

CITY CLERK ORIGINAL

C-8102
06/26/2012

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into this 26th day of June, 2012, and is effective between the City of Glendale, an Arizona municipal corporation ("City"), and Luebkin & Walker Enterprises, Inc., an Arizona corporation authorized to do business in the State of Arizona, and currently doing business as Salt River Irrigation ("Contractor").

RECITALS

- A. City intends to undertake a project for the benefit of the public, with public funds, that is more fully set forth in **Exhibit A** attached ("Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project;
- C. City and Contractor 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 Contractor agree as follows:

1. Project.

- 1.1 Scope. Contractor will provide all services and material necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors, providers or consultants retained by City.
- 1.2 Project Team.
 - a. Project Manager. Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, to complete the Project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the Project by Contractor will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Contractor.
 - c. Sub-contractors.
 - (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
 - (2) Contractor will remain fully responsible for Sub-contractor's services.
 - (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
 - (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Project will be undertaken in a manner that ensures it is completed in a timely and efficient manner. If not otherwise stated in Exhibit A, the Project shall be completed no later than November 1, 2013.

3. **Contractor's Work.**

3.1 **Standard.** Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services and materials for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Contractor warrants that:

- a. Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- b. Neither Contractor nor any Sub-contractor 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 Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approval or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default of this Agreement.

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

3.4 **Coordination; Interaction.**

- a. If the City determines that the Project requires the coordination of professional services or other providers, Contractor will work in close consultation with City to proactively interact with any other contractors retained by City on the Project ("Coordinating Entities").
- b. Subject to any limitations expressly stated in the budget, Contractor will meet to review the Project, schedules, budget, and in-progress work with Coordinating Entities and the City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. If the Project does not involve Coordinating Entities, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 **Hazardous Substances.** Contractor is responsible for the appropriate handling, disposal of, and if necessary, any remediation and all losses and damages to the City, associated with the use or release of hazardous substances by Contractor in connection with completion of the Project.

3.6 **Warranties.** At any time within two years after completion of the Project, Contractor must, at Contractor's sole expense and within 20 days of written notice from the City, uncover, correct and remedy all defects in Contractor's work. City will accept a manufacturer's warranty on approved equipment.

3.7 **Bonds.** Upon execution of this Agreement, and if applicable, Contractor must furnish Payment and Performance Bonds as required under A.R.S. § 34-608.

4. **Compensation for the Project.**

4.1 **Compensation.** Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$138,108.60, as specifically detailed in Exhibit B ("Compensation").

- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified by the City.
- a. Adjustments to the Scope or Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the scope of the Project and not contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

5. Billings and Payment.

5.1 Applications.

- a. Unless Exhibit B (Compensation) dictates otherwise, the Contractor 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) Completed work generated by Contractor and its Sub-contractors; and
 - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

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.
- c. Contractor will provide, by separate cover, and concurrent with the execution of this Agreement, all required financial information to the City, including City of Glendale Transaction Privilege License and Federal Taxpayer identification numbers.
- d. City will temporarily withhold Compensation amounts as required by A.R.S. § 34-221(C).

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. Contractor will be equitably compensated any services and materials furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Contractor 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 Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages.
- b. If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. Insurance.

7.1 Requirements. Contractor must obtain and maintain the following insurance ("Required Insurance"):

- a. Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively "Contractor's Policies"), until each Parties' obligations under this Agreement are completed.
- b. General Liability.
 - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - (2) Sub-contractors 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, products and completed operations, XCU hazards if requested by the City, 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 Contractor and 1,000,000 per accident for Sub-contractors 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.
- e. Equipment Insurance. Contractor must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor or its Sub-contractors.
- f. Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- g. Certificates of Insurance.

- (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.
 - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
 - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under this Agreement.
- h. Other Contractors or Vendors.
- (1) Other contractors or vendors that may be contracted by Contractor with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular agreement.
 - (2) This insurance coverage must comply with the requirements set forth above for Contractor'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 and employer's liability coverages, the City must be named and properly endorsed as additional insureds on all liability policies required by this section.
- (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 section must be with companies legally authorized to do business in the State of Arizona and acceptable to all parties.

7.2 Sub-contractors.

- a. Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.
- c. Contractor and Sub-contractors must provide to the City proof of Required Insurance whenever requested.

7.3 Indemnification.

- a. To the fullest extent permitted by law, Contractor 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 Contractor)

and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), 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, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- c. Contractor 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.

7.4 Waiver of Subrogation. Contractor waives, and will require any Subcontractor to waive, all rights of subrogation against the City to the extent of all losses or damages covered by any policy of insurance.

8. **Immigration Law Compliance.**

- 8.1 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.
- 8.2 Any breach of warranty under subsection 8.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 8.3 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 8.1 above.
- 8.4 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 8.1 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.
- 8.5 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.
- 8.6 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.
- 8.7 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.

9. **Conflict.** Contractor 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.

10. **Foreign Prohibitions.** Contractor 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.

11. **Non-Discrimination Policies.** Contractor must not discriminate against any employee or applicant for employment on the basis of race, religion, color sex or national origin. Contractor must develop, implement and maintain non-discrimination policies and post the policies in conspicuous places visible to employees and applicants for employment. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section.

12. **Notices.**

12.1 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).
- 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, 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
 - (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.

12.2 **Representatives.**

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

Luebkin & Walker Enterprises, Inc., d/b/a
Salt River Irrigation
Attn: Andrew Walker
P.O. Box 1582
Glendale, Arizona. 85301

- 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
Attn: Mark Fortkamp
Utility Operations Superintendent
6210 W. Myrtle Ave. Suite. 112
Glendale, Arizona 85301

With required copies to:

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

City of Glendale
City Attorney
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 considered 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 Contractor identifying the designee(s) and their respective addresses for notices.
- d. Changes. Contractor 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.

13. **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.

14. **Entire Agreement; Survival; Counterparts; Signatures.**

14.1 **Integration.** This Agreement contains, except as stated below, the entire agreement between City and Contractor 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.
- c. Any solicitation, addendums and responses submitted by the Contractor are incorporated fully into this Agreement as Exhibit A. Any inconsistency between Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

14.2 **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.

14.3 **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, or the earlier termination of this Agreement.

14.4 **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.

14.5 **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.

14.6 **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.

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

15. **Dispute Resolution.** Each claim, controversy and dispute ("Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.
16. **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 | Compensation |
| Exhibit C | Dispute Resolution |

(The remainder of this page left blank intentionally. Signatures appear on the following page.)

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

City of Glendale,
an Arizona municipal corporation

Horatio Skub
By:
Its:

ATTEST:

Darce McCracken
City Clerk (SEAL)

APPROVED AS TO FORM:

[Signature]
City Attorney

Luebkin & Walker Enterprises Inc.,
an Arizona corporation d/b/a Salt River Irrigation

[Signature]
By: Andrew Walker
Its:

WOMEN-OWNED/MINORITY BUSINESS [] YES [] NO

1. PROJECT/SCOPE OF WORK GENERAL DESCRIPTION

- 1.1 Contractor will provide irrigation service to residents living in an area generally bounded by Olive Avenue on the north, Maryland on the south, 53rd Avenue on the east, and 65th Avenue on the west. The Contractor will provide water flow during the irrigation season as determined by the City ("Irrigation Season"). Contractor will furnish any and all required labor, materials, equipment, transportation and services for the normal operations and maintenance of irrigation services for a monthly fee set forth in Exhibit B of this Agreement. In addition, the Contractor shall repair damages to valves, gates, pipelines and property due to careless/negligent irrigation service at no additional charge to the city.
- 1.2 In the event of a water shut down or dry-up during the Irrigation Season, Contractor will notify affected customers within a reasonable time as defined by Executive Director of Water Services or his or her designee ("Contract Administrator"). Notification to customers shall be via door hangers, telephone or direct contact.
- 1.3 Contractor will serve as the customer service representative for responding to irrigation calls and resolving irrigation-related issues with the customer at all times. The Contractor shall communicate with the Contract Administrator on all customer complaints or changes.

2. IRRIGATION SPECIFICATIONS – BASIC SERVICES

2.1 Basic Irrigation Services

2.1.1 Deliver irrigation water to all irrigation customers in the same week on a bi-monthly basis during the Irrigation Season. The number of irrigation customers/properties range from approximately three hundred and thirty-five to four hundred and sixty-eight (335-468) customers annually. Irrigation customer count varies annually as numbers are based on residential participation.

2.1.2 Total irrigation run time for the year is one thousand nine hundred and eighty (1,980) hours.

2.1.3 During the course of the thirty (30)-week Irrigation Season, up to a maximum of fifteen (15) irrigations per customer shall be provided.

2.1.4 Contractor shall coordinate communications with Salt River Project (SRP) and the City to order water for irrigation delivery.

2.1.5 Contractor shall communicate with the Contract Administrator on all customer complaints or changes. The Contractor agrees to respond to all customer service complaints within 24 hours of receiving notice. In the event of an irrigation emergency, the Contractor shall respond within 30 minutes or less. The Contractor will maintain a logbook of all complaints and submit a monthly report to the Contract Administrator.

2.2 Site Inspections

2.2.1 Contractor has made a site inspection and is aware of all the conditions affecting its performance of this Agreement prior to signing this Agreement. The site inspection activities include, but are not limited to, physical inspections of all irrigation customer properties and the irrigation distribution system.

2.2.2 The Contractor will coordinate with the Contract Administrator to maintain a current database of irrigation customers. The Contractor must maintain a logbook of all cancellations and new sign-ups including lot inspections and re-inspections. The Contractor shall submit monthly reports containing the information.

3. IRRIGATION SERVICES – ADDITIONAL SERVICES

3.1 Regular Maintenance and Repair

3.1.1 Contractor shall identify, excavate and repair problems within the irrigation system and complete any and all maintenance and repairs within 5 working days after notification by the City.

3.1.2 If the problem within the irrigation system is an emergency, Contractor must begin corrective action or repair immediately and complete the work as soon as practicable.

3.1.3 If Contractor could not complete the repair and maintenance within the period provided in 3.1.1 and 3.1.2, Contractor shall notify the Contract Administrator in writing (hand delivered) as soon as possible.

3.2 If a complex repair is required in the City's right-of-way, the Contractor will request quotations and report the repair to the Contract Administrator.

3.3 Contractor shall dedicate one employee to serve as the system maintenance coordinator and customer service representative, year round three hundred sixty-five (365) days a year, twenty-four (24) hours/day, seven (7) days/week.

3.4 Contractor shall provide a logbook identifying all repairs, calls, and complaints on a monthly basis to the Contract Administrator.

4. GENERAL WORK PERFORMANCE

4.1 City will perform weekly evaluation of Contractor's performance. If City is not satisfied with Contractor's performance, City will issue a written notice setting forth the deficiencies, and a date by which the deficiencies must be corrected to City's satisfaction.

4.2 If Contractor does not correct deficiencies to City's satisfaction, City may, at the sole expense of the contractor, correct the deficiencies by using City personnel or another contractor. The cost for services performed by City personnel or another contractor to correct deficiencies will be deducted from Contractor's monthly service payment in accordance with Paragraph 9 of this Exhibit.

4.3 Contractor will ensure that only skilled work crews shall be employed on projects performed under this contract. When required by the Contract Administrator, the Contractor must discharge any person who is, in the opinion of the Contract Administrator, disorderly,

dangerous, insubordinate, incompetent, or otherwise objectionable. Contractor shall hold the City harmless and indemnify the City from damages or claims for compensation that may occur in the execution and enforcement of this Agreement.

4.4 The Contractor will provide qualified supervision of each crew at all times. Each supervisor must be able to converse in the English language, and shall be authorized by Contractor to accept and act upon all directives issued by City. Failure of the supervisor to act on said directives constitutes a material breach of the Agreement unless such directives would create potential personal injury or safety hazards, or are contrary to the intent of the Agreement.

4.5 The Contractor will only employ skilled work crews, a minimum two employees per shift. Each crew member must be able to converse in the English language, and shall be authorized by Contractor to accept and act upon all directives issued by City.

4.6 Employees of Contractor shall be easily identified by uniform or name badge representing Contractors' company. Employees will also be required to carry at all times cell phones for communication purposes.

5. CITY REQUIREMENTS

5.1 The City will bill the irrigation customers and receive all revenue directly. Contractor will be paid on a monthly basis after receipt of an itemized invoice. Services for a partial month will be prorated based on the amount of time the services were provided (i.e. 14-day service = amount per month/property, divided by 30 days, multiply by 14 days).

5.2 The City shall provide Contractor with maps and geographical data for irrigation customers.

6. TERM

6.1 Unless otherwise renewed or amended, the Agreement will terminate on March 31, 2014.

6.2 City may, at its option and with the approval of Contractor, extend the term of this agreement four additional years in one year increments. Contractor shall be notified in writing by the City Materials Manager of the City's intent to extend the contract period at least thirty (30) calendar days prior to the expiration of the original contract period. Price adjustments will only be reviewed during contract renewal and may be subject to the approval of City's governing body.

7. COOPERATIVE USE OF CONTRACT

The Agreement may be extended for use by other governmental agencies and political subdivisions of the State, including all members of SAVE (Strategic Alliance for Volume Expenditures). Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City.

8. PERMITS AND LICENSES

Contractor is responsible for determining and securing, at its own expense, any and all licenses and permits that are required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction in any manner connected with providing operations and maintenance of the

facility. Such fees shall be included in and are part of the total proposal cost. During the term of the contract, the Contractor shall notify the City in writing, within two (2) working days, of any suspension, revocation or renewal.

9 LIQUIDATED DAMAGES

If Contractor fails to deliver the supplies or perform the services within the time specified in this Agreement, or any extension thereof, the actual damages to the City for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, Contractor shall pay to the City as fixed, agreed, and liquidated damages for each calendar week of delay, the amount of \$50.00/property. Contractor shall not be charged with liquidated damages when the delay arises out of cause beyond the control and without the fault of negligence of the successful proposer. City shall determine what is beyond the control of the successful proposer and his supplier.

**EXHIBIT B
CONSTRUCTION AGREEMENT**

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

By bid; services are based upon time and materials.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$138,108.60.

DETAILED PROJECT COMPENSATION

For Irrigation Services-Basic Services \$98,208.60:

All Irrigation customers receive water in the same week on a bi-monthly basis. The number of irrigation customers/properties range from approximately 335 to 468 annually. Irrigation customer counts vary annually as the number is based on residential participation.

Total irrigation run time for the year is 1,980 hours.

During the course of the irrigation season, 30 weeks, up to a maximum of 15 irrigations per customer shall be provided.

As reflected in the compensation, the Contractor shall coordinate communication with Salt River Project (SRP) and the City to order water for irrigation delivery. In addition, the Contractor shall communicate with the City's Contract Administrator or designee on all customer complaints or changes. The Contractor agrees to respond to all customer service complaints within 24 hours of receiving notice. In the event of an irrigation emergency, the Contractor shall respond within 30 minutes or less. The Contractor will maintain a logbook of all complaints and submit a monthly report to the City's Contract Administrator or designee.

The Contractor shall conduct physical inspections of all irrigation customers' properties to become familiar with the irrigation distribution system prior to start of each irrigation season. Contractor will locate the delivery valve, determine the condition of the berms, identify any potential flooding hazards, and inform the homeowner of any required corrective action. After the visual inspection, Contractor will perform a "trial irrigation run" at the earliest available opportunity to verify proper flow to the property and identify any other potential issues.

The Contractor shall coordinate with the City's Contract Administrator or designee to maintain a current database of irrigation customers. The Contractor shall maintain a logbook of all cancellations and new sign-ups including lot inspections and re-inspections. The Contractor shall coordinate information into monthly reports.

For Irrigation Services-Requested Additional Services \$39,900.00:

The Contractor shall identify, excavate and repair problems within the irrigation system and complete any and all "Maintenance and Repairs" within 5 working days after notification by the City; with the exception of emergency calls.

If Contractor is delayed at any time, the Contractor shall notify the City in writing (hand delivered) of such delay within 8 hours thereof and shall make a specific reference to this section of the proposal.

Contractor will monitor the irrigation system while providing the delivery service, ensuring sufficient flow to customers' lots. Contractor will identify any new deficiencies that are preventing adequate flow and use all available resources to correct the problem on site. If the problem cannot be corrected on site, contractor will notify all affected customers via door hangers and notify the City by telephone to inform all interested parties of the interruption in service and intent to correct the problem before the next scheduled delivery.

Upon completion of each delivery cycle, Contractor will compile a list of all new deficiencies to be corrected during the following maintenance week. Contractor will coordinate and complete all basic repairs to the irrigation system during the maintenance week. If a complex repair is required in the City's right-of-way, the Contractor will request quotations and report repair to the City's Contract Administrator or designee.

The Contractor shall dedicate 1 employee to serve as the system maintenance coordinator and customer service representative, year round 365 days a year, 24 hours/day, 7 days/week. If a customer has a question or complaint that cannot be resolved on site, a Contractor supervisor will contact the customer within 1 hour to schedule a visit. In the event of an emergency, a Contractor supervisor will be on site within 30 minutes.

The Contractor shall provide a logbook identifying all repairs, calls, and complaints and submit a report on a monthly basis to the City's Contract Administrator or designee.

**EXHIBIT C
CONSTRUCTION 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 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 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.