

CITY CLERK
ORIGINAL

C-7949-1
05/27/2014

Service Agreement

THIS ON-LINE SERVICES AGREEMENT (this "Agreement") is made and entered into this 27 day of May, 2014, by and between **GovernmentJobs.com, Inc.**, a California corporation (d/b/a "NEOGOV") authorized to transact business in the State of Arizona, and the City of Glendale, AZ, a public entity acting by and through its duly appointed representative ("Customer").

1. **Provision of On-line Services.**

(a) Customer hereby engages NEOGOV, and NEOGOV hereby agrees (subject to the terms and conditions set forth herein), to provide the services (the "Services") more fully described in this Agreement and in Exhibit A (Order Form). Customer hereby acknowledges and agrees that NEOGOV's provision and performance of the Services is dependent and conditioned upon Customer's full performance of its duties, obligations and responsibilities hereunder.

2. **Additional NEOGOV Responsibilities.** In connection with the performance of this Agreement, NEOGOV shall be responsible for:

- (a) Hosting and operations support for the applications provided through this Agreement.
- (b) Providing and following those support, maintenance, procedures and other services to Customer more fully described in this Agreement.

3. **Customer Responsibilities.** In connection with the performance of this Agreement and the provision of the Services, Customer shall be responsible for the following:

- (a) NEOGOV's logos, including the "powered by" logo, may appear on the "employment opportunities", "job description" and other pages of Customer's web site.
- (b) Customer shall be responsible for ensuring that Customer's use of the Services and the performance of Customer's other obligations hereunder comply with all laws applicable to Customer.
- (c) Customer shall be responsible, as between NEOGOV and Customer, for the accuracy and completeness of all records and databases provided by Customer in connection with this Agreement for use on NEOGOV's system.

4. **Ownership, Protection and Security.**

- (a) The parties agree that the NEOGOV trademark(s) and logos and the Customer's trademark(s) and logos shall both be displayed on and through NEOGOV's system(s).
- (b) Ownership of any graphics, text, data or other information or content materials and all records and databases supplied or furnished by Customer hereunder for incorporation into or delivery through the application(s) described in this agreement shall remain with Customer, and NEOGOV shall cease use of all such material upon termination of this Agreement.

(c) Customer acknowledges and agrees that nothing in this Agreement grants Customer any licenses or other rights with respect to NEOGOV's software system (source code or object code) other than the right to receive Services as expressly provided herein. NEOGOV shall retain all ownership in the intellectual property and all other proprietary rights and interests associated with NEOGOV's software system and Services and all components thereof and associated documentation, except as expressly provided herein.

(d) NEOGOV grants to Customer a limited license during the term of this Agreement to use and reproduce NEOGOV's trademarks and logos for purposes of including such trademarks and logos in advertising and publicity materials and links solely as permitted hereunder. All uses of such trademarks and logos shall conform to Customer's standard guidelines and requirements for use of such trademarks and logos.

5. **NEOGO V Representations and Warranties.**

(a) *Service Performance Warranty.* NEOGOV warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof.

(b) *No Other Warranty.* EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

(c) *Disclaimer of Actions Caused by and/or Under the Control of Third Parties.* NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

6. **Publicity.** Following execution of this Agreement, the parties hereto may issue a press release, the form and substance of which shall be mutually agreeable to the parties, announcing the relationship created by this Agreement. Except as expressly contemplated herein, neither party shall issue any additional press release which mentions the other party or the transactions contemplated by this Agreement without the prior consent of the other party, which consent shall not be unreasonably withheld.

7. **Nondisclosure.** Through exercise of each party's rights under this Agreement, each party may be exposed to the other party's technical, financial, business, marketing, planning, and other information and data, in written, oral, electronic, magnetic, photographic and/or other forms, including but not limited to (i) oral and written communications of one party with the officers and staff of the other party which are NEOGOV, Inc.

marked or identified as confidential or secret or similarly marked or identified and (ii) other communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret ("Confidential Information") and trade secrets. In recognition of the other party's need to protect its legitimate business interests, each party hereby covenants and agrees that it shall regard and treat each item of information or data constituting a trade secret or Confidential Information of the other party as strictly confidential and wholly owned by such other party and that it will not, without the express prior written consent of the other party or except as required by law including the Public Records Act of the State of Arizona, redistribute, market, publish, disclose or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other party's Confidential Information during the term of this Agreement and for a period of three (3) years after the termination of this Agreement or, if later, from the last date Services (including any warranty work) are performed by the disclosing party hereunder; and (ii) any of the other party's trade secrets at any time during which such information shall constitute a trade secret under applicable law.

Notwithstanding the above, should any information described in this section be subject to a public records request, Customer will inform NEOGOV that the information will be released unless NEOGOV objects to the release within five days of the notice. If NEOGOV objects to release of any information, NEOGOV agrees to handle all communications with the requestor and indemnify, defend, and hold harmless Customer from any and all liability or penalties associated with the non-release or partial release of the requested information.

8. **Liability Limitations.**

(a) If promptly notified in writing of any action brought against Customer based on a claim that NEOGOV's Services infringe a United States patent, copyright or trademark right of a third party (except to the extent such claim or infringement relates to any third party software incorporated into NEOGOV's applications), NEOGOV will indemnify, defend and hold harmless Customer at NEOGOV's sole expense and NEOGOV will pay any and all fees, costs, penalties, interest, or damages of any kind or any manner that may be finally awarded in such action or any settlement resulting from such action (provided that Customer shall permit NEOGOV to control the defense of such action and shall not make any compromise, admission of liability or settlement or take any other action impairing the defense of such claim without NEOGOV's prior written approval).

(b) Customer acknowledges and agrees that: (i) NEOGOV has no proprietary, financial, or other interest in the goods or services that may be described in or offered through Customer's web site; and (ii) except with respect to any material supplied by NEOGOV, Customer is solely responsible (as between NEOGOV and Customer) for the content, quality, performance, and all other aspects of the goods or services and the information or other content contained in or provided through Customer's web site.

(c) OTHER THAN THOSE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, NEOGOV DOES NOT MAKE ANY WARRANTIES TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, EITHER EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER. NEOGOV SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY, UNDER ANY CIRCUMSTANCE OR DUE TO ANY EVENT WHATSOEVER, FOR CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION,
NEOGO, Inc.

LOSS OF PROFIT, LOSS OF USE OR BUSINESS STOPPAGE.

(d) Under no circumstances shall NEOGOV's total liability to Customer or any other person, regardless of the nature of the claim or form of action (whether arising in contract, tort, strict liability or otherwise), exceed the aggregate amount of fees and revenue received by NEOGOV hereunder for the prior twelve (12) month period; provided, however that the foregoing limitations set forth in this Section 8(d) shall not apply to claims or actions brought under 7 or 8(a) above or to any injury to persons or damages to property arising out of NEOGOV's gross negligence or willful, gross misconduct.

9. Term and Termination.

(a) This Agreement shall commence as of the date hereof ("Effective Date") and remain in effect for twelve (12) months unless terminated by either party as set forth herein ("Initial Term").

(b) This Agreement may be renewed for one additional one-year term ("Renewal Term") commencing on the anniversary of the Effective Date of this Agreement, provided Customer notifies NEOGOV in writing at least thirty (30) days prior to the end of the Initial Term that it wishes to renew.

(c) NEOGOV reserves the right to terminate this Agreement immediately if the Services provided hereunder become illegal or contrary to any applicable law, rule, regulation or public policy. Customer reserves the right to terminate this Agreement for cause immediately if there is a material breach of this contract by NEOGOV, including Services not being provided in accordance with Section 2 above or Exhibit A.

(d) Each party shall have the right to terminate this Agreement upon sixty (60) days prior written notice to the other party.

(e) Within sixty (60) days of notification of termination of this Agreement, NEOGOV shall provide Customer with a dedicated data files suitable for importation into commercially available database software (e.g., MS-Access or MS-SQL). The dedicated data files will be comprised of Customer's data contained in NEOGOV's system. The structure of the relational database will be specific to the Customer's data and will not be representative of the proprietary NEOGOV database.

(f) In the event either party terminates this Agreement prior to the conclusion of the Initial or Renewal Term in accordance with subsections (c) or (d) above, NEOGOV shall refund or reimburse Customer the amount paid for Services hereunder on a pro-rata basis.

10. Payments.

(a) *Initial Term.* See Exhibit A (Order Form).

(b) *Renewal Term(s).* During the Renewal Term, NEOGOV will continue to provide Customer with all Services, including maintenance and support services as described herein, provided Customer issues a purchase order or modification to this Agreement and pays NEOGOV, in advance, the annual recurring charges then in effect. If there is an increase in annual maintenance and support charges, NEOGOV shall give Customer written notice of such increase at least thirty (30) days prior to the expiration of the Initial Term. In order for the price increase to be effective, Customer must consent to such an amendment to this Agreement in a signed writing.

11. **Force Majeure.** Neither party shall be liable for any damages, costs, expenses or other consequences incurred by the other party or by any other person or entity as a result of delay in or inability to deliver any Services or fulfill any obligations due to circumstances or events beyond the party's reasonable control, including, without limitation: (i) acts of God; (ii) changes in or in the interpretation of any law, rule, regulation or ordinance; (iii) strikes, lockouts or other labor problems; (iv) transportation delays; (v) unavailability of supplies or materials; (vi) fire or explosion; (vii) riot, military action or usurped power; or (viii) actions or failures to act on the part of a governmental authority.

12. **Piggyback Clause.** It is understood and agreed by Customer and NEOGOV that any governmental entity may purchase the services specified herein in accordance with the prices, terms, and conditions of this Agreement. It is also understood and agreed that each local entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the new governmental entity and NEOGOV. It is also hereby mutually understood and agreed that Customer is not a legally bound party to any contractual agreement made between NEOGOV and any entity other than Customer.

13. **Miscellaneous.** Either party may not assign its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the party to be bound. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to conflict of law rules. Customer acknowledges and agrees that this Agreement is not intended to be and shall not be construed to be a franchise or business opportunity.

14. **Immigration Law Compliance.**

(a) NEOGOV, 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.

(b) Any breach of warranty under subsection (a) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement. Customer retains the legal right to inspect the papers of NEOGOV or subcontractor employee who performs work under this Agreement to ensure that NEOGOV or any subcontractor is compliant with the warranty under subsection (a) above.

(c) Customer may conduct random inspections, and upon request of the Customer, NEOGOV shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (a) above.

(d) NEOGOV agrees to keep papers and records available for inspection by the Customer during normal business hours and will cooperate with Customer 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 I.

(e) NEOGOV agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the Customer. NEOGOV 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 Customer.

(f) NEOGOV's warranty and obligations under this Section I to the Customer are continuing throughout the term of this Agreement or until such time as the Customer determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

(g) 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.

15. **Conflicts.** This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

16. **Notices.**

(a) A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

1. The Notice is in writing; and
2. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and

3. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:

(i.) 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 service on or before 5:00 p.m.; or

(ii.) As of the next business day after receipt, if received after 5:00 p.m.

4. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
5. Digitalized signatures and copies of signatures will have the same effect as original signatures.

(b) Representatives.

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

NEOGO
V
c/o Scott Letourneau
222 N Sepulveda Blvd, Ste 2000
El Segundo, CA 90245
310-426-6304
scott@neogov.com

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

Debbie Burson
HR Administrator
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
623-930-2919
dburson@glendaleaz.com

17. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between NEOGOV and Customer will be resolved in accordance with Exhibit B. The final determination will be made by the City.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date set forth above.

Customer

City of Glendale,
an Arizona municipal corporation



By: Brenda S. Fischer
Its: City Manager

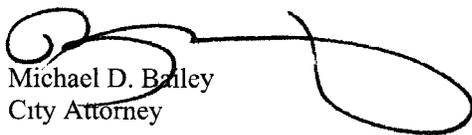
ATTEST



City Clerk

(SEAL)

APPROVED AS TO FORM:



Michael D. Bailey
City Attorney

GovernmentJobs.com, Inc., a California corporation

Signature: *Damir Davidovic*

Print Name: *Damir Davidovic*

Title: *CEO*

Date: *5-21-14*

EXHIBIT A – ORDER FORM

Customer:

Bill To:

<u>City of Glendale, AZ</u>		<u>Attention: Debbie Burson</u>	
		<u>Address: 5850 W. Glendale Ave.</u>	
		<u>Glendale, AZ 85301</u>	
		<u>Phone: (623) 930-2919</u>	
		<u>Email: dburson@glendaleaz.gov</u>	
<u>Quote Date:</u>	<u>3/13/14</u>	<u>Valid To:</u>	<u>12/31/14</u>
<u>Requested Service Date:</u>	<u>TBD</u>	<u>Initial Term:</u>	<u>12 Months, with one-year renewal option</u>

Order Summary:

<u>Line</u>	<u>Description¹</u>	<u>Annual-Recurring Cost</u>	<u>Non-Recurring Cost</u>
1.0	Insight Enterprise Edition		
1.1	Subscription License	\$17,500.00	
<u>Sub Total:</u>		\$17,500.00	
<u>Order Total:</u>		<u>\$17,500.00</u>	

¹More detailed descriptions of the services are contained in the order detail for each service, which are incorporated herein and made a part hereof by this reference.

Order Detail

1.0 Insight Enterprise Edition

1.1 License Subscription

The Customer's subscription to the Insight Hiring Management Software includes the following functionality.

Recruitment

- Customized online job application
- Accept job applications online
- Online applications integration with current agency website
- Online job announcements and descriptions
- Automatic online job interest cards
- Proactively search your applicant database
- Real-time database of all applicant information
- Recruitment and examination planning

Selection

- Create, store, and reuse supplemental questions in the Insight item bank
- Screen applicants automatically as they apply
- Define unique scoring plans per recruitment, or copy existing scoring plans
- Test Item bank (optional in TMS at an extra charge)
- Conduct item analysis
- Test processing (automatically input Scantron test data sheets)*
- Test analysis and pass-point setting
- Score, rank, and refer applicants

Applicant Tracking

- Email and hardcopy notifications
- EEO Data collection and reports
- Track applicants by step/hurdle
- Schedule written, oral, and other exams
- Detailed applicant history record
- Skills tracking and matching

Reporting and Analysis

- Collect and report on EEO data
- Analyze and report on adverse impact and applicant flow
- Track and analyze data such as time-to-hire, recruitment costs, staff workload, applicant quality, etc.
- Over 80 standard system reports
- Ad Hoc reporting tool

HR Automation

- Create and route job requisitions
- Refer and certify applicants electronically
- Scan paper application materials

* Requires a Scantron or similar Optical Mark Reader (OMR) scanner, special forms, form set-up, and scanner software, which are not included in the cost.

Additionally, during the term of the subscription, the Customer will be provided:

Unlimited Customer Support (6:00 AM – 6:00 PM PT)

Customer Support shall be provided to the Customer both on-line and by telephone Monday – Friday, 6:00 AM – 6:00 PM PT (excluding NEOGOV holidays).

Product Upgrades to Licensed Software

Customer shall receive all product upgrades to purchased package. Product upgrades are automatic and available upon the next login following a product upgrade rollout. Product upgrade rollouts are generally released every three months.

1.2 Provisioning

The following activities are conducted as part of the Insight Enterprise implementation

- Conduct a project kick off meeting to review the project timeline, deliverables, and establish project expectations
- NEOGOV will establish an Agency-specific training environment that will be used during training and post-training to allow the Agency to learn the system and begin defining new roles, responsibilities, and activities within the HR staff
- NEOGOV will conduct eight hours of on line instructor led video tutorial training. NEOGOV will provide all required user exercises and user guides to the Agency.
- Once the core user community is comfortable with the system (typically within 10 hours of hands-on use) they will train the remaining HR staff to complete their tasks using Insight.
- Between the training and go-live, NEOGOV will complete the following activities:
 - Creating an agency-specific training environment which is used by your agency during training and afterwards to train in prior to moving into production
 - Configure printable job bulletin
 - Integrate your new production job opportunities, promotional opportunities, and class specifications web pages into your existing agency website
 - Establish the Agency's Insight Enterprise production environment

1.3 Online Training

NEOGO V will deliver online training videos to Agency recruiters. We will provide all required user exercises and user guides to the Agency.

Following the training, your agency will have full access to the training environment. Additionally, your agency has full access to our Customer Support Help Desk during the training to help new users fully utilize Insight. Our existing customers find that this unique implementation approach enables their users to become familiar with Insight in a safe environment, promoting system use and leading to a more successful rollout.

Order Form Terms and Conditions:

- (1) The Customer hereby orders and GovernmentJobs.com, Inc. (d/b/a NEOGOV, Inc., hereafter "NEOGOVS") agrees to provide the services described in this Order Form. THE SERVICES ARE PROVIDED PURSUANT TO THE TERMS AND CONDITIONS OF THIS ORDER FORM AND THE SERVICE AGREEMENT BETWEEN NEOGOV AND THE CUSTOMER.
- (2) The Customer agrees that the payment schedule is as follows:
Provide all required software and Licenses
 - One hundred percent (100%) of the annual license price is payable within thirty (30) days of execution of this Order Form and Service Agreement. (\$17,500:00)
- (3) Neither the Customer nor NEOGOV will be bound by this Order Form until it has been signed by authorized representatives of both parties
- (4) Changes or alterations to this Order Form will not be accepted.

THERE ARE SIGNIFICANT ADDITIONAL TERMS AND CONDITIONS, WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS CONTAINED IN THE SERVICE AGREEMENT BETWEEN THE CUSTOMER AND NEOGOV.

DO NOT SIGN THIS ORDER FORM BEFORE YOU HAVE READ THE SERVICE AGREEMENT IN ITS ENTIRETY. YOUR SIGNATURE BELOW INDICATES THAT YOU HAVE READ THE SERVICE AGREEMENT AND AGREE TO BE BOUND BY ITS PROVISIONS.

<u>Customer</u>		<u>NEOGOVS, Inc.</u>	
Signature:		Signature:	
Print Name:	Brenda S. Fischer	Print Name:	Damir Davidovic
Title:	City manager	Title:	CEO
Date:	5/28/14	Date:	5-21-14

ATTEST:

City Clerk



EXHIBIT B
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, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial 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 10 years experience, 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 non-prevailing 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, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.
4. **Exceptions.**
- 4.1 **Third Party Claims.** City and Contractor 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 Contractor.
- 4.2 **Liens.** City or Contractor 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.