

CITY CLERK ORIGINAL

C-8100-1
06/26/2012

WARRANTY AGREEMENT

This Warranty Agreement for professional and construction services rendered ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Currier Construction Inc., an Arizona corporation, authorized to do business in the State of Arizona, ("Consultant") as of the 26 day of June, 2012 ("Effective Date").

RECITALS

- A. City has undertaken a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City retained the professional services of Consultant, including construction services, to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with an appropriate warranty for the professional and construction services rendered ("Services") which Services were and are consistent with best consulting engineer and construction practices and the standards set forth in this Agreement; 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, and Consultant warrants as follows:

1. Consultant's Work.

- 1.1 Standard. Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.
- 1.2 Licensing. Consultant warrants that:
 - a. Consultant and its Subconsultants or Subcontractors held, and continue to hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
 - b. Neither Consultant nor any Subconsultant or Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - c. 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.
- 1.3 Compliance. Services have been 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.
- 1.4 Warranties. At any time within two years after completion of the Project, Consultant must, at Consultant's sole expense and within 20 days of written notice from the City, uncover, correct and remedy all defects in Consultant's work and the work of its Subconsultants or Subcontractors. City will accept a manufacturer's warranty on approved equipment.

1.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its Subconsultants or Subcontractors to grant to the City, the exclusive ownership of and all copyrights, if any, 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 as may be applicable ("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 will also remove any seal and title block from the Work Product.

2. **Compensation for the Project.**

Consultant's compensation for the Project and this Warranty Agreement, including Services furnished by its Subconsultants or Subcontractors will not exceed \$196,307.70 .

3. **Payment.**

Payment may be subject to or conditioned upon City's receipt of:

- (1) Completed work generated by Consultant and its Subconsultants and Subcontractors; and
- (2) Unconditional waivers and releases on final payment from all Subconsultants and Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

4. **Conflict.** 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.

5. **Insurance.**

5.1 Requirements. Consultant avers that it has retained sufficient General Liability Insurance Coverage (minimum \$1 million per occurrence; \$2 million in the aggregate) and Professional Liability Insurance Coverage (minimum \$1 million per occurrence; \$2 million in the aggregate) to cover any potential claims which may be brought under the indemnity provisions of this Agreement or in accordance with any warranty.

5.2 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 the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.

- b. This indemnity and hold harmless provision 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 will 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.

6. Immigration Law Compliance.

- 6.1 Consultant, and on behalf of any Subconsultant or 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.
- 6.2 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.
- 6.3 City retains the legal right to inspect the papers of any Consultant, Subconsultant, or Subcontractor employee who performs work under this Agreement to ensure that the Consultant, Subconsultant or any Subcontractor is compliant with the warranty under this section.
- 6.4 City may conduct random inspections, and upon request of City, Consultant will provide copies of papers and records of Consultant demonstrating continued compliance with the warranty under this section. Consultant 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.
- 6.5 Consultant agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Consultant and expressly accrue those obligations directly to the benefit of the City. Consultant also agrees to require any Subconsultant or 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.
- 6.6 Consultant'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.
- 6.7 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.

- 7. **Prohibitions.** Consultant certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

8. Notices.

- 8.1 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 overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day 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; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
 - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
 - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

8.2 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:

Michael R. Rivera
Executive Vice-President
Currier Construction, Inc.
36 North 56th Street
Phoenix, Arizona 85034

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

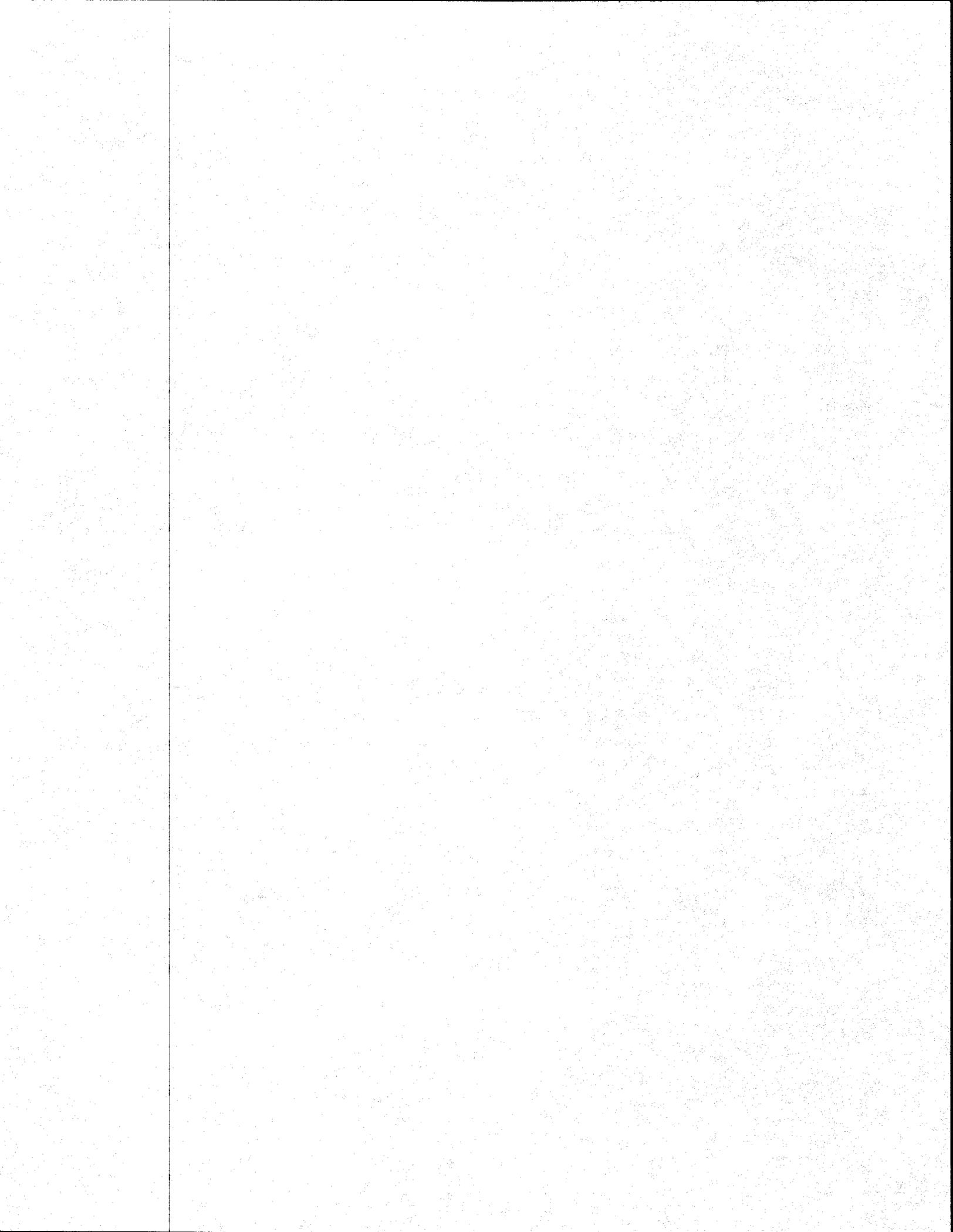
City of Glendale
c/o Craig Johnson
Executive Director, Water Services
7070 West Northern Avenue
Glendale, Arizona 85301

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 the City Manager and the 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.

9. Entire Agreement; Survival; Counterparts; Signatures.

9.1 Integration. This Agreement contains, except as stated below, 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 other 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.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

9.2 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.

9.3 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 Project, and the termination of this Agreement. Manufacturers' product and equipment warranties also survive the term of this Agreement

9.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

9.5 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.

9.6 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 with applicable law.

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

10. Term. The term of this Agreement commences upon either the effective date of this Agreement or the date upon which the work was completed and accepted by the City, whichever coverage period is longer, and continues for a two-year period. There are no automatic renewals of this Agreement.

11. 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

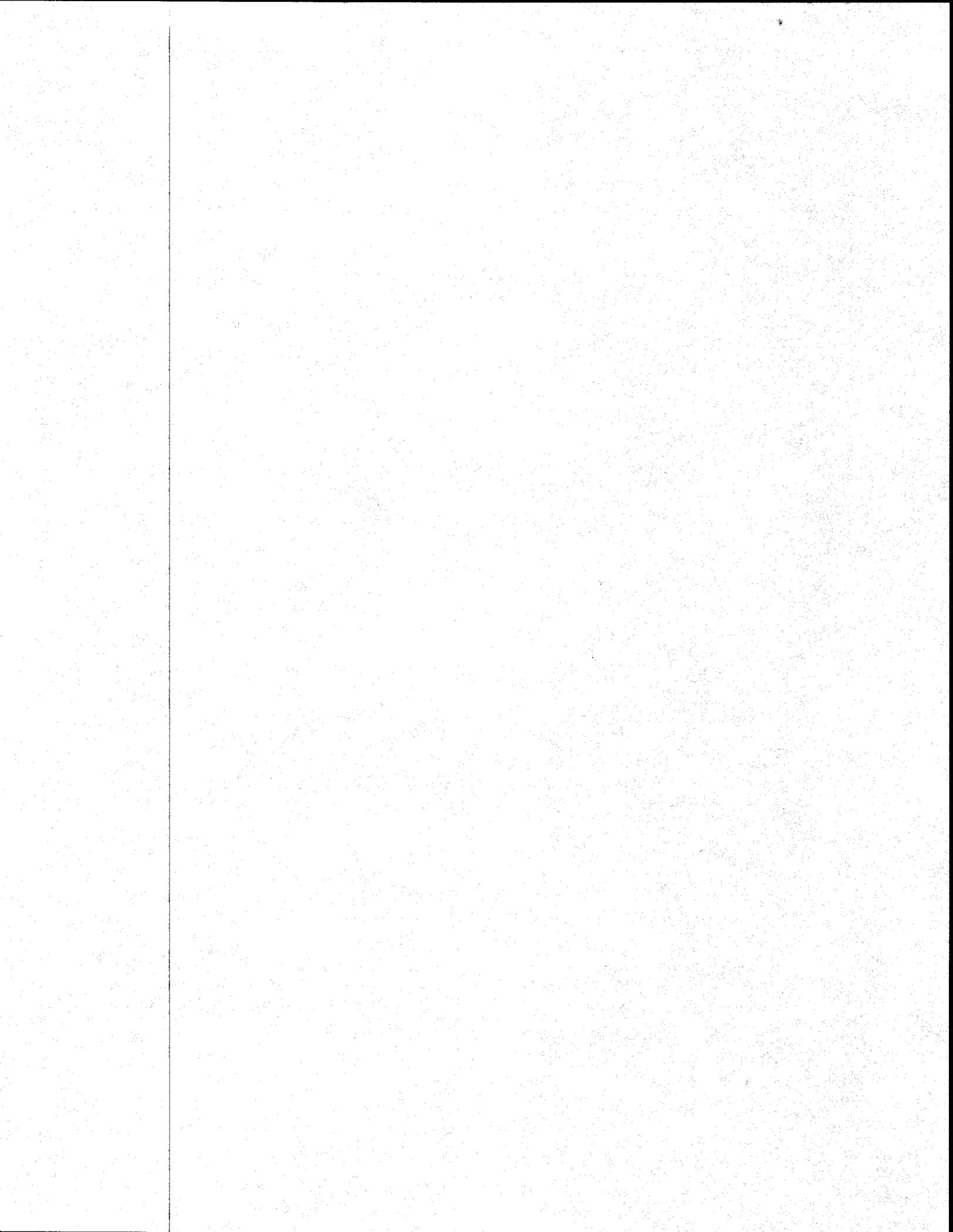


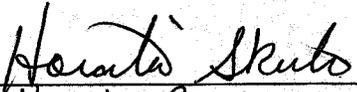
Exhibit D Compensation

Exhibit E Dispute Resolution

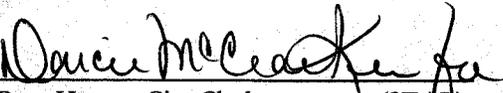
(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

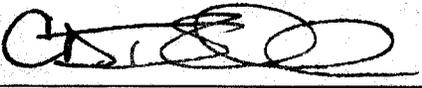
City of Glendale,
an Arizona municipal corporation


By: Horatio Skeete
Its: Acting City Manager

ATTEST:


Pam Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:


Craig Tindall, City Attorney

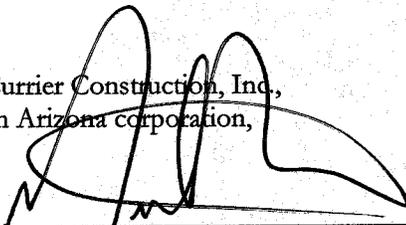
Currier Construction, Inc.,
an Arizona corporation,

By: Michael R. Rivera
Its: Executive Vice-President

EXHIBIT A
Professional Services Agreement

PROJECT

Arrowhead Treatment Facility—Removal of damaged and deteriorating skimmers and the replacement of the original skimmers with painted carbon steel skimmers with manual lever operators.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

1. Remove existing damaged skimmer units.
2. Purchase and install six new Polytech painted carbon steel skimmers with manual lever operators.
3. Remove and dispose of damaged skimmer units offsite.
4. Transport ineffective plastic skimmers offsite.

EXHIBIT C
Professional Services Agreement

SCHEDULE

NOT APPLICABLE.

EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

In accordance with Section 3 of this Agreement, Consultant agrees to submit an invoice to the City's Project Manager after completion of the Project. Upon approval of the expenditure by the City Council, and the receipt of a full and complete invoice, the City will remit payment within thirty (30) days of Council approval. Contractor acknowledges that the City is entitled to a \$103,303.43 credit and Contractor will apply the entire amount of the credit toward compensation for the full completion of all work required by the Project in its entirety.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$196,307.70.

DETAILED PROJECT COMPENSATION

See the attached Cost Proposal.

Cost Proposal



Task Number: TBD		CCI NO: TBD
Project Location: City Of Glendale Arrowhead Facility		Date: 01/12/12
Task Name: Purchase and Instalation of Painted Carbon Skimmers		Prepared by: GT
P.O. number TBD		

Description of Work to be Performed (attach supporting documentation and plan information):

1. Remove existing 6 skimmer units.
2. Purchase and install 6 new Polytech painted carbon steel skimmers with manual lever operators.
3. All electrical work on units is excluded from this proposal.
4. Dispose of existing skimmer units off site after removal.

Labor

Item	Unit	Quantity	Labor rate	Total	Item Total
Project Manager	Hours	16	\$85.00	\$1,360.00	\$1,360.00
Superintendent	Hours	240	\$59.00	\$14,160.00	\$14,160.00
Project Engineer	Hours	16	\$85.00	\$1,040.00	\$1,040.00
Administrative Assistant	Hours	0	\$34.00	\$0.00	\$0.00
Project Forman	Hours	0	\$40.00	\$0.00	\$0.00
Skilled Tradesman	Hours	480	\$34.00	\$16,320.00	\$16,320.00
Equipment Operator	Hours	240	\$32.00	\$7,680.00	\$7,680.00
Skilled Worker	Hours	240	\$29.00	\$6,960.00	\$6,960.00
				Total Labor Cost	\$58,480.00

Equipment

Item	Unit	Quantity	Equip. Unit	Total	Item Total
(Supt. & 1/2 PM, 1/2 PE time) Truck	Hours	256	\$9.00	\$2,304.00	\$2,304.00
Forman's Truck	Hours	0	\$8.00	\$0.00	\$0.00
Boom Truck	Day	12	\$900.00	\$10,800.00	\$10,800.00
Scaffolding	Day	30	\$75.00	\$2,250.00	\$2,250.00
Air Monitors	Day	30	\$120.00	\$3,600.00	\$3,600.00
Blower	Day	30	\$75.00	\$2,250.00	\$2,250.00
Reach lift	Day	30	\$275.00	\$8,250.00	\$8,250.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
Fuel	LS	1	\$500.00	\$500.00	\$500.00
Pickup and Delivery			\$0.00	\$0.00	\$0.00
				Total Equipment Cost	\$29,954.00

Materials

Item	Unit	Quantity	Material Unit	Total	Item Total
16" Diameter Painted Carbon Steel Scum Skimmers	EA	6	\$11,950.83	\$71,585.00	\$71,585.00
Epoxy for anchor bolts	LS	1	\$250.00	\$250.00	\$250.00
Misc. fastener and seal materials	LS	1	\$250.00	\$250.00	\$250.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
Safety Tools & Equipment			1.00%	\$475.20	\$475.20
Small Tools			5.00%	\$2,376.00	\$2,376.00
				Total Material Cost	\$74,956.20

Cost Proposal



Task Number: TBD			CCI NO: TBD
Project Location: City Of Glendale Arrowhead Facility			Date: 01/12/12
Task Name: Purchase and Instalation of Painted Carbon Skimmers			Prepared by: GT
P.O. number TBD			
Description of Work to be Performed by			
Company	Description of Work to be Performed (Supporting quote & information attached)		Item Total
Waste Management	Dumpster for old units		\$600.00
Christina Cameron PE	Skimmer Submittal Review		\$1,200.00
			\$0.00
Total SUBCONTRACTORS			
Subtotal			\$154,210.20
Mark-up of Work @ 12%			\$ 18,505.22
Total With Mark-up:			\$ 172,715.42
Support & Nondirect Site Expense			\$ 8,651.19
Total Field Costs:			\$ 181,366.61
Insurance Costs			\$ 3,445.97
Bond Costs	Minimum bond cost is \$250.00		\$ 2,720.50
Sales Tax (65% of 6.83%)			\$ 8,325.53
2nd Iteration Sales Tax			\$ 449.09
			\$ 196,307.70
<p>You are hereby notified that the payment requested by this job order does not include any amounts for changes in the work sequence, delays, disruptions, consequential cost impacts, or any other reasons and our right is expressly reserved to make claim for any and all of these related items of cost prior to final payment upon this Contract.</p>			
Submitted by: _____		Date: _____	

EXHIBIT E
Professional Services Agreement

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 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 five 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 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 will 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 required 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.