

CITY CLERK ORIGINAL

C-8819
02/25/2014

PROFESSIONAL SERVICES AGREEMENT

for
General Plan Update

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Matrix Design Group, Inc., a Colorado corporation, authorized to do business in the State of Arizona, ("Consultant") as of the 25 day of February, 2014 ("Effective Date").

RECITALS

- A. City intends to undertake 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 desires to retain the professional services of Consultant 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 professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows.

1. Key Personnel; Other Consultants and Subcontractors.

1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within 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 consultants or contractors, retained by City.

1.2 Project Team.

a. Project Manager.

(1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and

(2) The City must approve the designated Project Manager.

b. Project Team.

(1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team"

(2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.

c. Discharge, Reassign, Replacement.

(1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.

(2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

(3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors.

(1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.

(2) Consultant will remain fully responsible for Subcontractor's services.

(3) Subcontractors must be approved by the City.

(4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. Schedule. The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. Consultant's Work.

3.1 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.

3.2 Licensing Consultant warrants that:

a. Consultant and its Subconsultants or Subcontractors will 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").

(1) 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.

(2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 Compliance Services will be 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.

3.4 Coordination; Interaction.

a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").

b. Consultant will meet to review the Project, Schedule and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

c. For projects not involving Coordinating Project Professionals, Consultant 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 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 defend, indemnify, and hold harmless the 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.

4. Compensation for the Project.

4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$110,000 as specifically detailed in **Exhibit C** ("Compensation").

4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.

a. Adjustments to 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 contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.

c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

4.3 Allowances. An "Allowance" may be identified in **Exhibit C** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.

a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit C** and any unused allowance at the completion of the Project will remain with City.

b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant

c. Consultant will not use any portion of an Allowance without prior written authorization from the City

d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

4.4 Expenses City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:

a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;

b. The Reimbursable Expenses in this section are approved in advance by City in writing; and

c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

5. Billings and Payment.

5.1 Applications.

a. Consultant 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 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.

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.

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. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.

b. Consultant 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 Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach

a. Consultant 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 Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.

b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages.

c. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall

require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

7. **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.

8. **Insurance.**

8.1 **Requirements.** Consultant must obtain and maintain the following insurance ("Required Insurance"):

a. Consultant and Subconsultants and Subcontractors. Consultant, and each Subconsultant or Subcontractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverage's at least as broad as described below (collectively referred to herein as the "Consultant's Policies"), until each Party's obligations under this Agreement are completed. If the Consultant's Policies provide higher limits than the minimums shown below, the City requires and shall be entitled to coverage for the higher limits maintained.

b. Commercial General Liability (CGL).

(1) Must at all times relevant hereto carry a CGL policy, as broad as Insurance Services Office Form CG 00 01, on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury with limits no less than \$1,000,000 per claim and \$2,000,000 annual aggregate limit.

c. Professional Liability (Errors and Omissions) Must maintain insurance appropriate to the Consultant's profession with limits no less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

d. Automobile Liability. Must maintain insurance with limits no less than \$1,000,000 per accident for bodily injury and property damage covering owned, non-owned and hired automobiles.

e. Workers' Compensation and Employer's Liability. Must maintain a workers' compensation and employer's liability policy with limits no less than \$500,000 per accident for bodily injury or disease. (Not required if consultant's provides written verification it has no employees).

f. Notice of Changes. Consultant must provide for not less than 30 days' advance written notice to City Representative of cancellation or termination.

g. Certificates of Insurance.

(1) Within 10 business days after the execution of the Agreement, Consultant must deliver to City Representative certificates of insurance for each of Consultant's Policies, which will confirm the existence or issuance of Consultant's Policies in accordance with the provisions of this section, and copies of the endorsements of Consultant'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 Consultant's Policies, or to examine Consultant's Policies, or to inform Consultant, Subconsultant, or Subcontractor in the event that any coverage does not comply with the requirements of this section. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them

(3) Consultant's failure to secure and maintain Consultant's Policies and to assure Consultant's Policies as required will constitute a material default under the Agreement.

h. Other Contractors or Vendors.

(1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.

(2) This insurance coverage must comply with the requirements set forth above for Consultant's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).

1. Policies. Except with respect to workers' compensation and professional liability coverage's, City, its officers, officials, employees and volunteers are to be covered as additional insured's 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 City.

(2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

j Waiver of Subrogation. Consultant's hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant's Policies may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

k. Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work
2. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*
3. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of contract work.

l. Corporate Protection. It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Consultant agrees that it is responsible for all acts and omissions of its employees, offices or directors regardless of the nature of the conduct and including intentional and grossly negligent actions occurring within the course and scope of employment while performing services pursuant to this Agreement, and the City agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Consultant, a Colorado corporation, and not against any of the Consultant's individual employees, officers or directors. This provision is inapplicable and shall not limit the City's remedy in the event Consultant denies or disputes responsibility or liability for the acts of its employees, officers or directors.

m. Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Consultant. The Consultant's services under this Agreement are being performed solely for the City's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The City and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision

8.2 Subconsultants and Subcontractors

a. Consultant must also cause its Subconsultants and Subcontractors to obtain and maintain the Required Insurance

b. City may consider waiving these insurance requirements for a specific Subconsultant or Subcontractor if City is satisfied the amounts required are not commercially available to the Subconsultant or Subcontractor and the insurance the Subconsultant or Subcontractor does have is appropriate for the Subconsultant or Subcontractor's work under this Agreement

c. Consultant and Subcontractors must provide to the City proof of the Required Insurance whenever requested.

8.3 Indemnification.

a. Indemnification for General Liability/Non-Professional Negligence

1. Consultant shall defend, indemnify and hold harmless the City and any of its agencies, officials, or employees from and against damages, liability, losses, cost and expenses, including reasonable attorneys' fees arising out of or resulting from the negligence of the Consultant, its employees, agent or subconsultants or other for whom the Consultant is legally liable, provided that such damage, liability, loss cost or expense is:

a) Attributable to bodily injury, sickness, disease, or death or the injury to or destruction of tangible property (other than the Project itself) including loss of use resulting there from and

b) Not the result of professional negligence; and

c) In addition, the Consultant's obligations hereunder shall specifically apply to those damages, liability, losses, costs or expenses arising from the negligent acts of the City or any its agencies, officials, officers, or employees in those instances which the City is named additional insured under the Consultant's General Liability insurance policy. If required insurance is not procured and maintained as required by this Agreement, then the Consultant's obligations hereunder shall apply as though the insurance was in place.

b. Indemnification for Professional Negligence.

1. The Consultant shall indemnify and hold harmless the City and any of agencies, officials, officers, or employees from and against damages, liability, losses, costs and expenses, but only to the extent caused by the negligent acts, errors or omissions of the Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, in the performance of professional services under this Agreement. The Consultant is not obligated under this subparagraph to indemnify the City for the negligent acts of the City or any of its agencies officials, officers or employees.

9. Immigration Law Compliance.

9.1 Consultant, and on behalf of any Subconsultant or Subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all applicable 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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

9.7 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.

10. Notices.

10.1 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.

10.2 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:

Celeste B. Werner, AICP
Project Manager / Vice President
Matrix Design Group, Inc.
2224 West Northern Avenue
Suite D-240
Phoenix, AZ
85021

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 Jon M. Froke, AICP
Planning Director
5850 West Glendale Avenue
Suite 212
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.

11. 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.

12. Entire Agreement; Survival; Counterparts; Signatures.

12.1 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 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 attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

12.2 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.

12.3 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.

12.4 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.

12.5 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.

12.6 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.

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

13. Term. The term of this Agreement commences upon the Effective Date and continues until March 1, 2015, unless sooner terminated. The City Manager may, at the City's option and with the approval of the Consultant, extend the term of this Agreement an additional six months. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original

or any renewal Agreement period. No price adjustments will be allowed. There are no automatic renewals of this Agreement.

14. **Fund Appropriation.** Consultant understands that the continuation of this Agreement after the close of the City's current fiscal year, which ends on June 30, 2014, is subject to City Council appropriation of the necessary expenditures required by this Agreement. Should the appropriation required for funding this Agreement not be made, the City may terminate this Agreement as of the close of any fiscal year during the term of this Agreement.

15. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit D**. 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	Scope of Work
Exhibit C	Compensation
Exhibit D	Dispute Resolution

(Signatures appear on the following page.)

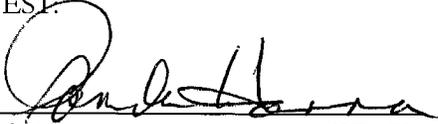
The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation



By: Brenda S. Fischer
Its: City Manager

ATTEST:



Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:



Michael D. Bailey
City Attorney

Matrix Design Group, Inc.,
a Colorado corporation



By:
Its: VICE PRESIDENT

EXHIBIT A
Professional Services Agreement

PROJECT

The Consultant will provide professional planning services to update and rewrite portions of the General Plan for the City of Glendale. The General Plan will include all required elements, studies and data in accordance with the Growing Smarter and Growing Smarter Plus legislation as found in Title 9 of the Arizona Revised Statutes. The General Plan will be based on citizen input, previous planning activities, and technical analyses of specific element areas.

The Consultant shall prepare a public involvement plan that ensures that staff, elected officials, appointed officials, stakeholders and the general public has ample opportunity to be involved in developing the elements of the General Plan and the Elections component. The Consultant will work with a staff team from related departments and a Council-appointed General Plan Steering Committee. The Consultant will provide public involvement opportunities in each of the six City Council districts as well as coordinate the overall citizen participation effort with assistance from city staff. The Consultant is invited to propose creative approaches that will reach out to the general public.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

The Consultant will provide the following services, in accordance with the provision of applicable Arizona Revised Statutes and City of Glendale Rules

Task One: Scope of Work - Minor adjustments to the scope of work, as set forth here and in Exhibit A, may be needed as part of the initiation process and throughout the project. Major changes from the scope of work are not anticipated. The Consultant shall create a new name for the General Plan that is acceptable to the City of Glendale. Glendale 2035 is the working title of the General Plan Update and should be used as part of the final name.

Task Two: Public Involvement (Citizen Participation Plan) - The Consultant(s) shall prepare a Citizen Participation Plan that meets the legal requirements of Arizona Revised Statutes and the City of Glendale Citizen Participation Ordinance. The Consultant will work with a staff team from related departments and a Council-appointed General Plan Steering Committee. The Consultant will attend public meetings and provide public involvement opportunities in each City Council district, as well as coordinate with the overall citizen participation efforts for the General Plan Update. The Consultant is invited to propose creative approaches that will reach out to the general public.

Task Three: Compilation of Existing Data - Numerous plans, studies, analysis documents currently exist within various departments in the City of Glendale. Compilation of pertinent information contained in these documents and copies of said documents shall be compiled by the Consultant prior to initiation of the public involvement process. "White Papers" will be produced by Planning Division staff as needed to serve as baseline information from which public involvement discussions can be based. The Consultant will be asked to review the "White Papers."

Task Four: Plan Elements - The content of the plan elements will be derived from a combination of data, strategic planning methodology, and public, City Council, General Plan Steering Committee, and staff team input. A timeline for the development of each plan element shall be prepared for review and approval of the City. It is anticipated that development of the plan elements shall overlap one-another or occur simultaneously due to the time constraints involved.

The current General Plan, Glendale 2025, is available in a word document on a compact disk. It is anticipated that the Consultant will update the existing text and mapping to reflect current conditions and to incorporate additional required elements of the General Plan

Task Five: Project Timeline & Public Hearings - An overall timeline for the General Plan project shall be developed with the following assumptions built into the timeline.

- a) The Consultant should be prepared to attend up to four (4) Planning Commission workshops and two (2) public hearings.
- b) The Consultant should be prepared to attend up to two (2) City Council workshops and one (1) public hearing.
- c) The Consultant should be prepared to attend a neighborhood meeting in each of the six (6) City Council districts to introduce the Glendale 2035 to the public.
- d) Notice to Proceed to be issued immediately upon execution of the approved contract.
- e) Draft General Plan to be complete and delivered to the City no later than March 1, 2015.
- f) Public hearing process to begin with a Planning Commission Workshop no later than June 30, 2014.
- g) Target date for adoption of General Plan by the Glendale City Council is no later than January 31, 2015.

Task Six: Deliverables -

The General Plan format will consist of both text (Microsoft Word) and maps (ArcGIS) in an 8 1/2" X 11" three ring binder format that lends itself to future annual amendments. Maps shall be produced in a format of 24" X 36", with the capability of being legibly reduced to 11" X 17" or 8 1/2" X 11" for inclusion in the binder. The Consultant shall deliver the draft and final documents in both hard copy and electronic formats that allows for easy reproduction, direct web readiness, and the ability for staff to edit. All data and graphics shall be created and submitted in a format compatible with those programs utilized by the City of Glendale Planning Division. The City of Glendale shall retain all ownership rights to the final product; however the Consultant may retain any work and reproduce without limitation for inclusion in a portfolio.

EXHIBIT C
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

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 \$110,000, including the cost of Deliverables.

DETAILED PROJECT COMPENSATION

Total compensation for professional services for completion of the Project and Scope of Work, Exhibits A and B respectively, shall be \$100,000. Progress payments shall be paid to consultant upon approval of invoice by City's Planning Director. During FY 2014 (through June 30, 2014) Consultant shall complete the following:

Task One: Scope of Work - Minor adjustments to the scope of work, as set forth here and in in Exhibit A, may be needed as part of the initiation process and throughout the project. Major changes from the scope of work are not anticipated. The Consultant shall create a new name for the General Plan that is acceptable to the City of Glendale. Glendale 2035 is the working title of the General Plan Update and should be used as part of the final name.

Task Two: Public Involvement (Citizen Participation Plan) - The Consultant shall prepare a Citizen Participation Plan that meets the legal requirements of Arizona Revised Statutes and the City of Glendale Citizen Participation Ordinance. The Consultant will work with a staff team from related departments and a Council-appointed General Plan Steering Committee. The Consultant will attend public meetings and provide public involvement opportunities and coordinate with the overall citizen participation efforts for the General Plan Update. The Consultant is invited to propose creative approaches that will reach out to the general public.

Task Three: Compilation of Existing Data - Numerous plans, studies, analysis documents currently exist within various departments in the City of Glendale. Compilation of pertinent information contained in these documents and copies of said documents shall be compiled by the Consultant prior to initiation of the public involvement process.

Payment for work completed during FY 2014 shall not exceed \$31,726. Payment for work completed during FY 2015 shall not exceed \$78,274

Continuation of this Agreement after the close of the City's current fiscal year, which ends on June 30, 2014, is subject to City Council appropriation of the necessary expenditures required by this Agreement. If such expenditures are appropriated, the remainder of work pursuant to the Scope of Work (the entire Project) must be completed by March 31, 2015, or as otherwise agreed to in writing by the City's Planning Director and Consultant. Compensation for the Deliverables is in addition to the compensation for Professional Services shall be billed at actual cost to Consultant with no mark up.

EXHIBIT D
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.