

PROFESSIONAL SERVICES AGREEMENT

City of Glendale
Wastewater Collection System and Manhole Rehabilitation Phase III
Project No. 121325

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Dibble & Associates Consulting Engineers, an Arizona Corporation, ("Consultant") as of the 10 day of June, 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 indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
 - (3) In such case, City will also remove any seal and title block from the Work Product.

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 ~~\$306,495.00~~ \$205,045.00 (revised 7-23-14 per council approved amount as specifically detailed in **Exhibit D** ("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 D** 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 D** 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 more than \$1,000,000 or the amount of this Agreement, whichever is greater.

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 coverages described below (collectively referred to herein as the "Consultant's Policies"), until each Party's obligations under this Agreement are completed.
- b. **General Liability.**
 - (1) Consultant 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 limit.
 - (2) Subconsultants and Subcontractors 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, 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. **Professional Liability.** Consultant must maintain a professional errors and omissions liability policy providing a minimum limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
- d. **Auto.** A business auto policy providing a liability limit of at least \$1,000,000 per accident for Consultant and \$1,000,000 per accident for Subconsultants and Subcontractors and covering owned, non-owned and hired automobiles.

- e. **Workers' Compensation and Employer's Liability.** Consultant must also maintain a workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- f. **Notice of Changes.** Consultant's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Consultant's Policies;
 - (2) Reduction of the coverage limits of any of Consultant's Policies; and
 - (3) Any other material modification of Consultant's Policies related to this Agreement.
- 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.
 - (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).
- i. **Policies.** Except with respect to workers' compensation and Consultant's professional liability coverages, 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 reasonably acceptable to all parties.

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. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

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 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:

Dibble & Associates Consulting Engineers, Inc.
c/o Joseph W. Graham
7500 N. Dreamy Draw Drive, Suite 200
Phoenix, Arizona, 85020

- 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 Bill Passmore, Principal Engineer
5850 W. Glendale Ave.
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 for a 1 year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional 1 year, renewable on an annual basis. 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. Price adjustments will only be reviewed during the Agreement renewal period. There are no automatic renewals of this Agreement.

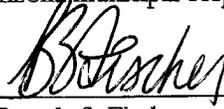
14. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit E**. The final determination will be made by the City.
15. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation
Exhibit E	Dispute Resolution

(Signatures appear on the following page.)

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

City of Glendale,
an Arizona municipal corporation



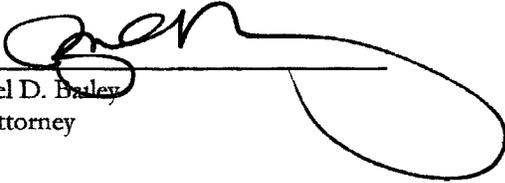
By: Brenda S. Fischer
Its: City Manager

ATTEST:



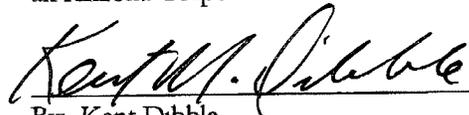
Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:



Michael D. Bailey
City Attorney

Dibble & Associates Consulting Engineers, Inc.,
an Arizona Corporation



By: Kent Dibble
Its: President

EXHIBIT A
Professional Services Agreement

PROJECT

(Cover Page)

EXHIBIT A
Professional Services Agreement
City of Glendale
Wastewater Collection System and Manhole Rehabilitation Phase III
Project No. 121325

REVISED 7-23-14 per Council Approved Contract Amount

PROJECT

DESCRIPTION OF PROJECT:

The City of Glendale has identified thirteen (13) pipe segment work areas that require corrective measures to ensure proper operation of the sanitary sewer collection system. Dibble Engineering will provide engineering design and construction administration services. This project consists of rehabilitating approximately 4,000 linear-feet of 8-inch, 10-inch and 27-inch diameter sanitary sewer pipe and installation of three (3) new manholes located at thirteen (13) separate locations throughout the City.

The project will be constructed under a Design-Bid-Build procurement method.



EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

(Cover Page)

EXHIBIT B
Professional Services Agreement
CITY OF GLENDALE
Wastewater Collection System and Manhole Rehabilitation Phase III
Project No. 121325

REVISED 7-23-14 per Council Approved Contract Amount

SCOPE OF WORK

Consultant (Dibble Engineering) will provide engineering design, bidding and construction phase services for the rehabilitation of sanitary sewer collection pipe and manholes at various locations throughout the City.

The Consultant will provide sanitary sewer rehabilitation design, technical specifications, field survey work, construction administration and observation services. Construction documents for thirteen (13) pipe segment work areas that require corrective measures to ensure proper operation of the sanitary sewer collection system. This project consists of rehabilitating approximately 4,000 linear-feet of 8-inch, 10-inch, and 27-inch diameter sanitary sewer pipe and installation of three (3) new manholes. Areas of work are identified in the following list:

TABLE ONE						
Work Area Location Number	Street Location	Manhole From	Manhole To	Pipe Material	Size (In.)	Length (L.F.)
165	N 59th Ave. / LOOP 101	41-15-042	40-15-010	RCP	27	540
175	N 59th Ave. / LOOP 101	40-15-010	40-15-003	RCP	27	346
173	N. 45th Ave. / W. El Camino Dr.	25-18-050	25-18-048	Liner	8	190
174	N. 45th Ave. / W. El Camino Dr.	25-18-051	25-18-050	Liner	8	253
188	W. Sherri Jean Ln. / N. 67th Ln.	35-12-058	35-12-057	VCP	8	405
69	W. Palmaire Ave. / N. 59th Ave.	23-15-049	23-15-025	Concrete	8	235
70	W. Palmaire Ave. / N. 59th Ave.	23-15-025	23-15-024	Concrete	10	181
71	W. Glenn Dr. / N. 59th Ave.	23-14-044	23-15-024	VCP/PVC/ CIPP	8	324
72	W. Glenn Dr. / N. 59th Ave.	23-14-024	23-15-023	Concrete	8	60
73	W. Myrtle Ave. / N. 58th Dr. Alley	23-15-027F	23-15-074	Concrete	8	367
74	W. Palmaire Ave. / N. 59th Ave. Alleyway School Yard	23-15-074	23-15-026	Concrete	8	251
75	W. Palmaire Ave. / N. 59th Ave. Alleyway School Yard	23-15-026	23-15-025	Concrete	8	189
75A	W. Palmaire Ave. / N. 59th Ave. Alleyway School Yard	23-15-026	Cap	Concrete	8	-

The services listed in this scope of work may include, but are not limited to, the following:

Task A. General Project Administration:

- 1) **Design Coordination:** The Consultant shall perform coordination with the City's Project Team during the design of the project. Coordination may include:
 - a. Coordinating with private, public and City utilities (Water Services Department and Wastewater Departments) regarding standard technology and utility issues and incorporating pertinent information into the plans.
 - b. Submitting and retrieving all required design documents to the required reviewing agencies.
 - c. Assisting the City in obtaining all required permits and approvals required for the Project. As the Project progresses, the Consultant shall timely furnish to the City copies of all communications between the Consultant and the respective agency or department and all approvals and permits for the Project.



- 2) **Meetings:** Attending project meetings as necessary to maintain the project budget and schedule; chairing periodic regular meetings; setting agendas and preparing and distributing meeting minutes. Meetings under basic services may include:
 - a. Meetings with City staff and management.
 - b. Meetings required to obtain a permit.

- 3) **Monthly Progress Report:** Submitting a written monthly progress report to the Project Team during the entire period of the project. Also, the Consultant will be required to submit a monthly project schedule update and status report, as well as a quarterly project cash flow schedule. This information will be submitted to City Engineering Administration for the entire period of the project, through both design and construction.
 - a. **Project Schedule:** The Consultant shall prepare a significant event calendar within fourteen (14) days of the Notice to Proceed (NTP). The initial schedule should show the original start date with initial completion date as a reference. One copy of the original overall schedule with original time line and data dates shall be submitted at the project kick-off meeting. Additionally, minimum general time frames for project milestones shall be provided. The Consultant shall update the schedule monthly to keep it current showing comparison with the Baseline/Target schedule. The updated schedule report shall be submitted with the monthly invoice.
 - b. **Invoices:** The Consultant shall submit a projection of monthly project billings with the fee proposal. The projected billing will be consistent with the project tasks, the project schedule, and the fee proposal. The City will provide the format for invoices. Projected invoices, with progress and status reports will be delivered to the City's Project Manager no later than the 25th day of the month. The invoices will be consistent with the project tasks, project schedule, fee proposal, and projected billings. The invoice will identify the contract number and include the amount of each work task and man-hour level of effort and consultant service identified in the approved fee proposal. The percent complete shall be determined the project schedule, tasks, and fee proposal per tasks. The total invoice submitted shall be less than or equal to the report that details the task percent complete with the associated cost. The invoice will show the amounts previously billed, the amount due for the current period, the project balance and the percent complete per tasks.
 - The Consultant shall submit one hard copy invoice to the City Project Manager, City of Glendale Engineering Department, 5850 West Glendale Avenue, Glendale, Arizona 85301.
 - c. **Cash Flow:** The cash flow schedule will provide information to the City regarding future funds needed to complete the project. It is the responsibility of the Consultant to submit the project life cycle cash flow spreadsheet on a quarterly basis. Non-response to this requirement could delay payments to the Consultant. The Consultant will have life cycle design and construction administration responsibility for the project.

The Consultant will collect or estimate the cash flow information from all the parties involved in the project (e.g., design consultants, engineers, construction contractors, etc.) and will combine this information using the Excel four (4) page workbook provided to the Consultant by the city. The Consultant will need to obtain the cash flow information from the Contractor and coordinate this information into the overall cash flow information. The Consultant will complete the applicable four (4)-page worksheet and send it electronically to Gloria Olaya (golaya@glendaleaz.com)) with the Engineering Department. To request an electronic form, address requests to the above. To request by telephone, call 623-930-3630.

Task B. Sewer Rehabilitation Design:

- 1) **Data Research and Collection:** Consultant will research City records and files to obtain pertinent as-built construction plans, quarter section maps, CCTV records, aerial photographs, and other information for design development. Consultant will contact Blue Stake in areas where excavation is anticipated to obtain a list of utilities having facilities within the area. Consultant will contact identified utility companies to obtain facility maps from the utility companies. Consultant will review and incorporate information as applicable to this project.

- 2) **Technical Memorandum:** Consultant will perform a CCTV review of the identified sewer pipe segments to determine the appropriate recommendations for construction. Options for construction will be CIPP lining, spot repairs, or open cut. Method of rehabilitation will be documented in an excel spreadsheet, and conclusions summarized in a technical memorandum (three pages).

- 3) **Field Survey:** Consultant will provide topographic survey for locations depicted below (as defined in Table 1) using Global Positioning System (GPS) equipment. The survey will be based on Glendale's vertical and horizontal datum. Consultant will prepare construction drawings depicting the results of local control, easements and rights-of-way.
 - Control drawing will be provided to show one (1) existing monument (vertical and horizontal)
 - Location 165 – topographic survey provided only at the manhole locations, and around the freeway access roads (topographic survey will NOT be provided across ADOT Loop 101)



- Control drawing will be provided to show one (1) existing monument (vertical and horizontal)
- Location 173, 174 – topographic survey will be provided for the entire area
- Location 188 - topographic survey will be provided for the entire area
- Location 69-75 – topographic survey will be provided only around the areas where manholes are to be installed

The topographic survey will extend 50 feet around the area of proposed work. Topographic survey will include location and elevation information for existing surface features, including fence lines, existing structure corners, curbs, pavement, and driveways as well as sewer manholes (rim and invert) and other observed surface features.

- 4) **Utility Coordination:** With each progress submittal, plans will be submitted to companies with utilities present within areas of disturbance, for "no conflict" review. The City's project manager will be provided a table showing that each utility has received and responded to the "no conflict" review upon request.

Consultant will identify underground utilities to be potholed. Consultant will identify required utility potholes and will coordinate with a pothole sub-consultant to collect and show potholes on the construction documents. Consultant will incorporate findings of subsurface utility investigation into the construction plans prior to the 90% submittal (Permit Drawings). A utility potholing allowance has been provided.

Task C. Construction Documents:

- 1) **Technical Specifications:** Consultant will prepare technical specifications and special provisions for the items not specifically addressed in the MAG specifications and City of Glendale Standards. Below is a list of technical specifications that will be modified and tailored specifically for this project:
- Measurement and Payment (Specifically for a design-bid-build)
 - Diversion of Sewage Flow
 - Remote CCTV Inspections of Existing Sewers
 - Sewer and Sewer Structure Cleaning
 - CIPP Lining of Existing Sewers
 - CIPP Lining of Existing Large Diameter Sewers
 - Coating Systems (Manholes)

These technical specifications will be included as specified under deliverables below for each submittal.

- 2) **Design Drawings:** Consultant will compile and integrate base maps from the information gathered in the field survey. Utilities will be shown based on surface features surveyed as well as mapping information received from each utility. Base mapping will be created in AutoDesk Civil 3D (AutoCAD 2013) format in conformance with Dibble's CAD standards.

Consultant will prepare design drawings and details for the proposed sewer rehabilitation as identified below. These drawings will be based on topographic survey, City ¼ sections maps, as-builts, and utility maps. Plan and profile drawings will be prepared at 1"=20' horizontal scale and 1"=2' vertical scale.

- Location 165 – plan and profile drawings be provided for this area
- Location 173, 174 – plan and profile drawings be provided for this area
- Location 188 – sewer plan and profile drawings be provided for this area
 - Water plan and profile sheet will also be required for the relocation of existing 6-inch water main
- Location 69-75 – all 8 and 10-inch sewer, will be rehabilitated with trenchless methods assuming CIPP lining. Contractor to use City Sewer ¼ section maps. Plan and profile drawings will be required for two (2) new manholes.

Plan preparation will be in accordance with the following standards and guidelines:

- City of Glendale, Engineering Design and Construction Standards and Standard Details, 2002
- Maricopa Association of Governments, Uniform Standard Specifications for Public Works Construction, Revisions through 2014
- Maricopa Association of Governments, Uniform Standard Details for Public Works Construction, Revisions through 2014



Special details will be prepared for construction not covered by the above noted standard details. Consultant will provide an engineer's opinion of probable construction cost for the 50%, 90%, and 100% submittals using the unit costs and item descriptions from the MAG Bid Item List, wherever possible, and recent bid tabulations from similar projects.

DELIVERABLES: Consultant will assemble and distribute the following deliverables:

- a. 50% Submittal: Submittal will include cover, sewer pipe plan view depicting the location of the work.
 - Two (2) copies Preliminary Technical Memorandum
 - Three (3) copies of plans, half size (11x17)
 - Two (2) copies, Engineer's opinion of probable construction cost
 - One (1) copy of Technical Specifications (Table of Contents)
 - Email copy of above will also be provided
- b. 90% Permit Submittal: Submittal will include complete sewer pipe plan view drawings, details and profile views where applicable, sealed by a registered Professional Engineer, suitable for permit submittal to all applicable permitting agencies. Drawings will be marked "Agency Review- Not for Construction".
 - Two (2) copy Final Technical Memorandum
 - One (1) copy of plans, full size (22x34) ---City Project Manager
 - Seven (7) copies of plans, full size (22x34) ---Development Services
 - Two (2) copies of plans, half size (11x17)
 - Two (2) copies of Technical Specification, bound
 - Two (2) copies, Engineer's opinion of probable construction cost
 - Email copy of above will also be provided
- c. 100% Bid Document Submittal: Submittal will include complete sewer pipe plan drawings, and profile drawings where applicable, along with Technical Specifications, sealed by a registered Professional Engineer, suitable for bidding incorporating all permit comments. Plans shall reflect approvals from all applicable permit agencies.
 - Two (2) copies of plans, full size (22x34), after approval from Development Services
 - One (1) copy of Technical Specifications, bound
 - One (1) copy of Technical Specification, unbound
 - One (1) copy, sealed Engineer's opinion of probable construction cost
 - One Bid Schedule
 - Electronic (PDF) copies of all documents on CD

Task D. Permitting:

- 1) Permitting: The Consultant will assist the City in obtaining State, County, City and utility permits and approvals required for the Project. As the Project progresses, the Consultant will furnish to the City copies of all communications between the Consultant and the respective agency or department and all approvals and permits for the Project. The anticipated permits are listed below:
 - a. City of Glendale Development Services: Consultant will prepare application and submittal packages to the City of Glendale Development Services for no-fee review. Consultant will address the City's comments and incorporate as instructed by the City's Project Manager.
 - Coordinating the building permit process and assist in filing the required documents to secure approval their approval. All original filing and approval fees shall be paid by the City or reimbursed to the Consultant if paid by the Consultant. If required, the Consultant shall resubmit the revised plans to the Planning Department for approval.
 - b. Maricopa County Environmental Services Department (MCESD) Permits: Consultant will prepare application and submittal packages to MCESD for Approval to Construct (ATC) and Approval of Construction (AOC). Permit fees for non-expedited review will be paid by Consultant and reimbursed as a Direct Cost.
 - c. Arizona Department of Transportation (ADOT) Permits: Consultant will prepare application and submittal packages to ADOT and attend two (2) review meetings with ADOT personnel to initiate the right-of-way encroachment permitting process. Technical Special Provision will incorporate ADOT requirements for the selected contractor to finalize the ADOT permit. Traffic control plans are excluded from this scope of work.

Task E. Bidding Phase Services:

- 1) Bid Phase Service: The Consultant will provide bid document packages for sewer and manhole rehabilitation.



- Consultant will provide one permit ready, reproducible bond copy of the sewer and manhole rehabilitation plans and an electronic copy of the technical specifications in Microsoft Word format. The Consultant will also seal and sign the project Specifications and Contract Documents produced by the City.
- Attending and preparing meeting minutes for the pre-bid conference, any other related meetings, and preparing all necessary addenda (two maximum) related to documents originated by the Consultant.
- Responding to questions regarding the plans and specifications. Consultant shall receive, review and make recommendations regarding requests for substitutions, and incorporate these substitution requests into the addenda as requested by the City.
- The Bid Phase will be considered complete when the City has accepted the Project construction bid and final construction documents have been received on electronic media.
- The Consultant will assist the City in evaluating the submitted bids and provide a recommendation of award letter, if requested by the City.

Task F. Construction Services:

Construction Services: Upon acceptance of the contract award for the construction of this project, the Consultant shall provide construction administration services. The services shall include, but are not necessarily limited to, the following:

- 1) Preconstruction Conference: Conduct a preconstruction conference with the Contractor, the City and other interested parties prior to issuance of the Notice to Proceed. The Consultant will be required to notify all interested parties and affected utilities of the date and time of the preconstruction conference to be held at City Hall. In addition to conducting the meeting, the Consultant will take minutes and issue them to all attendees.
- 2) Quality Acceptance (Inspection): The Consultant shall provide quality acceptance services to perform inspection and acceptance testing for all items of work required by the contract documents. The Consultant shall monitor construction for compliance with the project plans and specifications.
 - The Consultant shall provide a representative to observe construction activities. The representative shall be available for a minimum of 25 percent of the contract construction period. The representative shall visit the project site during the course of critical construction activities, but not less than two times per week, depending on the status of work per the Contractor's construction schedule.
 - The Consultant shall bring any deficiencies in the work or materials to the attention of the City and Contractor. Reports of these deficiencies shall be forwarded to the City Project Manager for review. The Consultant will resolve any construction-related problems, conflicts or discrepancies, and will recommend remedial actions, but shall take no action without the prior approval of the City Project Manager.
 - The representative shall be a full-time employee, shall have a minimum of seven years' experience in the engineering and/or construction profession, and shall have had prior quality acceptance experience on a project of comparable size and scope.
 - The Consultant shall assist the Contractor in establishing a Contractor Quality Control Program to ensure conformance to applicable specifications and plans with respect to materials, workmanship, construction, finish, and functional performance. The Quality Control Program shall be effective for control of all construction work performed under the Contract and shall establish an effective level of quality control.
 - The Consultant shall identify and coordinate with the Contractor all required acceptance material tests require by the City, project specifications and consistent with MAG. The contractor shall schedule and coordinate all required tests and provide all necessary source sampling and factory acceptance tests, results and inspection information to the Consultant for review and comment.
- 3) Construction Schedule Review: The Consultant shall review the construction schedule with particular emphasis on assuring that reasonable time allowances have been made for the work required. The Consultant shall observe construction progress and maintain and issue a monthly construction observation report.
 - The Consultant will prepare a "Contractor Schedule Review" statement and submit it to the City Project Manager. All updated schedules must be reviewed and approved prior to issuance of monthly progress payments to the Contractor. The Consultant shall initiate any required correspondence necessary to assure the Contractor remains on schedule.
- 4) Submittal and Shop Drawing Reviews: The Consultant shall review the contract documents, prepare a list of all required submittals, and provide the schedule to the Contractor. The Consultant shall maintain a submittal log and coordinate all reviews and any necessary resubmittals.



- The Consultant shall review and approve all shop drawings. The Consultant will advise the Contractor before the commencement of any work requiring a shop drawing or sample submission if the submission has not been accepted by Consultant.
- 5) Conduct Project Meetings: The Consultant shall conduct construction project meetings, prepare an agenda and minutes of the meeting, and distribute to all attendees.
 - 6) Value Engineering: Review and make recommendations on any value engineering proposals, which the Contractor may submit during the project. No value engineering proposal shall be implemented without the prior approval of the City Engineer.
 - 7) Payments: Review the Contractor's initial and updated schedule of estimated monthly payments and advise the City as to acceptability. Review and process the Contractor's monthly payment requests, and forward to the City for final approval and processing. The Consultant's review shall be for the purpose of making an independent opinion of work completed and mathematical check of the Contractor's payment request. Consultant is responsible for verifying the quantities of work which are the basis of the payment requests. The final monthly pay requests will be approved and processed by the City.
 - 8) Requests for Information: Interpret construction contract documents and respond when requested by the City or Contractor.
 - 9) Change Order Requests: The Consultant shall review and make recommendations on all change order request from the Contractor. Provide documentation and administer the processing of change orders, including applications for extension of construction time. Evaluate the cost and scheduling aspects of all change orders and, where necessary, negotiate with the Contractor to obtain a fair price for the work. No change order shall be implemented without the prior approval of the City. If requested by the City, the Consultant shall prepare all necessary documents and submittals for City Council approval.
 - 10) Materials Testing: Materials testing will be the responsibility of the Contractor. However, the Consultant shall evaluate and report on tests and test analyses for materials, including concrete, pipe, soil, soil compaction, asphalt, and any other subjects that may be required by the specifications and good construction practices.
 - 11) Substantial Completion: Upon substantial completion, inspect the construction work and prepare a punch-list of those items to be completed or corrected before final completion of the project. Submit results of the inspection to the City and the Contractor.
 - 12) Final Inspection and Payment: The Consultant will maintain a running deficiency list during the course of the project and keep the Contractor informed as to its current status. The Consultant will conduct, with the assistance of the City, a final inspection and prepare a final punch list, including all items remaining on the deficiency list, as well as any additional items discovered during the final inspection. Subsequent inspections should be anticipated in order to insure completion of all identified deficient items.
 - 13) Project Closeout: The Consultant will compile a list of required final submittals, including, but not necessarily limited to: record drawings, warranty and guarantee documents, product manuals, and maintenance and operation manuals required to be provided by the Contractor. The Consultant shall review the project closeout documents for final approval.
 - As-Built Drawings: The Consultant shall prepare record as-built drawings of the completed work based upon markups from the Contractor's record drawings and deliver the drawings to the City upon completion of the work. The Consultant will provide one set of record drawings on bond paper and on a computer disk in the appropriate format of AutoCAD approved by the City. The Consultant will provide a second set of record drawings in PDF format. Each drawing sheet shall be presented as a separate PDF file and shall include the seal and signature of the engineer of record. The seal and signature of the engineer of record is not required on the computer disk with the AutoCAD file.

The RECORD DRAWING signature block on the cover sheet must be filled out and signed by the appropriate responsible party.

- 14) One-Year Warranty Inspection: The Consultant will conduct, with the assistance of the City, a one-year warranty inspection. The Consultant will prepare a punch list of deficient items discovered during the one-year inspection. The Consultant should anticipate subsequent inspections in order to insure completion of any identified deficient items discovered during the one-year inspection.



SUBCONSULTANTS:

- 1) Utility Potholing: Utility potholing will be provided by RT Underground (RTU) LLC, a potholing Contractor, as a sub-consultant to Dibble. The City will be invoiced for the actual number of potholes completed, not to exceed a maximum of seven (7) ~~nine (9)~~, all are anticipated in the asphalt concrete. If potholes are in dirt, City will only be invoiced for work complete. Backfill and Asphalt Replacement for Utility Potholes will be per Glendale Standard Detail G-691.
- 2) Public Relations and Public Outreach: Project Marketing and Outreach (d.b.a. YPMO) will be a sub-consultant to Dibble, and will provide community relations and outreach to area residents and businesses to notify them of upcoming construction and provide an avenue for feedback of their special needs and considerations.
 - Outreach services during the design phase will include developing a construction notice containing a City approved message that is distributed to the general public. Public outreach efforts will inform and prepare the public for upcoming construction activities and hear comments back from the public for transfer to the City and design team.

The program shall consist of the following:

- Develop a public information and communications plan for the project;
- Attend project progress meetings (maximum of four (4));
- Communicate construction activities with City departments, Ocotillo, Cholla, Barrel and Sahuaro Council Districts, and other departments as needed;
- Develop and distribute a project flier to residences, neighborhood and homeowner associations, and businesses within 500 feet of each project location;
- Conduct a business walk to distribute fliers and updates to answer any questions or concerns from any nearby businesses owners, schools, fire stations and emergency medical facilities; and
- Maintain project hotline communication, log and report at team progress meetings;

ALLOWANCES:

- 1) City's Allowance: An allowance is provided for additional engineering, or construction management and coordination not included in this scope or other items as directed by the City. This item will only be used with written authorization from the City.

DIRECT EXPENSES:

- 1) Direct Costs: Reimbursements will be made by the City for direct costs incurred for printing, document reproduction, plotting, as-builts, fees charged for obtaining facility mapping.
- 2) Maricopa County Environment Services Department (MCESD): Non-expedited review fees from MCESD.

ASSUMPTIONS:

Scope and fee assumes the following:

- Assumes no fee for ADOT Encroachment Permit.

EXCLUSIONS:

Scope and fee excludes the following:

- Environmental and/or archeological clearances and/or evaluations.
- Geotechnical investigation and Report.
- No traffic control plans for work within ADOT Rights-of-Way.

Handwritten signatures in black ink, appearing to be initials or names, located in the bottom right corner of the page.

EXHIBIT C
Professional Services Agreement

SCHEDULE

(Cover Page)

Exhibit C
 City of Glendale
 Wastewater Collection System and Manhole Rehabilitation Phase III

City Project Number 121325

PROJECT SCHEDULE

Activity	Duration (days)
DESIGN PHASE	Total 140
Sewer Rehabilitation Design	25
<ul style="list-style-type: none"> • Data Research and Collection • Technical Memo • Field Survey • Initial Utility Coordination • City Review 	
Construction Documents	85
<ul style="list-style-type: none"> • 50% Preliminary Submittal • City Review • 90% Permit Submittal • Utility Potholing • MCESD • ADOT (Loop 101 Crossing) • City Review • 100% Construction Documents • City Acceptance 	
Bidding Phase Services	30
<ul style="list-style-type: none"> • Pre-bid Meeting • Advertisement • Council Approval 	

NOTES:

1. Design schedule durations is based on working days and NOT calendar days.
2. Detailed Microsoft Project schedule will be provided at kickoff meeting.
3. Construction schedule to be determined by Contractor.



EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Compensation shall be hourly rate plus allowable reimbursable expenses.

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 \$306,495.

DETAILED PROJECT COMPENSATION

See attached.

**EXHIBIT D
Professional Services Agreement**

REVISED 7-23-14 per Council Approved Contract Amount

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Compensation shall be hourly rates plus allowable reimbursable expenses.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Dibble Engineering, for full completion of all work required by the Project during the entire term of the Project must not exceed \$205,045.00.

DETAILED PROJECT COMPENSATION

See attached spreadsheets for detail

Wastewater Collection System and Manhole Rehabilitation Phase III Design and Construction Fee Schedule		
TASK	Hours	COST
Task A – General Project Administration	119	\$16,995
Task B – Sewer Rehabilitation Design	126	\$17,560
Task C – Construction Documents	327	\$44,155
Task D – Permitting	90	\$12,460
Task E – Bid Phase Services	38	\$5,340
Task F – Construction Services	610	\$80,450
Subconsultants		\$13,175
Allowances		\$2,060
City's Contingency		\$8,000
Direct Expenses		\$4,850
TOTAL PROJECT COST:		\$205,045



EXHIBIT E
Professional Services Agreement

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
- a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
- a. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.

4. **Exceptions.**

- 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
- 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.