

CITY CLERK ORIGINAL

C-8363
02/12/2013

ADMINISTRATIVE SERVICES AGREEMENT

City of Glendale Retiree Health Savings Account

This Administrative Services Agreement ("Agreement") is made and entered into between City of Glendale, an Arizona municipal corporation ("City" or "Employer"), and Educators Benefit Consultants, LLC, a third party administration company registered with the Arizona Department of Insurance ("EBC"), as of the 12th day of February, 2013.

RECITALS

- A. City sponsors a retiree health savings plan on behalf of its eligible employees (RHS); and
- B. ICMA-RC currently administers the RHS for the City; and
- C. ICMA-RC exercised its 60-day termination clause for the RHS; and
- D. City adopted an amended and restated City of Glendale Retiree Health Savings Account Basic Plan and Trust Document (RHSA) ("Plan") this same date; and
- E. City desires to contract with EBC to provide administrative services on behalf of the Plan.
- F. City and EBC 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 EBC agree as follows:

1. EBC OBLIGATIONS.

- 1.1. Plan Documentation. EBC will prepare the following documentation for Plan in order to keep Plan compliant with Internal Revenue Codes (IRC) 105, 106, 213(d), and 115 as applicable. EBC will make recommendations to the City of Glendale ("Employer") as needed on ways to comply with these Code sections. Employer will be notified of the cost, and changes required by the IRS as changes are required.
 - 1.1.1. Plan Document
 - 1.1.2. Adoption Agreement
 - 1.1.3. Trust Document (if trust is desired pursuant to IRC 115)
 - 1.1.4. Summary Plan Description – Plan Highlights
 - 1.1.5. Enrollment Forms
 - 1.1.6. Claim Forms
 - 1.1.7. Initial COBRA Notice
 - 1.1.8. Notice of Privacy Practices (also referred to as HIPAA Privacy Notice)
 - 1.1.9. Business Associate Agreement for HIPAA compliance purposes.
- 1.2. Discrimination Test (D-Test) Performed Annually. EBC shall annually perform and review eligibility and benefits discrimination test in accordance with IRC 105(h). Employer shall receive D-Test Form from EBC and complete and return. EBC shall provide written results and analysis

of test. If the first line of testing provides that employer Plan is discriminating in favor of the highly compensated, EBC will perform another test (the Classification Test). The Classification Test will require census information from the Employer. The fee for performing any Classification Test during the Initial Term of the Agreement is set forth on Exhibit A, Fee Payment Authorization, which is attached and incorporated herein.

- 1.3. Administrative Duties. EBC shall perform the following:
 - 1.3.1. Process participant claims and determine the amount to be distributed for claim reimbursements.
 - 1.3.2. Prepare benefit and/or account statements for the participants.
 - 1.3.3. Reimburse participants via ACH, check, or debit card process.
 - 1.3.4. Consult on additional plan design issues.
 - 1.3.5. Perform Center for Medicare & Medicaid Services Reporting as required under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.
 - 1.3.6. Monitor investment offerings in HRAs funded in a trust environment.
 - 1.3.7. Provide participants with ability to change investment designations on-line or via paper forms.
 - 1.3.8. Provide participants with investment performance information and expense.
 - 1.3.9. Provide daily valued funds.
 - 1.3.10. Provide secure web access to daily account activity
- 1.4. Ongoing Annual Filings. Upon request by Employer, EBC will prepare the following filings. The cost to prepare any of these filings during the Initial Term of the Agreement is set forth on Exhibit A:
 - 1.4.1. Medicare D Creditable Coverage Certificates and government reporting.
 - 1.4.2. COBRA Administration. Because of the complex nature of COBRA, a separate engagement letter to establish performance expectations and other matters will be required.

2. EMPLOYER OBLIGATIONS.

- 2.1. **Timeliness and Accuracy of Data.** Employer will provide complete, accurate, and timely employee information to EBC. EBC will rely exclusively on information provided by Employer or Employer's authorized representative(s) in writing, and will have no responsibility to verify independently the accuracy of that information. We assume no responsibility to acquire information other than to request it from you, and will not be liable for any errors or omissions made because of incomplete or incorrect information that you furnish to us. In the event inaccurate or incomplete materials require that we repeat any compliance work already completed, you will be charged an additional fee.
- 2.2. **Annual Compliance.** Upon request EBC may require employee census data and updated information about your company. Following the receipt of complete information from you, EBC will do the following:
 - 2.2.1. **Filing Government Reports** – EBC will prepare certain government reports on your behalf. You will be responsible for the timely filing of these reports with the appropriate agency.
 - 2.2.2. **Notification of Contacts by Government Agencies** – Employer will notify EBC of any plan audits, investigations, or examinations by any governmental agency including, without limitation, the Internal Revenue Service or U.S. Department of Labor. If additional services are requested in connection with any such audit, investigation, or examination,

EBC will provide those services and bill separately for those services under our Fee Schedule.

2.2.3. Qualified Medical Child Support Order ("QMCSO") Determination – Unless Employer otherwise requests us to assist in the determination, Employer will be responsible for the determination of whether court orders comply with the QMCSO requirements of the Code. Assistance from EBC, if requested, requires no additional fee. In the event Employer has possession of any QMCSO requiring the separation of any assets of the Plan, Employer must inform EBC of the required separation.

2.2.4. Other Plans - The Plan's operation and tax qualification is affected by other plans sponsored by the Company (whether currently active or terminated, and whether or not EBC administers them). Employer is responsible for informing EBC of other plans.

3. **CONFIDENTIALITY.** The EBC design shall not be divulged by the Employer to any third parties, unless required by legal process or law, including Arizona's Public Records law, A.R.S. § 39-101 et seq., or written permission is received from EBC providing that the Employer may divulge aspects of the EBC design when acting as a reference to third parties who are considering adoption of the EBC system.

4. **BILLING PROCEDURES AND COLLECTIONS.**

4.1. Statements, Late Charges, Stopping of Work – Employer will be billed on an ongoing basis for work performed by EBC that is not taken directly from the participants' accounts.

4.2. EBC will submit monthly invoices (each, a "Payment Application") to Employer and Employer will remit payments based upon the Payment Application as stated below. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

4.3. After a full and complete Payment Application is received, Employer will process and remit payment within 30 days. Payment may be subject to or conditioned upon Employer's receipt of completed work generated by EBC and its subcontractors.

4.4. Statements are due upon receipt, and become delinquent and subject to late charges if payment is not received by EBC's office within 30 days. If payment is past due in excess of 60 days, EBC reserves the right to stop all work until Employer's account is brought current. In addition, balances not paid within 60 days of the invoice date will bear a late charge equal to 1.5% of the outstanding balance for each month or partial month until paid in full. EBC is not responsible for any late tax filings or penalties, fines, taxes, or other charges that may be assessed.

5. **GOVERNING LAW.**

5.1. This agreement is made, or to be performed in the Arizona, and shall be interpreted, construed, and enforced in accordance with the substantive law of the State of Arizona. The venue of any arbitration shall be in Maricopa County, Arizona, unless otherwise agreed by Employer and EBC.

6. **EFFECTIVE DATE, TERM AND TERMINATION.**

6.1. This Agreement will be in effect on March 1, 2013 or such late date as the Agreement has been signed by both Employer and EBC ("Effective Date").

6.2. The term of the Agreement is for a period of five (5) years from March 1, 2013 through February 28, 2018. Employer may, at its option and with the approval of EBC, extend the term of this Agreement an additional two (2) years, renewable on an annual basis. No price adjustments will be reviewed during the initial five-year term of this Agreement. Price adjustments will only be reviewed during the Agreement renewal period.

6.3. This Agreement may be terminated upon thirty (30) days written notice by Employer. This Agreement may be terminated upon one hundred eighty (180) days written notice by EBC.

7. **ENTIRE AGREEMENT.**

7.1. This Agreement contains the entire agreement between Employer and EBC with respect to your Plan. This Agreement may be modified only by mutual written consent between you and EBC.

8. **CONFLICT OF INTEREST.**

8.1. EBC 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.

9. **INSURANCE.**

9.1. EBC shall be fully responsible for providing Workers' Compensation or other applicable insurance coverage for itself and its employees and the Employer shall have no responsibility of liability for such insurance coverage.

9.2. EBC shall provide to the Employer a copy of the policy or a certification by the insurance carrier, showing EBC to have in effect during the term of this Agreement, a General Liability Insurance policy, which shall be the primary coverage for EBC activities under this Agreement. The coverage limits of such insurance shall not be less than those listed below.

9.3. EBC certificate(s) shall include all sub-contractors as additional insured's under its policies or EBC shall furnish to the Employer separate certificates and endorsements for each subcontractor. All coverage's for sub-contractors shall be subject to the minimum requirements identified above.

9.4. The insurance company issuing the policy required above shall have an AM Best financial rating of "A-" or better and be authorized by the State of Arizona Department of Insurance to transact business within the State. **The certificate and policy shall name the Employer as an additional insured and shall be primary and the Employer's insurance/self-insurance shall be non-contributory coverage. The Employer shall also be an additional insured to the full limits of the liability insurance purchased by EBC even if those limits are in excess of those required by this Agreement.**

9.5. The Employer reserves the right to terminate this Agreement if EBC fails to maintain such insurance coverage.

9.6. EBC must provide certification of insurance compliance within ten (10) calendar days after notification of award. Certification must include: name and address of insurance company; policy number; liability coverage amounts; a statement the policy will not be canceled or failed to be renewed without thirty (30) days written notice to the Employer. Certification to be submitted to: Materials Management, 5850 West Glendale Avenue, Suite 317, Glendale, Arizona 85301.

<u>Type of Insurance</u> <u>(Minimum)</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Employer's Liability	
Each Accident	\$100,000
Disease-Each Employee	\$100,000
Disease-Policy Limit	\$500,000

Commercial General Liability shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, independent contractors, and broad form contractual coverage.

Each Occurrence	\$1,000,000
Personal and Advertising	\$1,000,000

General Aggregate	\$2,000,000
Products-Completed Operations	\$1,000,000
Automobile Liability – Including bodily injury and property damage for any owned, hired and non-owned vehicles used in the performance of the services	
Combined Single Limit (CSL)	\$1,000,000
Professional Liability (Errors and Omissions) coverage shall apply to liability for a professional error, act or omission arising out of the scope of services as defined. EBC warrants that any retroactive date under a claims-made policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed. The policy shall contain a waiver of subrogation in favor of the City of Glendale.	
Per Claim	\$1,000,000
Policy Aggregate	\$2,000,000

10. WORKER'S COMPENSATION.

- 10.1. Workers' Compensation Law (Title 23, Chapter 6, Arizona Revised Statutes) as amended, and all rules and regulations of the Industrial Commission of Arizona made in pursuance thereof. EBC shall secure payment of compensation to employees by insuring the payment of such compensation with the State Compensation Fund or any insurance company authorized by the Insurance Department of Arizona to transact business in the State of Arizona
- 10.2. EBC further agrees that he shall require any and all sub-contractor performing work under the agreement to comply with said Workers' Compensation Law. It is expressly understood and agreed that all persons employed directly or indirectly by the EBC, or any of his sub-contractor(s), shall be considered the employees of EBC or his sub-contractor(s), and not the employees of the Employer of Glendale.

11. INDEMNIFICATION.

- 11.1. EBC shall indemnify, defend, save and hold harmless the City of Glendale and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of EBC or any of its owners, officers, directors, agents, employees or subEBCs. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such EBC to conform to any Federal, State or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by EBC from and against any and all claims. It is agreed that EBC will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the EBC agrees to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from the work performed by the EBC for the City.
- 11.2. EBC shall indemnify and hold harmless Employer and each of its officers, directors, and employees from and against any and all claims, damages or expense of any kind incurred by Employer (including any asserted indemnification claim against Employer by MG Trust or otherwise) as a result of a third party claim that EBC or MG Trust acted in negligence, willfully, or in violation of applicable standard of care in breach of its obligations under this Plan or other agreements.

12. IMMIGRATION LAW COMPLIANCE.

- 12.1. EBC, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 12.2. 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.
- 12.3. City retains the legal right to inspect the papers of any EBC or subcontractor employee who performs work under this Agreement to ensure that EBC or any subcontractor is compliant with the warranty under this section.
- 12.4. City may conduct random inspections, and upon request of City, EBC shall provide copies of papers and records of EBC demonstrating continued compliance with the warranty under this section. EBC 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.
- 12.5. EBC agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon EBC and expressly accrue those obligations directly to the benefit of the City. EBC 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.
- 12.6. EBC'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.
- 12.7. 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.

13. FOREIGN PROHIBITIONS. EBC 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 statutes, in the countries of Sudan or Iran.

14. NOTICES.

- 14.1. A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
 - 14.1.1. The Notice is in writing; and
 - 14.1.2. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
 - 14.1.3. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - 14.1.3.1. 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 service on or before 5:00 p.m.; or
 - 14.1.3.2. The next business day after receipt, if received after 5:00 p.m.
 - 14.1.4. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
 - 14.1.5. Digitalized signatures and copies of signatures will have the same effect as original signatures.

15. REPRESENTATIVES.

15.1. EBC. EBC's representative (the "EBC's Representative") authorized to act on EBC's behalf with respect to this Agreement, and his or her address for Notice delivery is:

Educators Benefit Consultants, LLC
c/o Paige McNeal
3125 Airport Parkway, NE
Cambridge, MN 55008

15.2. 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 Executive Director of Human Resources and Risk Management
Attn: Jim Brown
5850 West Glendale Avenue
Glendale, Arizona 85301
623-930-2277

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

15.3. Concurrent Notices.

15.3.1. All notices to City's representative must be given concurrently to City Manager and City Attorney.

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

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

15.3.4. Changes. EBC 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.

16. Entire Agreement; Survival; Counterparts; Signatures.

16.1. Integration. This Agreement contains, except as stated below, the entire agreement between City and EBC and supersedes all prior conversations and negotiations between the parties regarding this Agreement.

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

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

16.4. The solicitation, any addendums and the response submitted by EBC are incorporated into this Agreement as if attached hereto. Any EBC response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

16.5. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

- 16.6. 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 the earlier termination of this Agreement.
- 16.7. 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. Electronic signature blocks do not constitute execution.
- 16.8. 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.
- 16.9. 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 deemed reformed to conform to applicable law.
- 16.10 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
- 17. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between EBC and City will be resolved in accordance with Exhibit B. The final determination will be made by the City.
- 18. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

- Exhibit A Fee Payment Authorization
- Exhibit B Dispute Resolution

The parties enter into this Agreement as of the Effective Date set forth above.

City of Glendale,
an Arizona municipal corporation

Horatio Skeete
Horatio Skeete, Acting City Manager

ATTEST:

[Signature]
City Clerk (SEAL)

APPROVED AS TO FORM:

[Signature]
City Attorney

EDUCATORS BENEFIT CONSULTANTS, LLC,
an insurance company registered with the Arizona
Department of Insurance

Page McNeal
By: Page McNeal
Its: VP

EXHIBIT A

FEE PAYMENT AUTHORIZATION

Plan: **CITY OF GLENDALE RETIREE HEALTH SAVINGS ACCOUNT (RHSA)**

Employer: **CITY OF GLENDALE, ARIZONA**

Pursuant to the attached "Administration Services Agreement", EBC has been engaged by the "Plan" to provide administration and compliance services. The specific services are outlined in the "Administration Services Agreement". The purpose of this agreement is for the Plan and Employer to acknowledge the fees associated with the compliance services provided by EBC and to authorize EBC to deduct fees for these services directly from participant accounts (either by design, or in the event of non-payment by the Employer).

1. Fees - For the performance of these services, EBC will charge the following:

- A. **Plan Documentation Fee (Document and Set-up) – One time only** **\$1,000**
- B. **Discrimination Test (D-Test) Performed Annually**
 - (a) **Initial Test: Eligibility and Benefits Test** **No Charge**
 - (b) **If needed: Classification Test** **\$ 850**
- C. **Post-Employment HRA fees are paid by participant unless another arrangement is made between Employer and EBC.**
- D. **Optional Services – These fees apply if services are requested by Employer**

Ongoing Annual Filings:

 - Medicare Creditable Coverage Notice
 - Annual Notice & the government filing \$250 plus postage
 - COBRA Administration
 - Continuation Packet \$15.00
 - Monthly COBRA Admin Fee \$7.00 per participant per month

2. **EFT/ACH Authorization for Contributions and Reimbursements**

Unless otherwise negotiated, Employer will authorize EBC to receive information via an electronic transaction from the Plan.

By: Horatio Skeete 2.15.13
Print Name: **HORATIO SKEETE** Date
Title: **ACTING CITY MANAGER**
Address: **5850 W. GLENDALE, GLENDALE AZ 85301**
Phone: **623 930 2870**

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 ten 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 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 ten years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least ten 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, EBC 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 EBC in accordance with this Agreement.

4. **Exceptions.**

- 4.1 Third Party Claims. City and EBC 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 EBC.
- 4.2 Liens. City or EBC 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.