

AGREEMENT FOR ALLEY CLEANING MAINTENANCE

BETWEEN

MARIPOSA LANDSCAPE ARIZONA, INC.,

AND

THE CITY OF GLENDALE

This Agreement for Alley Cleaning Maintenance ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Mariposa Landscape Arizona, Inc., an Arizona corporation (the "Contractor"), as of the 7th day of April, 2015.

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** (the "Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project attached hereto;
- C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

1. Key Personnel; Sub-contractors.

- 1.1 Services. Contractor will provide all services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors or consultants, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, complete the Project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement;
 - (2) The City must approve the designated Project Manager; and
 - (3) To assure the Project schedule is met, Project Manager may be required to devote no less than a specific amount of time as set out in Exhibit A.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the project by Contractor will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Contractor.

c. Discharge, Reassign, Replacement.

- (1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in the response to the Project's solicitation.
- (2) Contractor will not discharge, reassign or 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 Contractor, in which event the substitute must first be approved in writing by City.
- (3) Contractor 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. Sub-contractors.

- (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
- (2) Contractor will remain fully responsible for Sub-contractor's services.
- (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
- (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

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

3. **Contractor's Work.**

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

3.2 Licensing. Contractor warrants that:

- a. Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- b. Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor 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.

Contractor must not discriminate against any employee or applicant for employment on the basis race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability.

Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Coordination; Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, 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, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- a. Ownership. Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors 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) Contractor 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. Contractor 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 Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.
 - (3) In such case, City shall also remove any seal and title block from the Work Product.

4. **Compensation for the Project.**

- 4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$26,220.00, as specifically detailed in **Exhibit B** (the "Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.
 - a. Adjustments to the 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 Contractor 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.

5. Billings and Payment.

5.1 Applications.

- a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Contractor and its Sub-contractors; and
 - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

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 30 days following the date of delivery.

- a. Contractor will be equitably compensated for Goods or Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provision of § 5.

- b. If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages of more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.**

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

- a. Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Contractor's Policies"), until each Party's obligations under this Agreement are completed.
- b. **General Liability.**
 - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate for each property damage and contractual property damage.
 - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. **Auto.** A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- d. **Workers' Compensation and Employer's Liability.** A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- e. **Notice of Changes.** Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- f. **Certificates of Insurance.**
 - (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.

- (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
- (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.

g. 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 Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).

h. Policies. Except with respect to workers' compensation and employer's 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 Sub-contractors.

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

8.3 Indemnification.

- a. To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this

Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.

- c. Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

- 9.1 Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 9.2 Any breach of warranty under subsection 9.1 above 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 Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.
- 9.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 9.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 9.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 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); and
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.

- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

10.2 Representatives.

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

Mariposa Landscape Arizona, Inc.
 c/o Luis Huizar
 7677 N. 67th Avenue
 Glendale, AZ 85301

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
 c/o Roger Boyer
 6210 W. Myrtle Avenue, #111
 Glendale, Arizona 85301
 623-930-2656

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 City Manager and City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.
- d. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

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 Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

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

- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

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. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.

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 deemed reformed to conform to applicable law.

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

13. **Term.** The term of this Agreement commences upon the effective date and continues until the expiration date of June 30, 2015. There are no automatic renewals of this Agreement.

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

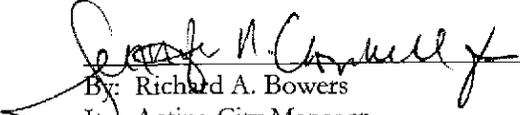
15. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

- Exhibit A Project
- Exhibit B Compensation
- Exhibit C Dispute Resolution

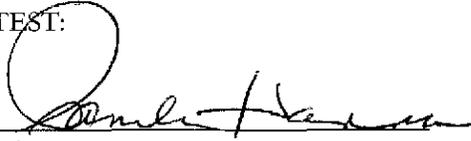
(Signatures appear on the following page.)

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

City of Glendale,
an Arizona municipal corporation


By: Richard A. Bowers
Its: Acting City Manager

ATTEST:


Pamela Hanna
City Clerk (SEAL)

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

Mariposa Landscape Arizona, Inc.,
an Arizona corporation

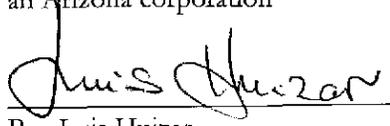

By: Luis Huizar
Its: Vice President of Operations

EXHIBIT A
ALLEY CLEANING MAINTENANCE
PROJECT

[See attached]



CITY OF GLENDALE

RIGHT-OF-WAY

INVITATION FOR BID

DESCRIPTION: ALLEY CLEANING MAINTENANCE

BID DUE DATE AND TIME: FEBRUARY 11, 2015 AT 3:00 P.M. LOCAL TIME

Offers for the services specified will be received by the City of Glendale, Right-of-Way office at the below specified location until the time and date cited. Offers received by the correct time and date will be opened and the name of each bidder and the amount of the bid will be publicly read.

Bid Opening and Submittal Location: City of Glendale
Right-of-Way Office
6210 W. Myrtle Avenue, Suite 111
Glendale, Arizona 85301

Offers must be in the actual possession of Right-of-Way Supervisor on or prior to the time and date, and at the location indicated above. Late offers will not be considered. Offers may be mailed, dropped off to the above address or e-mailed to RBoyer@Glendaleaz.com.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.

For questions regarding
Scope or Specifications contact:

Roger W. Boyer
Right-of-Way Supervisor
(623) 930-2656
RBoyer@Glendaleaz.com

Eddie Sandoval
Contract Manager
623.930.2639
ESandoval@Glendaleaz.com

**CITY OF GLENDALE
RIGHT-OF-WAY
ALLEY CLEANING MAINTENANCE**

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1. BACKGROUND

The City of Glendale (City) has about 22 miles of alleys that need regular maintenance, and the city wishes to put these areas under a landscape maintenance contract. The attached pdf shows the areas that are in this bid.

1.1 INTENT

The City of Glendale (COG) desires to put our alleys under regular contracted maintenance. This specifically includes 22.2 miles of public alleys within the city limits. Duties shall include, but are not limited to; shrub maintenance, tree trimming, loose trash pick-up, weed abatement activities and illegal dumping.

The city will pay all landfill charges for the execution of this contract.

The intent is to award this contract as soon as possible and get the project started with available funds. A budget request is being submitted to continue this contract through FY16.

1.2 Award of this contract shall be for all 15 mapped areas that are attached.

1.3 AREAS OF SERVICE (AOS):

Areas to be serviced are mapped on attachments:

505 507 605 606 607 705 706

707 708 709 805 806 807 905 1206

1.4 DEFINITION OF TERMS

- **Litter** – Organic plant material including leaves, limbs, twigs, animal feces, etc.
- **MSDS** – Material Safety Data Sheet
- **Policing/Cleaning** – Act of removing all manmade trash and litter and dead animals from contracted COG ROW areas
- **NPDES** – National Pollutant Discharge Elimination System
- **Post-Emergent** – Application of weed-killer directly to existing weeds
- **Raking Out** – Act of raking out granite/soil areas and removing all trash and litter
- **Rights-of-Way (ROW)** – City casements between residential walls in alleys
- **Trash** – All manmade material including paper, cardboard, bottles, broken glass, cans, etc.
- **Illegal Dumping** – Couches, TVs, landscape debris, broken concrete, dirt piles, mattresses, book cases, (people’s junk!)etc.
- **Weeding Out** – Process of mechanically removing weeds

2. SCOPE OF WORK

- 2.1 The contractor's work shall include furnishing all materials, tools, supplies, chemicals that include herbicides, labor, equipment and vehicles necessary to provide landscape maintenance on public ROW areas in accordance with the provisions specified in this document.
- 2.2 The contractor's duties include, but are not limited to; tree and shrub maintenance, trash/litter collection and removal, including illegal dumping activities and weed abatement.
- 2.3 All work shall be performed during daylight hours.
- 2.4 Work shall be performed Monday through Friday, excluding holidays. The City observes the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day. If the successful contractor wishes to work on any of the specified holidays, the Right-of-Way Contract Manager shall coordinate that with the contractor.
- 2.5 No work will be performed on weekends without prior approval of the COG ROW Contract Manager.

3. CONTRACTOR COMPLIANCE

- 3.1 The contractor shall be considered in compliance with the contract if, after inspection, all of the following have been completed by the contractor:
- Trees, shrubs, are pruned to be clear of City garbage collection trucks
 - Litter and/or trash has been removed
 - Weeds and grasses have been treated and removed
 - Illegal dumping debris has been removed
- 3.2 Non-compliance with the above requirements may lead to termination of the contract.

4. POLICING AND CLEANING

- 4.1 **The contractor shall police and clean all contract areas on a quarterly schedule.**
- 4.2 The contractor shall remove all foreign material, which includes trash, papers, cans, bottles, broken glass, feces, dead plant material, realty and yard sale signs, household

furniture, washers/dryers, dead animals, landscape debris, piles of dirt etc. from the contract areas.

- 4.3 All foreign material shall be retrieved and removed from the site by the contractor and delivered to the City Landfill on Glendale Avenue. The city ROW Division will pay for landfill expenses. All material is to be properly disposed of in accordance with all federal, state and local laws, ordinances and regulations.

5. WEEDING

- 5.1 The contractor shall control all alley areas with proper mechanical and chemical application, as necessary, to maintain contract areas weed and grass free.

6. CHEMICALS

- 6.1 The contractor shall submit a list of proposed chemicals complete with current MSDS specimen labels and specific application rates to be used to the ROW Contract Manager for approval ten (10) days prior to commencement of contract period.
- 6.2 Any additions or substitutions of the proposed chemicals must also be approved ten (10) days prior to chemical application.
- 6.3 Any deviation from the approved list without prior written approval of the COG ROW Contract Manager shall be grounds for non-payment and termination of contract.
- 6.4 All chemicals used must have Environmental Protection Agency (EPA) registration.
- 6.5 The contractor's materials, techniques and processes shall comply with all federal, state, and local laws, regulations, standards and ordinances pertaining to health, safety and environmental protection.
- 6.6 The contractor and personnel performing the required weed control services shall be licensed by the State of Arizona to perform the required services as approved by the State of Arizona.
- 6.7 The contractor shall provide a list of all certified applicators, copies of licenses, certifications, and up-to-date training certificates.
- 6.8 City may request verification of certifications during the term of the contract.
- 6.9 The contractor shall track all chemicals; herbicide types, brands, quantities, associated application ratios for Storm Water NPDES reporting and shall provide information when requested by the ROW Contract Manager.

7. POST-EMERGENT WEED/GRASS CONTROL

- 7.1 The contractor shall treat all weeds and grasses with an appropriate herbicide before the weeds and grasses reach a height of four inches (4") and the weeds and grasses must be mechanically removed.
- 7.2 The contractor's post-emergent chemical applications shall include an ultra-violet colored dye in a sufficient amount to be visible for five (5) days after herbicide applications.
- 7.3 In the winter the contractor shall control weeds in a similar manner (as described above in this section), but the use of a 2-4-D broad leaf herbicide is not permitted.
- 7.4 The contractor shall not use soil sterilants of any type.
- 7.5 The contractor shall track all chemicals, herbicides, pesticides, types, brands, quantities, associated application ratios for Storm Water NPDES reporting and shall provide information when requested by the ROW Contract Manager.

8. PEST & INSECT CONTROL

- 8.1 The contractor shall immediately contact the COG ROW Contract Manager, concerning pest and insect infestations, **which will be dealt with by ROW staff.**
- 8.2 The contractor or the contractor's on-site supervisor shall have the knowledge to diagnose and recommend proper procedures for the control of insects and pests.

9. PRUNING

- 9.1 The contractor shall not remove shrubs or trees without the approval of the COG ROW Contract Manager. The intent of this contract is to make the alleys less maintenance intense, so the removal of trees and shrubs would be looked upon favorably, on a case by case basis.

10 PERFORMANCE STANDARDS

The following is a list of required performance standards and the recurrence interval for each activity:

10.1 Frequency

Activity	Performance Standard and Recurrence Interval
Policing and Cleaning	Once every 3 months (quarterly)
Raking out	Once every 3 months (quarterly)
Weeds/Grasses	Once every quarter or as needed to keep areas weed/grass free.
Post-Emergent	As needed to keep areas weed free, at full label directed rate
Shrub/Tree Trimming	Quarterly

11 HAZARD AND SAFETY REPORTING

- 11.1 The contractor shall, during the normal work hours, obtain emergency medical care for any member of the public who is in need of such care due to illness or injury occurring on the work site.
- 11.2 The contractor shall cooperate fully with the COG in the investigation of any accidental injury or death occurring on site, including a prompt report within one day thereof to the COG ROW Contract Manager, if the accident or death occurred within City of Glendale boundaries.
- 11.3 The COG, through its designees, reserves the right to issue immediate restraints or cease and desist orders to the contractor when unsafe or harmful acts are observed or reported relative to the performance of the work under the contract.
- 11.4 The contractor shall report immediately to the COG ROW Contract Manager, all hazardous conditions in the COG contract areas.
- 11.5 The contractor shall report immediately to the COG ROW Contract Manager, spills of any chemicals that enter the streets/gutters, storm drain system, sanitary sewer, or that may cause an adverse impact to the safety of humans or the environment.

12 SERVICE ADDITIONS, INTERRUPTIONS AND END-OF-CONTRACT CONDITIONS

- 12.1 The COG reserves the right to substitute and/or delete maintenance service areas during the contract period.

- 12.2 In the event of such a substitution or deletion of maintenance service areas, the COG will give the contractor ten (10) days' notice prior to date of discontinuance of maintenance services and responsibilities.
- 12.3 The contractor shall not be compensated for the loss of work due to deletions and/or substitutions.
- 12.4 The COG reserves the right to add maintenance service areas during the term of the contract at an agreed upon rate.
- 12.5 In the event the COG and the contractor cannot agree on maintenance charges, the COG reserves the right to maintain the additional areas with COG personnel, or other outside contract services.
- 12.6 During the final two (2) calendar weeks of the contract, the COG ROW Contract Manager, and the contractor shall make a final inspection to determine the condition of all landscape areas.
- 12.7 Items found during the final inspection to be improperly maintained by the outgoing contractor will be listed and evaluated by the COG.
- 12.8 The COG will arrange for repairs to be made and the costs for making repairs to the areas shall be deducted from final payments to the outgoing contractor.

13 LANDSCAPE MAINTENANCE SCHEDULES

- 13.1 The contractor shall provide work schedules to the COG ROW Contract Manager within ten (10) working days after the effective date of the contract.
- 13.2 The work schedules shall be biweekly, identifying the task, frequency, and location of work.
- 13.3 The schedule shall delineate the time frames for the landscape maintenance functions and normal day-to-day procedures of the contractor, including contractor inspection of contracted areas.
- 13.4 The COG reserves the right to make suggested changes to the schedule set up by the contractor, the specific requirements, and to establish the minimum requirements.
- 13.5 The contractor shall supply complete landscape maintenance for the COG ROW areas designated on the OFFER SHEET in accordance with the agreed-upon schedule.

- 13.6 Any agreed-upon changes in scheduling shall be submitted by the contractor, in writing, to the COG ROW Contract Manager.
- 13.7 The contractor shall submit revised schedules when actual performance differs substantially from planned performance. Revisions shall be submitted to the COG ROW Contract Manager within five (5) workdays prior to scheduled time for the work.
- 13.8 The contractor must make every effort to stay on schedule each day and shall complete all routine work during the calendar week that is scheduled, unless unforeseen circumstances out of the control of the contractor cause delays..
- 13.9 Biweekly schedules shall be submitted no later than noon on every Thursday prior to the upcoming two week period.
- 13.10 The COG ROW Contract Manager will determine if work that is not done on schedule constitutes non-compliance.
- 13.11 The COG ROW Contract Manager's approval to do work more than five (5) working days ahead of schedule may be obtained from a phone call to the COG ROW Contract Manager.
- 13.12 Contractor must deliver all schedules to the COG ROW Contract Manager via email at ESandoval@Glendaleaz.com

14 MONTHLY SUMMARY REPORTS AND INVOICES

- 14.1 The contractor shall prepare a written monthly summary report covering the maintenance activities and submit reports to the COG ROW Contract Manager and ROW Supervisor, along with a monthly invoice for payment. This report should be e-mailed to ESandoval@Glendaleaz.com and RBoyer@Glendaleaz.com with the monthly invoice.

15 CONTRACTOR DEDICATED EMPLOYEES AND CONTACT INFORMATION

- 15.1 The contractor shall provide supervision and on-the-job training to assure competent performance of the landscape maintenance work.
- 15.2 The contractor shall furnish at least one field supervisor (working foreman) for the contract.

- 15.3 The contractor shall have a field supervisor available during working hours for coordination with the City.
- 15.4 The COG has the right to review the qualifications of the supervisor and if the COG does not feel the supervisor is qualified, the contractor shall remove him/her from that position.
- 15.5 The contractor shall provide an alternate contact in the event the contractor's field supervisor is not available.
- 15.6 The contractor shall provide to the COG ROW Contract Manager a facsimile (fax) number, an email address, and a mobile phone number for the contractor's field supervisor.
- 15.7 The contractor's job manager, supervisors and service personnel using herbicides must be fluent in the English language due to the necessity to read chemical labels, job instructions, and signs, as well as the need for conversing with COG management personnel and the public.
- 15.8 Each of the contractor's work crews shall have a minimum of one person who is able to speak fluent English. The contractor is responsible for compliance with all immigration and naturalization legal requirements and shall be responsible for any accidents due to contract employees being non-proficient in the English language.

16 WASTE

- 16.1 The contractor shall remove from contract areas and properly dispose of all waste generated and/or handled by the contractor in compliance with federal, state, county and COG laws and regulations.
- 16.2 The contractor's open bed trucks used for transporting of waste must be covered (tarped).
- 16.3 The City ROW Division will be responsible for all disposal fees (dumping charges) incurred during routine maintenance and the collection of illegal dumping in the contracted alleys.
- 16.4 The contractor's disposal of waste must be at the city's authorized landfill.

17 ACCIDENT PREVENTION, PROTECTION OF THE PUBLIC AND BARRICADING

- 17.1 The contractor's work shall be accomplished with a minimum of traffic interruptions.
- 17.2 The contractor's use of barricades, electric warning lights and notices must be approved by the COG ROW Contract Manager.
- 17.3 COG-approved barricades, warning lights, and notices shall be erected and maintained by the contractor in strict accordance with the latest edition of the City of Phoenix Barricade Manual for Traffic Control, should the need arise.

18 SAFETY – Contractor shall:

- 18.1 Use barricades and caution tape in areas under repair that are not constantly supervised by Contractor;
- 18.2 Provide and maintain all barricades when approved by Contract Manager;
- 18.3 Not restrict travel lanes or sidewalks on arterial roadways between the hours of 6am-8:30am & 4pm-6pm;
- 18.4 Use 28 inch cones to warn, and restrict traffic from entering area where equipment is stored;
- 18.5 Have appropriately licensed, insured, and clearly identified vehicles with a vehicle number, name of the company, and phone number on each side of the vehicle. Lettering shall be at least three (3) inches high and of proportionate width;
- 18.6 Use arrow boards when work groups are working in lanes of traffic, and may utilize a 'rolling lane closure' as long as vehicles aren't stopped for longer than 30 minutes; and
- 18.7 All employees in work area must wear a Type II reflective vest.

19 EQUIPMENT

- 19.1 The contractor shall provide and maintain during the entire period of this contract, equipment sufficient in number, operational condition and capacity to efficiently perform the work and render the services required by this contract.
- 19.2 The contractor shall furnish to the COG ROW Contract Manager a list identifying all equipment to be used in fulfilling this agreement, within 10 days of contract, and notify the COG of any additions or deletions.
- 19.3 All of the contractor's vehicles and trailers transporting herbicides and their application equipment shall display proper State of Arizona licensing information and adhere to all labeling and transporting procedures as specified by the State of Arizona regulations.

- 19.4 The contractor shall maintain all of the contractor's equipment in good repair, appearance and sanitary condition at all times. The contractor shall perform regular maintenance activities to reduce leaks, spills, or other unintended discharges of chemicals associated with the application of chemicals.
- 19.5 The COG reserves the right to inspect the contractor's equipment at any time to ascertain the condition of the equipment, and to deny use of inappropriate equipment.
- 19.6 All of the contractor's handheld power equipment, i.e., blowers, weed eaters, trimmers, hedgers, chain saws, etc., must be low emission, four-cycle or electric powered.
- 19.7 When the Arizona Department of Environmental Quality (ADEQ) issues a High Pollution Advisory (HPA), the use of leaf blowers and gas powered equipment on governmental properties is prohibited during the advisory period. It is the contractor's responsibility to monitor HPA restrictions.
- 19.8 All vehicles used by the contractor must be appropriately licensed, insured, and clearly identified with a vehicle number, name of the company, and phone number on each side of the vehicle. The vehicle number, name of the company, and phone number letters shall be at least three (3) inches high and of proportionate width.
- 19.9 The contractor shall maintain herbicide application equipment in proper operating condition by adhering to any manufacturer's conditions and industry practices, and by calibrating, cleaning and repairing such equipment on a regular basis to ensure effective pesticide application and pest control. The contractor must ensure that the equipment's rate of herbicide application is calibrated to deliver the precise quantity of pesticide needed to achieve greatest efficacy against the target pest.

20 QUALITY CONTROL PROGRAM

- 20.1 The contractor's approved quality control program shall include, but not be limited to, the following: an action plan outlining performance levels, frequency of inspections, work schedules, staffing levels, name of contract person for follow-up and type of equipment to be utilized.

21 EMPLOYEE IDENTIFICATION

- 21.1 For visibility to traffic and for personnel safety, the contractor must provide, and each of the contractor's employees must wear, a uniform, shirt or vest bearing the contractor's name and/or logo.
- 21.2 The uniform, shirt or vest must be fluorescent yellow/red/or orange with Type II reflective strips.

22 WATER

- 22.1 The contractor shall furnish all water needed for dust control.
- 22.2 Penalties may be assessed for wasting of water. Wasting water is a violation of the COG of Glendale Ordinance No. 1659. Chapter 30 Article 1, Section 30-4.

23 DEFICIENCIES IN WORK, PENALTIES AND REMEDIES

- 23.1 Each week the contractor's performance for each COG designated contract area will be evaluated by the COG.
- 23.2 In the event the contractor's performance does not meet one or more of the performance standards described herein, the contractor will be given written notice setting forth the deficiencies to be corrected to the COG ROW Contract Manager's approval.
- 23.3 In the event the contractor has been notified of a deficiency and the deficiency is not corrected, the COG ROW Division may perform the services using COG personnel or by a separate contract.
- 23.4 The contractor shall not have the exclusive right for ROW landscape maintenance during the term of this contract and all renewals thereof, within the COG.
- 23.5 Additional issues that shall constitute non-compliance and are grounds for termination of contract are as follows:
- Revocation, termination, surrender or lapse of contractor's certification(s) during the term of the contract.
 - Revocation, termination, surrender or lapse of any insurance required by federal, state or local agencies.

24 INSPECTIONS – CONTRACTOR'S AND COG'S

- 24.1 The COG ROW Contract Manager will serve as monitor to oversee adherence to the contract and to assist in resolving problems as they occur.
- 24.2 The contractor shall perform maintenance inspections weekly during daylight hours of all sites to ensure compliance, and inspections shall be included in the weekly reporting process.

- 24.3 The COG's monitor provides continuing inspection of all sites to ensure adequacy of maintenance and that methods of performing the work are in compliance with the specifications.
- 24.4 The COG's monitor shall note discrepancies and deficiencies in the work in writing and, unless it is an emergency (in which case a phone call will suffice), shall be brought to the attention of the contractor's representative.
- 24.5 The contractor shall correct all work discrepancies and deficiencies identified in writing in a timely manner as allowed by the Correction Time Limit Schedule (below).
- 24.6 Failure to correct areas named deficient by the COG within the limits of this Correction Time Limit Schedule may result in termination of the contract for default, unless written extensions have been authorized.
- 24.7 **CORRECTION TIME LIMIT SCHEDULE**

Weed Control	5 Working Days
Policing/Cleaning	3 Working Days
Illegal Dumping	3 Working Days
Pruning & Tree Maintenance	5 Working Days
Dead Plant Removal	5 Working Days
Schedules	3 Working Days

25 LOCAL OFFICE

- 25.1 The contractor shall maintain a local office with a competent contractor representative who can be contacted during normal working hours.
- 25.2 A local office is one that can be reached from within the City of Glendale without a toll call.
- 25.3 A fax, email address and a mobile telephone will fulfill the requirement for a local office.
- 25.4 The contractor must have a phone number for contact, Monday through Friday, 6:00 a.m. to 5:00 p.m.

26 OFFER

- 26.1 **PREPARATION OF BID PACKAGE** Only the following items need to be returned at time of bid:
- **OFFER SHEET**, Page 17
 - **ONE LETTER OF REFERENCE**, Page 16

26.2 **PRICE** All prices quoted shall be firm and fixed for the specified contract period.

26.3 **TERM OF AGREEMENT** The term of agreement for this Bid shall be from contract signing to June 30, 2015.

26.4 **OPTION TO EXTEND** The City may, at its option and with the approval of the contractor, extend the term of this agreement. Contractor shall be notified in writing by the City Materials Manager of the City's intention to extend the contract period at least thirty (30) calendar days prior to the expiration of the original contract period. Price adjustments will only be reviewed during contract renewal.

26.5 **INSURANCE** Contractor, performing as an independent contractor hereunder, shall be fully responsible for providing Workers' Compensation, or other applicable insurance coverage for itself and its employees and the City shall have no responsibility of liability for such insurance coverage.

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

The insurance company issuing the policy required above shall have a "BB" or better financial rating in the current edition of the Standard & Poors Insurance Guide and be authorized by the State of Arizona Department of Insurance to transact business within the State. **The certificate and policy shall name the City of Glendale as an additional insured and shall be primary coverage for the activity of the contractor.**

The City reserves the right to terminate any contractor agreement if the contractor fails to maintain such insurance coverage.

Contractor must provide certification of insurance compliance within ten (10) calendar days after notification of award. Certification must include: name and address of insurance company; policy number; liability coverage amounts; a statement the policy will not be canceled or failed to be renewed without thirty (30) days written notice to the City.

Certification to be submitted to: Materials Management, 6829 North 58th Drive, Suite 202, Glendale, Arizona 85301-2599.

<u>Type of Insurance</u> <u>(Minimum)</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Contractor(s) Protective Bodily Injury	\$1,000,000 each occurrence
Contractor(s) Protective Property damage	\$500,000 each accident
Contractual Bodily Injury	\$500,000 aggregate
Contractual property damage	\$1,000,000 each occurrence
Contractual property damage	\$500,000 each accident
Automobile bodily injury & property damage	\$500,000 aggregate
	\$1,000,000 each occurrence

26.6 **WORKERS' COMPENSATION** Contractor shall be in full compliance with the provisions of the Arizona Workers' Compensation Law (Title 23, Chapter 6, Arizona Revised Statutes) as amended, and all rules and regulations of the Industrial Commission of Arizona made in pursuance thereof. Contractor shall secure payment of compensation to employees by insuring the payment of such compensation with the State Compensation Fund or any insurance company authorized by the Insurance Department of Arizona to transact business in the State of Arizona.

Contractor further agrees that he shall require any and all sub-contractors performing work under the agreement to comply with said Worker's Compensation Law. It is expressly understood and agreed that all persons employed directly or indirectly by the Contractor, or any of his sub-contractors, shall be considered the employees of such Contractor, or his sub-contractor(s), and not the employees of the City of Glendale.

27 **REFERENCES** Provide with the bid, one letter of reference from a company for whom contractor has provided similar products/services in the last twelve (12) months. Also include company name, address, phone number, contact person, a description of the products/services provided with a description of any major variation to the requirements of this Bid.

EXHIBIT B
ALLEY CLEANING MAINTENANCE
COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Method of payment is provided in Paragraph 5 of the Agreement.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$26,220.00.

DETAILED PROJECT COMPENSATION

Alley Cleaning Maintenance of approximately 22 miles of alleys - through June 30, 2015.

Duties shall include, but are not limited to: shrub maintenance, tree trimming, loose trash pick-up, weed abatement activities and illegal dumping.

Areas of Service are mapped as: 505 507 605 606 607 705 706 707 708 709 805 807 905 1206

28 **OFFER** Bidder certifies that they have read, understand, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Bidder also certifies that the prices offered were independently developed without consultation with any of the other bidders or potential bidders.

<u><i>Luis Huizar</i></u>	<u>Mariposa Landscape Arizona Inc</u>
Authorized Signature	Company's Legal Name
<u>Luis Huizar</u>	<u>7677 North 67th Avenue</u>
Printed Name	Address
<u>Vice President Of Operations</u>	<u>Glendale , Arizona 85301</u>
Title	City, State & Zip Code
<u>623-764-6151</u>	<u>623-463-2223</u>
Telephone Number	FAX Number
<u>luish@mariposa-az.com</u>	<u>hr@mariposa-ca.com</u>
Authorized Signature Email Address	Company Email Address

For questions regarding this offer: (If different from above)

<u>john.maleske@mariposa-az.com</u>	<u>623-203-4339</u>	<u>623-463-2223</u>
Contact Name	Phone Number	Fax Number
<u>john.maleske@mariposa-az.com</u>		
Contact Email Address		

FEDERAL TAXPAYER ID NUMBER: 26-2123097

Arizona Sales Tax No. 20336331 Tax Rate 8.5 %

Bidder certifies it is a: Proprietorship Partnership Corporation

Minority or woman-owned business: Yes No

Bid Amount

	<u>Total Bid</u>	
Glendale Alley Maintenance	<u>\$5,244.00</u>	(monthly)
Glendale Alley Maintenance	<u>\$1,210.15</u>	(weekly)
Initial, One-Time Start-Up costs (if any)	<u>None</u>	

EXHIBIT C
ALLEY CLEANING MAINTENANCE
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 parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
- a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (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 shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

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

4. **Exceptions.**

4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.

4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.