

**PROFESSIONAL SERVICES AGREEMENT**  
Thunderbird Reservoir Improvements  
City Project No. 131422

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and CH2M Hill Engineers, Inc., a Delaware corporation, authorized to do business in the State of Arizona, ("Consultant") as of the 24 day of November, 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 \$252,722 00 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

83 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:

Ryan Rhoades  
1501 W Fountainhead Parkway, Suite 401  
Tempe, AZ 85282

- 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 Engineering Department  
5850 W. Glendale Avenue, Suite 315  
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 one year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional zero 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

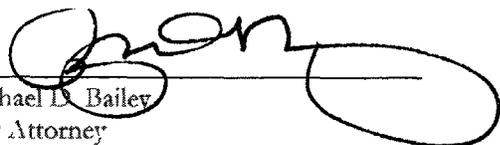


By: Brenda S. Fischer  
Its: City Manager

ATTEST:

  
Pamela Hanna (SEAL)  
City Clerk

APPROVED AS TO FORM.

  
Michael D. Bailey  
City Attorney

CH2M Hill Engineers, Inc.,  
a Delaware corporation



By: Tom McLean  
Its: Vice President

**EXHIBIT A**  
**Professional Services Agreement**

PROJECT

(Cover Page)

## Exhibit A

### Project Description

The 12 Million Gallon (MG) Thunderbird Park Reservoir was constructed in 1983 and is comprised of a hopper bottom, asphaltic cement structure with a Hypalon liner. The reservoir is located within the boundaries of the Thunderbird Conservation Park. The operations system for the reservoir consists of a fill line, underdrain, sump pumps, electrical system, chemical addition, source water line, and security measures. In 2013, a condition assessment of the liner was commissioned by the City of Glendale via an underwater inspection, which indicated that the liner had significant defects. The City concluded that the liner should be replaced. This project will provide engineering design and construction services for replacement of the reservoir liner and related work.

**EXHIBIT B**  
**Professional Services Agreement**

SCOPE OF WORK

(Cover Page)

## Exhibit B

### Scope of Work

#### **TASK 1 DESIGN SERVICES**

##### **TASK 1.1 - PROJECT INITIATION**

Upon final execution of the Contract with GLENDALE, CONSULTANT will prepare a project work plan and attend a kickoff meeting with GLENDALE. Up to four staff members from CONSULTANT's team will be present. Meeting will not last longer than 2 hours. The purpose of the meeting is to:

- Introduce key team members from GLENDALE staff and CONSULTANT's team to each other defining roles and responsibilities relative to the Project.
- Identify and review pertinent information and/or documentation necessary from GLENDALE for the completion of the Project.
- Review and explain the overall project goals, general approach, tasks, work plan and procedures and deliverable products of the Project.
- Review and explain the project work plan for all parties present; determine any adjustments or fine tuning that needs to be made to the work.
- Prepare and distribute minutes of the project kick-off meeting.

##### **TASK 1.2 - PROGRESS MEETINGS**

It is anticipated that progress meetings will be convened monthly between CONSULTANT, GLENDALE staff and other project stakeholders during design. Such meetings will normally be held at City Hall. These meeting will have duration of no longer than 2 hours and will include up to two staff members from CONSULTANT's team. These meetings will be combined with reviews of deliverables as appropriate. Notes of significant decisions and actions will be distributed by email after the meetings.

##### **TASK 1.3 – RESERVOIR WATER QUALITY EVALUATION**

The Thunderbird reservoir currently has a single inlet and outlet and no baffling to prevent short-circuiting of water, which could be cause for a higher water age in parts of the reservoir and contribute to elevated disinfection byproducts in the distribution system. A Solarbee reservoir mixing system is currently installed that provides some noticeable benefits to equalizing water age. GLENDALE would like to identify additional opportunities to reduce disinfection byproduct formation in their distribution system by reducing water age and implementing air stripping technology.

CONSULTANT will meet with GLENDALE to review the reservoir operations strategies and request data. Reservoir fill levels and disinfection byproducts data will be provided by GLENDALE. CONSULTANT will

theoretically evaluate the benefits and costs of improved mixing such as separating the inlet/outlet, baffles, or a hydraulic pump back system. In addition, CONSULTANT will evaluate the benefits and costs of two air stripping technologies: bubble diffusion and surface aeration. The basis of treatability will be reports and feedback gained from interviewing up to 2 utilities identified by CONSULTANT that have pilot or full-scale experience with these technologies. Additional water quality testing may be recommended by CONSULTANT, which will be performed by GLENDALE if desired. The projected electrical loads for new equipment will be considered in the analysis.

A technical memorandum will be developed summarizing the evaluation and recommendations. A meeting will be held with GLENDALE to review the evaluation before finalizing the memorandum. The recommendations for improvements made under this task are assumed not included in the design.

#### TASK 1.4 – SITE ELECTRICAL UPGRADES EVALUATION

GLENDALE requires an upgraded electrical service to the Thunderbird reservoir site to replace chlorination equipment and install new facilities to improve water quality. CONSULTANT will analyze the current electrical loads for the facility, and any future loads or upgrades to determine the desired future power service. CONSULTANT will contact APS to request power utility maps and to request a meeting to determine the appropriate location of obtain a new power feed and transformer to upgrade service to the site for these future conditions. It is anticipated that power would be obtained from 67th Avenue. CONSULTANT will attend a meeting at the Thunderbird site with APS and with GLENDALE's participation.

CONSULTANT will generally describe the power service needs and proposed routing of service based on this initial coordination in a technical memorandum. The recommendations for power service and routing made under this task are assumed not included in the design.

#### TASK 1.5 - PRE-DESIGN REPORT

CONSULTANT will assist GLENDALE in identification of critical elements of construction. An evaluation will be conducted to identify design issues relating to functional need, constructability, regulatory codes, and consideration of impacts of the Project on parks use during construction and include the following:

- Significant site considerations during construction including parks use, accessibility, truck routes, and contractor staging areas;
- Evaluation of up to two potential liner systems;
- Feedback from at least one potential liner supplier/contractor to determine lead time and availability of liner materials;
- Applicable permit requirements, code requirements, and Glendale, County, State and Federal requirements;
- Recommended construction duration;

- Conceptual plan, section, and attachment detail for Liner Replacement;
- Initial summary of quantities and conceptual construction cost estimate;
- List of drawings and specification sections.

After completion of site investigation work and items identified above, CONSULTANT will present and review with GLENDALE the Pre-Design Report.

#### **TASK 1.6 –RESERVOIR LINER REPLACEMENT DESIGN**

CONSULTANT will prepare 50% Preliminary Design and 90% Final Design Documents on GLENDALE standard sheets using AutoCAD format. Generally the following types of drawings will be developed and submitted appropriate for each design level:

Index sheets and general notes

Location of improvements and contractor laydown areas

Design Plans and Sections

Special details

CONSULTANT will develop technical specifications for the project in CSI 49 Division Specifications format a format with appropriate references to Maricopa Association of Governments (MAG) standard specifications and details.

A complete reproducible set of sealed and signed contract plans necessary to bid and construct the improvements identified in this contract will be provided with submittal of the 100% design. Electronic versions of all plan sheets will be provided in pdf compatible format on compact disk (CD) in CD-R format. Final and complete quantity summaries and CONSULTANT'S construction cost estimate will be provided. All reproduction is to be provided by CONSULTANT and included as a reimbursable cost. CONSULTANT to provide 5 hard copies of each submittal. Drawings submitted will be half size except that final will include one full size set.

#### **TASK 1.7 – DESIGN PERMITTING**

CONSULTANT will submit the 100% plans and application for permit to construct to the Maricopa County Environmental Services Department (MCESD). An expense line item of \$4000 is included in the fee estimate and GLENDALE will reimburse the CONSULTANT for permit fees required by the County. CONSULTANT will also submit plans to Glendale Development Services for building permits. It is assumed that no fees are associated with Glendale Development Services and the CONSULTANT will not be responsible for additional permit related fees.

## **TASK 1.8 - COST ESTIMATES**

CONSULTANT will prepare detailed quantity summaries and construction cost estimates in CONSULTANT's standard format at the 50%, 90% and 100% design submittals. Allowances for design, bidding or construction, if included in the estimate, are to be shown as individual line items, with the percentage and base of calculation clearly identified.

CONSULTANT will develop the Bid Schedule for all items determined to be pay items for the project. Bid Schedules will be prepared by the CONSULTANT in the CITY's standard format and will be provided at the 90% and 100% Submittals.

## **TASK 1.9 - BID PHASE SUPPORT**

CONSULTANT will conduct a pre-bid conference. CONSULTANT will respond to questions related to the design of the Project and the Contract Documents. The meeting will be up to 2 hours and attended by 2 CONSULTANT staff. CONSULTANT will prepare up to 2 addenda to the bid documents as required and provide to GLENDALE for issuance to bidders. Pre-bid conference notes will be developed and distributed to plan holders via addendum. GLENDALE will perform the bid evaluation including any investigations such as verifying any financial and performance history documentation submitted. GLENDALE will prepare and issue the notice of award and the notice to proceed to the CONTRACTOR. If requested by the CITY, the CONSULTANT will evaluate the submitted bids and provide a recommendation letter.

## **TASK 2 – SERVICES DURING CONSTRUCTION**

CONSULTANT will provide Services during Construction as described herein. CONSULTANT general nature of the work will be to provide construction management services, review of CONTRACTOR's work in accordance with the Contract Documents, and construction close-out. CONSULTANT will not be responsible for the means, methods, techniques, sequences or procedures of the CONTRACTOR.

### **TASK 2.1 CONSTRUCTION MANAGEMENT**

CONSULTANT will provide services to assist in coordinating the site activities, communication, reporting, and administering the contract for construction. CONSULTANT will implement and maintain regular communications with the CONTRACTOR during the construction. CONSULTANT will receive and log all major communications from the CONTRACTOR and will coordinate the communications between GLENDALE and CONTRACTOR. CONSULTANT will not communicate directly with the CONTRACTOR's subcontractors.

#### **2.1.1 Construction Management Manual**

CONSULTANT will develop a general work plan that defines CONSULTANT's delivery approach, staffing, responsibilities and project deliverables. CONSULTANT will establish a system and set of procedures for

managing, tracking and storing all relevant documents between the CONTRACTOR, CONSULTANT, and GLENDALE produced during Construction and Closeout phases of the project. CONSULTANT will, in coordination with GLENDALE, maintain hard copy records, suitably organized, of all relevant documentation. CONSULTANT will implement procedures for the logging and tracking of all relevant correspondence and documents to assist GLENDALE in monitoring all outstanding decisions, approvals or responses required from GLENDALE.

#### 2.1.2 Pre-Construction Conference

CONSULTANT will coordinate, conduct and attend one pre-construction conference with the CONTRACTOR and GLENDALE to review the project communication, coordination and other procedures and discuss the CONTRACTOR's Quality Control System. CONSULTANT will lead the meeting and record the results of this conference. Meeting shall last up to 2 hours and shall include 2 members of the project team.

#### 2.1.3 Construction Progress Meetings

CONSULTANT will conduct up to 12 bi-monthly 1 hour progress meeting followed by a 1 hour site visit with the CONTRACTOR, subcontractors as appropriate, and GLENDALE attending. The progress meeting conducted by CONSULTANT will review work progress, progress schedule, quality control, schedule of submittals, application for payment, contract modification, and other matters requiring discussion and resolution. Up to 1 CONSULTANT staff will be in attendance in addition to the inspector that will coordinate the visit with other duties. Meeting notes will be captured in the next week's meeting agenda.

#### 2.1.4 Change Orders and Work Change Directives

CONSULTANT will issue field instructions, orders or similar documents during construction as provided in the contract for construction. CONSULTANT may authorize minor variations in the work which do not involve an adjustment in the CONTRACTOR's contract price nor time for construction and are not inconsistent with the intent of the contract documents. Additionally, CONSULTANT will assist GLENDALE with the issuance of field directives to authorize allowances in the contract for construction. CONSULTANT will also review CONTRACTOR requested changes to the contract for construction. CONSULTANT will make recommendations to GLENDALE regarding the acceptability of the change order and, upon approval of GLENDALE, assist GLENDALE in negotiations of the requested change. Upon agreement and approval, CONSULTANT will assist GLENDALE in preparing final change order documents. Up to 5 work change directives and CONTRACTOR change orders are anticipated.

CONSULTANT will maintain logs regarding the status of field directives, including pending field directives and their amounts. CONSULTANT will also receive, log, and notify GLENDALE about all letters and notices from the CONTRACTOR concerning claims or disputes between the CONTRACTOR and GLENDALE pertaining to the acceptability of the work or the interpretation of the requirements of the contract for construction.

#### 2.1.5 Review of Contractor Application for Payment

CONSULTANT will receive and review the CONTRACTOR's requests for payment and will determine whether the amount requested reflects the progress of the CONTRACTOR's work, and is in accordance with the contract for construction. CONSULTANT also will review the CONTRACTOR's schedule of values at the beginning of construction. CONSULTANT will provide recommendations to GLENDALE as to the acceptability of the requests, in addition will advise GLENDALE as to the status of the total amounts requested, paid, and remaining to be paid under the terms of the contract for construction.

Recommendations by CONSULTANT to GLENDALE for payment will be based upon CONSULTANT's knowledge, information and belief from its observations of the work on site and selected sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by CONSULTANT to ascertain that the CONTRACTOR has completed the work in exact accordance with the contract for construction.

#### 2.1.6 Review of CONTRACTOR's Construction Schedule

CONSULTANT will review the CONTRACTOR's baseline construction schedule and verify that it is consistent with the requirements of the contract for construction. CONSULTANT will also review the CONTRACTOR's monthly schedule updates as submitted with the payment application. CONSULTANT will advise the CONTRACTOR of any areas where the schedule is not in compliance with the contract for construction. CONSULTANT will provide comments to GLENDALE to assist GLENDALE in approving, accepting or taking other action on the CONTRACTOR's schedule, in accordance with the contract for construction. CONSULTANT's review and comments will not be considered as a guarantee or confirmation that the CONTRACTOR will complete the work in accordance with the contract for construction.

#### 2.1.7 Safety

CONSULTANT will manage the health, safety and environmental activities of its staff and the staff of its subcontractors to achieve compliance with applicable health and safety laws and regulations. CONSULTANT will coordinate its health, safety and environmental program with the responsibilities for health, safety and environmental compliance specified in the contract for construction. CONSULTANT will coordinate with responsible parties to correct conditions that do not meet applicable federal, state and local occupational safety and health laws and regulations, when such conditions expose CONSULTANT staff, or staff of CONSULTANT subcontractors, to unsafe conditions.

CONSULTANT will notify affected personnel of any site conditions posing an imminent danger to them which CONSULTANT observes. CONSULTANT is not responsible for health or safety precautions of construction workers, GLENDALE staff, or any other third party. CONSULTANT is not responsible for the CONTRACTOR's, GLENDALE staff, or other third party's compliance with the health and safety requirements in the contract for construction, or with federal, state, and local occupational safety and health laws and regulations.

## TASK 2.2 - REVIEW OF CONTRACTOR'S WORK

### 2.2.1 Construction Inspections

CONSULTANT will conduct periodic on-site observations of the CONTRACTOR's work for the purposes of determining if the work generally conforms to the contract for construction and that the integrity of the design concept as reflected in the contract for construction has been implemented and preserved by the CONTRACTOR. CONSULTANT will not provide a full time Resident Engineer/Inspector. All inspection will be provided on an as needed basis to confirm compliance with the Contract Documents. CONSULTANT will visit the site a minimum of once a week when significant construction activities are in progress.

CONSULTANT shall not, during such visits or as a result of such observations of CONTRACTOR's work in progress, supervise, direct, or have control over CONTRACTOR's work. Nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by CONTRACTOR or safety precautions and programs incident to the work of CONTRACTOR or for any failure of CONTRACTOR to comply with laws, rules, regulations, ordinances, codes or orders applicable to CONTRACTOR furnishing and performing work. Accordingly, CONSULTANT can neither guarantee the performance of the construction contracts by CONTRACTOR nor assume responsibility for CONTRACTOR's failure to furnish and perform work in accordance with the Contract Documents. However, if during a milestone inspection, CONSULTANT observes a construction means, method, technique, sequence or procedure which will delay the work or cause a defect in the work, CONSULTANT shall immediately report such information to the CONTRACTOR and GLENDALE.

The inspector will prepare written reports of their observations. The inspector will attend the bi-weekly progress meetings. CONSULTANT's inspection staff will obtain from the CONTRACTOR monthly photographs of the work in progress. CONSULTANT's observation of the work is not an exhaustive observation or inspection of all work performed by the CONTRACTOR. CONSULTANT does not guarantee the performance of the CONTRACTOR. CONSULTANT's observations will not relieve the CONTRACTOR from responsibility for performing the work in accordance with the contract for construction.

CONSULTANT will observe the CONTRACTOR's quality control coordination. Should CONSULTANT discover or believe that any work by the CONTRACTOR is not in accordance with the contract for construction, or is otherwise defective, or not conforming to requirements of the contract or applicable rules and regulations, CONSULTANT will bring this to the attention of the CONTRACTOR's Quality Control Manager and GLENDALE. CONSULTANT will thereupon monitor the CONTRACTOR's corrective actions and will advise GLENDALE as to the acceptability of the corrective actions.

### 2.2.2 Substantial and Final Completion

CONSULTANT will assist the Owner with inspections at substantial and final completion, in accordance with the contract for construction. CONSULTANT will participate in a substantial completion inspection, prepare a punch-list of items noted during the walk-through, and transmit these to the CONTRACTOR. This inspection will last up to 1 hour with 2 project staff members. CONSULTANT will participate in a final completion inspection, ensure that the substantial completions punch-list items have been

completed, and transmit his final comments to the CONTRACTOR. This inspection will last up to 1 hour with 2 project staff members. CONSULTANT will make recommendations to GLENDALE regarding acceptance of the work based upon the results of the final inspection. CONSULTANT will conduct a subsequent inspection to verify all identified deficient items are completed.

### 2.2.3 Facility Startup

Start up planning meetings shall be conducted by CONSULTANT in order to facilitate completion and communication of the start-up plan. CONSULTANT will review CONTRACTOR's start up and disinfection plan including review and approval of the Contractor's independent testing agency for performing water quality sampling and testing. CONSULTANT's inspector will witness disinfection performance. Upon receiving water quality test results from the CONTRACTOR, CONSULTANT will review and advise GLENDALE on the acceptance and water quality is met based upon the conformance of bacterial limitations for public drinking water.

## TASK 2.3 – ENGINEERING REVIEWS

### 2.3.1 Submittal Reviews

CONSULTANT will obtain from the CONTRACTOR and review a proposed submittal schedule of shop drawings, project information, shop and mill test results, submittals, and operation and maintenance (O&M) manuals required by the contract for construction, along with the anticipated dates for submission. CONSULTANT will coordinate with the design team for the reviews of the CONTRACTOR's, shop drawings, samples, submittals, and O&Ms in accordance to the contract documents. CONSULTANT's review of all shop drawings, samples and submittals will be for general conformance with the design concept and general compliance with the requirements of the contract for construction. Such review will not relieve the CONTRACTOR from its responsibility for performance in accordance with the contract for construction. Reviewed submittals shall be returned to Contractor for action.

### 2.3.2 Requests for Information

CONSULTANT will review the CONTRACTOR's requests for information (RFI) or clarification of the contract for construction. CONSULTANT will coordinate such review with the design team and with GLENDALE as appropriate. CONSULTANT will issue, as necessary, written and verbal interpretations and clarifications of the Contract Documents. CONSULTANT will assist GLENDALE in reviewing and responding to the CONTRACTOR's requests for substitution of materials and equipment. CONSULTANT will review such requests and will advise the Owner as to the acceptability of such substitutions.

### 2.3.3 Specialty Inspections

The CONTRACTOR will provide Quality Control and Quality Assurance for the project per specifications. CONSULTANT will review the reports and other information prepared by the CONTRACTOR's Quality Control Manager. CONSULTANT will not provide material testing to independently verify the quality of the CONTRACTOR's work. Specialty inspections and testing in accordance with Chapter 17 of the IBC are not anticipated for this project.

## TASK 2.4 – PROJECT CLOSE-OUT

### 2.4.1 MCESD Approval of Construction

CONSULTANT will assist GLENDALE with securing the Approval of Construction (AOC) from the Maricopa County Environmental Services Department (MCESD). CONSULTANT will review all Approval to Construct Permit Stipulations and prepare all required documentation, and will submit on behalf of GLENDALE to MCESD. GLENDALE will reimburse CONSULTANT for all permit related fees paid directly to the County.

### 2.4.2 Close-out Documentation

CONSULTANT will coordinate with the CONTRACTOR for the submission of required warranties, guarantees, lien releases and other similar documents as required by the contract for construction. CONSULTANT will advise GLENDALE as to the acceptability and compliance of these documents with the contract for construction. CONSULTANT will provide to the Owner two organized sets of project documents and records.

### 2.4.3 Record Drawings

CONSULTANT will coordinate the CONTRACTOR's submittal of construction red lines of drawings, specifications and other record documents in preparation for finalizing record drawings and will transmit these to the Owner. CONSULTANT will review the Contractor's red-lines in the field prior to transmitting to CONSULTANT.

As required by the Contract Documents, CONSULTANT will receive from the Contractor certified red-line construction record drawings. CONSULTANT will prepare the as-built record drawings using information provided on the certified Contractor red-line drawings. The as-built record drawings shall be submitted as follows:

The CONSULTANT will provide one set of record drawings on bond paper and on a computer disk in the appropriate format of ACAD 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 in a signature block stating that the record drawings were produced under their supervision. The seal and signature of the engineer of record is not required on the computer disk with the ACAD file.

The record drawing signature block on the cover sheet will be filled out and signed by the appropriate responsible party. Record drawings will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or

exact manner in which the project was finally constructed. CONSULTANT is not responsible for any error or omissions in the information from others that is incorporated into the record drawings.

### **TASK 3 PROJECT MANAGEMENT SERVICES**

#### **TASK 3.1 – PROJECT MANAGEMENT**

The purpose of this task is to manage, coordinate and lead CONSULTANT Team's activities. This task includes development and tracking of the project schedule and budget and project team coordination. The general project administration services may include:

- Coordinating with the CITY Project Team during the design of the project.
- Submitting and retrieving all required design documents to the various required reviewing agencies.
- Preparing and maintaining a project schedule after meeting with the designated CITY project manager (referred to as "Project Manager") to determine appropriate submittal deadlines and to coordinate project submissions.
- Assisting the CITY in obtaining all federal, state, county, local and utility 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.
- Submitting a written monthly progress report to the CITY Project Team during the entire period of the project. Also, the CONSULTANT will be required to submit a monthly project schedule update, as well as a quarterly project cash flow schedule for both design and construction phases. This information will be submitted to CITY Engineering Administration for the entire period of the project, through both design and construction.
- 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.
- 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.

- 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.

**EXHIBIT C**  
**Professional Services Agreement**

SCHEDULE

(Cover Page)

Exhibit C  
Project Schedule

**Thunderbird Reservoir Liner Replacement Project Schedule**

Task Description	Duration
Pre-design Services	45 days
Design Services	75 days
Prepare Construction Documents/ Bidding Phase	45 days
Construction Services	150 days

It is understood that this schedule may be modified to meet City deadlines and financial requirements.

**EXHIBIT D**  
**Professional Services Agreement**

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 Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$252,722.00

**DETAILED PROJECT COMPENSATION**

See attached

Exhibit D  
Compensation

<b>Fee Compensation</b>		
<b>Task No.</b>	<b>Task Description</b>	<b>Task Fee</b>
1	Design Services	\$117,158.00
2	Services During Construction	\$93,440.00
3	Project Management Services	\$19,124.00
	Subtotal	\$229,722.00
	Owner (City of Glendale) Contingency	\$23,000.00
	<b>Total Project Cost</b>	<b>\$252,722.00</b>

**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.