any time any of the provisions of this Agreement or any other rights with respect thereto, shall not be deemed to be a waiver of any other rights hereunder or of any other breach or failure of performance of the other party.

12. GOVERNING LAW

Arizona law shall govern this Agreement these Attachments and any action must be brought in Maricopa County, Arizona.