

CITY CLERK ORIGINAL

C-9952
04/28/2015

PROFESSIONAL SERVICES AGREEMENT Intelligent Transportation System Enhancements along 51st, Olive and Northern Avenues

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Kimley-Horn and Associates, Inc., a North Carolina corporation, authorized to do business in the State of Arizona, ("Consultant") as of the 28 day of APRIL, 2015 ("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.

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, 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 \$162,420 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.** For the duration of the term of this Agreement, Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Contractor, its agent(s), representative(s), employee(s) and any subcontractors.

8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

8.2 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts

or equipment furnished in connection with any tasks, or work performed by Contractor or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.

- b. For any claims related to this Project, the **Contractor's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.3 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Contractor has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.4 Waiver of Subrogation. **Contractor hereby agrees to waive its rights of subrogation which any insurer may acquire** from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agent(s) and subcontractor(s).

8.5 Verification of Coverage. Within 15 days of the Effective Date of this Agreement, Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Contractor's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Contractor's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Contractor to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.6 Subcontractors. Contractor shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

8.7 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Contractor, the Project or the insurer.

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:

Ray Yparraguirre
7740 N. 16th Street, Suite 300
Phoenix, Arizona 85020

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

City of Glendale
c/o Trevor Ebersole
6210 W. Mrytle Ave., Suite 112
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 two year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional two 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.

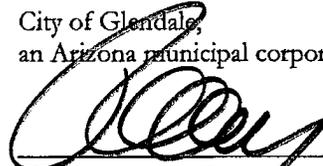
15. **Exhibits**. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

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.

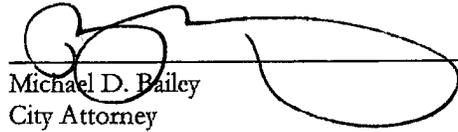
City of Glendale,
an Arizona municipal corporation


By: Richard A. Bower
Its: Acting City Manager

ATTEST:


Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

KHA MT
07

Kimley-Horn and Associates, Inc
a North Carolina Corporation


By: BRENT MUTTI
Its: V.P.

EXHIBIT A
Professional Services Agreement

PROJECT

(Cover Page)

Exhibit A
Professional Services Agreement

Project consists of Intelligent Transportation Systems (ITS) planning and design along 51st, Olive and Northern Avenues.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

(Cover Page)

SCOPE OF SERVICES

Task 1 – Project Administration

Task 1.1 – Project Schedule

KHA and Associates, Inc. (KHA) will develop a project schedule identifying project milestones. The schedule will be updated periodically as the project progresses. It is anticipated that the design phase of the project will require an 18 month schedule.

Task 1.2 – Kick-Off Meeting

KHA will arrange for a kick-off meeting with the City and ADOT within one week of the notice to proceed. The meeting will serve to confirm the lines of communication, review the scope and schedule, and address other project details. Because this project will be constructed using federal funds, determining the submittal dates and agency review periods at the kick-off meeting will be key to completing the project on schedule.

KHA will provide a meeting agenda, proposed schedule, handouts as necessary, and will develop brief meeting minutes that summarize action items which will be disseminated to project stakeholders.

Task 1.3 – Project Status Reports

KHA will prepare monthly project status reports and invoices. The status reports are intended to document KHA's progress, identify potential issues as they arise and identify changes to the project schedule.

Task 1.4 – Project Coordination and Progress Meetings

KHA will prepare for and attend monthly progress meetings with the City of Glendale and/or participating agencies/departments to discuss project issues. The regular time and dates for the meetings will be selected at the project kick-off meeting. The City of Glendale will arrange for the meeting space. KHA will provide a meeting agenda, handouts as necessary, and will develop brief meeting minutes that summarize action items which will be disseminated to project stakeholders. Because meetings may not be required every month and the comment review meetings will be held in place of corresponding monthly meetings, 6 progress meetings are anticipated.

The City of Glendale will provide comments to meeting minutes, project status reports, and other formal correspondence through the City of Glendale Project Manager. KHA will incorporate City comments into all final documents.

Task 1 Deliverables:

1. Project Schedule
2. Monthly Project Status Reports
3. Kick-off Meeting Minutes
4. Progress Meeting Minutes

Task 2 – Prepare Project Assessment

Task 2.1 – Field Review of Existing Conditions

KHA will perform a field review to confirm the location of existing infrastructure and identify locations for the installation of the proposed infrastructure. Existing pull boxes will be examined to determine if they need to be replaced and/or if modifications need to be made to the conduit sweeps within them to accommodate new fiber. As part of this field review, the City of Glendale will provide technician assistance with conduit continuity verification.

Task 2.2 – Project Assessment (PA)

KHA will prepare a PA that complies with Arizona Department of Transportation (ADOT) requirements to convey basic project background and requirements. The PA will include the following information:

1. Title Page
2. Introduction
3. Background Data
4. Project Scope
5. Project Development Considerations
 - a. Environmental Requirements
 - b. Geotechnical and Drainage Requirements
 - c. Critical Outside Agency Involvement
 - d. Right-of-Way Requirements
 - e. Utility Relocation Requirements
 - f. Seasonal Considerations
 - g. Traffic Requirements
 - h. Design Criteria
 - i. Communication Plan which includes considerations to connect additional signalized intersections or ITS devices
 - j. Identification of Device Locations
 - k. Options for Additional ITS Infrastructure
 - 1) Based on allocated construction budget
 - 2) Consider extending project limits
 - 3) Consider additional ITS devices and infrastructure
6. Other Requirements
 - a. Funding Sources
 - b. Project Development
 - c. Construction Administration

- d. Certification Acceptance Procedures
- e. Itemized Estimate
- f. Vicinity Map with segments identified.
- g. Revised Design Schedule
- h. 30% plans (Project Overview Map) (See Task 2.4)

KHA will organize and attend a comment resolution meeting to resolve comments generated from the Preliminary PA.

KHA will revise the preliminary PA based on input from ADOT, the City and project stakeholders. KHA will track all comments and resolutions to each comment.

KHA will complete the ADOT Systems Engineering Checklist during this task.

Both KHA and the City understand that revising the project limits will require MAG approval.

Task 2.3 – Prepare Base Plans

KHA will subcontract with Survey Innovation Group, Inc. to develop base plans of the project area.

Task 2.4 – Prepare 30% Plans

The 30% plans will show the general alignment for the fiber backbone project and primarily will identify existing and new conduit, the eight intersections at which traffic signal controllers will be tied into the fiber backbone, and proposed CCTV locations. The plans will be prepared in AutoCAD format at a scale of 1 inch = 40 feet and will adhere to City of Glendale's design guidelines. Final electronic files will be provided to the ADOT in Microstation format.

The following plan sheets and sections of plan sheets (estimated) will be included in the plan package:

- Title sheet (1 sheet);
- Olive/Northern/51st Avenue ITS plan sheets (16 sheets)

The design of the system will utilize the existing conduit and pull boxes to the extent possible. The alignment may be behind sidewalk or within the street, depending upon which area is most appropriate for installation. Typical conduit depths will eventually be included on a detail sheet.

All plans and estimates will be prepared in accordance with the following design references:

1. City of Glendale Traffic Signal and ITS Standard Details, 2011;
2. ADOT Standard Plans and Specifications; and
3. ADOT Project Development Process Manual;

These documents were prepared to establish uniform design policies, procedure design guidelines, and criteria for all ITS related projects. Deviation from the policies and criteria may only be permitted with the written approval of the City and ADOT.

Task 2.5 – Prepare Preliminary Estimate of Probable Cost

KHA will prepare an engineering estimate of cost based on the summary of quantities and recent bid prices from the City of Glendale and other construction projects similar in scope and location to this project.

Task 2.6 – Submit 30% Plans and Estimate of Probable Cost

KHA will submit 30% plans and a preliminary estimate of probably costs to the City of Glendale and ADOT for review. It is anticipated that 2 copies of this submittal will be required. All plan sheets will be 11” by 17”.

Task 2.7 – 30% Comment Review Meeting

KHA will prepare for and attend a comment review meeting to discuss comments from all stakeholders. KHA will provide meeting minutes and a summary of comments/comment resolution.

Task 2 Deliverables:

1. Draft PA - An electronic copy and up to ten hard copies (8.5” x 11”) will be provided to ADOT and the City of Glendale for review.
2. Final PA - KHA will revise the PA based on any written comments from ADOT or the City of Glendale and submit an electronic copy and up to ten hard copies (8.5” x 11”) will be provided to ADOT and the City of Glendale.
3. 30% plans and preliminary estimate of probable cost
4. 30% comment review meeting minutes and comment resolution forms

3 – Environmental Task Documentation

KHA will prepare the environmental clearance with a Group II Programmatic Categorical Exclusion (CE) in the form of ADOT’s CE Checklist. Technical documents included with the CE will include an Urban Project Biological Evaluation form, a Preliminary Initial Site Assessment (PISA) and a Class I Cultural Resources report.

Task 3.1 - General Coordination/Meetings

This task includes time for KHA environmental staff to attend project meetings and to coordinate with the ADOT EPG NEPA Planner assigned to the project as well as EPG resource specialists (cultural resources, biology, hazmat, etc).

Task 3.2 - Public and Agency Scoping

KHA will prepare scoping letters and a scoping list for distribution of the letter for review and approval by ADOT EPG NEPA Planner. Separate scoping letters will be prepared for relevant agency contacts.

Task 3.3 - Conduct Field Reconnaissance for Project Clearance

This task includes a field reconnaissance of the project area. The field reconnaissance will focus on gathering information regarding biological resources, land use, and potential contamination within the project area.

Task 3.4 - Urban Biological Review Form

The purpose of this task is to prepare the appropriate biological document for the project's CE. It is assumed for this scope of work and will be verified at the time of the Kick-Off meeting that the appropriate biological document is an Urban Project Biological Evaluation (UPBE).

The UPBE Form will address potential affects the project may have on threatened and endangered species and to their critical habitat in the project vicinity and within Maricopa County. The preparation and submittal of the UPBE Form will comply with ADOT requirements.

The draft and final draft UPBE will be submitted to the ADOT NEPA Planner and Biologist for their review and approval.

Task 3.5 - Hazardous Materials - PISA

The Consultant will prepare a Preliminary Initial Site Assessment (PISA) to identify contamination concerns within the project area. The PISA documentation will include observations from field reconnaissance and review of an EDR database report for the three areas involved in the project. This task assumes that a Phase I Environmental Site Assessment will not be necessary.

A draft PISA report summarizing the findings will be submitted to ADOT EPG. Following ADOT EPG review, comments will be incorporated and a final PISA report will be submitted to ADOT.

Task 3.6 - Cultural Resources

As a subconsultant to Kimley-Horn, ACS will conduct a Class I Cultural Resources Literature Review and prepare draft Section 106 consultation letters. Please see attached proposal from ACS for details.

Task 3.7 - Draft CE

KHA will perform an environmental evaluation in the form of ADOT's Group II CE and will include an objective review of the proposed project and its potential environmental issues or potential changes to the environment.

The evaluation will include an analysis of environmental concerns including Natural Environment, Physical/Construction, Socioeconomic, and Cultural Resources. The results of the impact evaluation will be documented in the Draft Group II CE that will be submitted to the ADOT EPG NEPA Planner for review. This task includes up to two rounds of reviews. In addition this task includes time to review applicable plans against the CE for any updates or modifications needed to the CE due to changes in design.

Task 3.8 - Final CE

This task includes responding to ADOT comments and incorporating the comments into the final Group II CE. This task includes up to two rounds of reviews. In addition this task includes time to review applicable plans against the CE for any updates or modifications needed to the CE due to changes in design.

Task 3 Deliverables:

1. Public/Agency Scoping Letters
2. UPBE
3. PISA
4. Cultural Resources Report and draft Section 106 consultation letters

5. Draft CE Checklist
6. Final CE Checklist

Additional Environmental Documentation Services:

The following environmental documentation services are not included in the scope for this project but can be provided if authorized. Compensation for additional services will be agreed upon prior to any work being performed.

- Section 404 Jurisdictional Delineation or Permit Application;
- Species Specific Surveys;
- Phase I Environmental Site Assessment;
- Asbestos and/or lead based paint testing
- Biological Evaluation;
- Environmental Assessment or Environmental Impact documents;
- Additional Cultural Resources Field Survey, Monitoring, Testing or historic building inventory;
- Air Quality Analysis; and
- Noise Analysis.

Task 4 – Utility Coordination and Clearance

The City of Glendale will provide KHA with electronic files, where available, of locations of all City of Glendale owned utilities within the project limits. The City of Glendale will provide these files within one month of the project kick-off meeting. Where electronic files are not available, the City of Glendale will provide available hard copy plans of City owned utilities within the project limits.

KHA will coordinate with Blue Stake to identify and contact known utility companies within the project limits to obtain their utility location information. Based on the utility records received, KHA will show the approximate location of existing utilities on the design plans, beginning at the 60% level. KHA will also include contact information for each identified utility company in the PA and in the project special provisions.

Once the project plans have reached the 60% level, KHA will distribute copies of the plans to each utility company identified to be within the project limits for review. A utility clearance form will be sent to each utility company that will document the status of each utility's facilities within the project limits, identify potential utility conflicts, and identify any special coordination or requirements that must be followed during construction.

Once clearance forms have been submitted for each utility within the project limits and the project plans have reached the 95% level, KHA will coordinate with ADOT for issuance of formal utility clearance. KHA will prepare a utility clearance letter for submission to ADOT.

Due to the nature of the construction of this project, the Consultant will obtain a Materials Clearance Memo Waiver.

Task 4 Deliverables:

1. Utility Clearance Letter
2. Materials Clearance Memo Waiver

Task 5 – Right-of-Way Coordination and Clearance

Although, it is not anticipated that this project will require additional right-of-way, KHA will coordinate with ADOT and the City of Glendale to identify existing right-of-way within the project limits. KHA will include this information on the design plans.

KHA will coordinate with ADOT to obtain right-of-way clearance. KHA will prepare right-of-way certifications for each parcel within the project limits along Olive Avenue, Northern Avenue, and 51st Avenue. All right-of-way certifications will be in accordance with ADOT right-of-way clearance documents.

Task 5 Deliverables:

1. Right-of-way Certifications
2. Right-of-way Clearance Letter

Task 6— Prepare 60% Plans, Specifications and Estimate (PS&E)

Task 6.1 – Prepare 60% Plans

Based on the approved PA, Environmental Clearance, and 30% plans, the design plans will be advanced to the 60% completion level. The 60% plans will be a complete plan set which includes sufficient detail for project construction requirements.

KHA will design the communication cable system including the splices, terminations and specifications. This task will require coordination with the City of Glendale's staff to identify the communications equipment currently being used in the field.

KHA will coordinate the design of the conduit and communication cable with other projects being developed that are located within the project area. KHA will design the splices for the new fiber optic cables and to the existing fiber optic cable as needed to integrate this project into the City fiber network.

Traffic control plans will not be developed for this project. It is anticipated that all construction activities will be completed utilizing standard lane closures. KHA will develop an estimate for traffic control which will include quantities for specific traffic control elements to be included in the estimate of probable cost

In addition to the plan sheets included in the 30% submittal, the following plan sheets (estimated) will be included in the 60% plan package:

- Title Sheet (prepared by ADOT Control Desk) (1 sheet);
- List of standard drawings (3 sheets)
- Index of sheets (1 sheet);
- Legend and abbreviations (1 sheet);
- General notes (1 sheet);
- Construction notes (1 sheet);
- Summary of quantities (1 sheet);
- Communications schematic (1 sheet);

- Splice details (7 sheets);
- Fiber equipment connection details (5 sheets);
- Traffic control plans (3 sheets);
- Corner detail sheets (7 sheets); and
- Location plan sheets (16 sheets)

Construction and device details are anticipated to consist of trench details (which will include identification of empty conduits within a bank), utility avoidance details, cabinet details, communication details, and applicable City of Glendale Standard Details.

Corner details will consist of 1" = 10' scale drawings of areas where the fiber will connect to existing traffic signal equipment.

Because the area of ground disturbance for this project is anticipated to be less than one acre, a stormwater pollution prevention plan will not be prepared.

Task 6.2 – Prepare 60% Special Provisions

KHA will prepare specifications and special provisions for the project construction which meet ADOT requirements. The special provisions will be prepared in Microsoft Word and will adhere to ADOT guidelines.

The specifications will utilize the ADOT Standard Specifications for Road and Bridge Construction (2008) as the basis for the special provisions document and will be modified as required to describe the construction requirements for this project.

Task 6.3 – Prepare 60% Estimate of Probable Costs

The estimate of probable costs will be updated to reflect the 60% plans and specifications.

Task 6.4 – Submit 60% PS&E

KHA will submit 60% PS&E package to the City and ADOT for review. It is anticipated that both ADOT and the City will require a CD with all submittal documents and up to two (2) 11"x17" plan sets.

The 60% submittal will not be submitted until after the Environmental Clearance is obtained.

Task 6.5 – 60% Comment Review Meeting

KHA will prepare for and attend a comment review meeting to discuss comments from all stakeholders. In addition, KHA will provide meeting minutes and a summary of comments/comment resolution.

Task 6 Deliverables:

1. 60% PS&E
2. 60% comment review meeting minutes and comment resolution forms

Task 7 – Prepare 95% Plans, Special Provisions and Estimate

Task 7.1 – Prepare Plans

Based on the review comments on the 60% PS&E, the 60% plans, will be advanced to 95% completion level.

Task 7.2 – Prepare 95% Special Provisions

Based on the 60% comments, the special provisions will be advanced to 95% level.

Task 7.3 – Prepare 95% Estimate of Probable Costs

The estimate of probable costs will be update to reflect the 95% plans and specifications.

Task 7.4 – Submit 95% PS&E

KHA will submit 95% PS&E package to the City of Glendale and ADOT for review. It is anticipated that 10 copies of this submittal will be required. All plan sheets will be 11” by 17”.

Task 7.5 – 95% Comment Review Meeting

KHA will set up a comment review meeting to discuss unresolved comments to the 60% PS&E from the City and ADOT. To minimize meeting time KHA will work to resolve as many comments as possible prior to the meeting. KHA will provide meeting minutes. If comments can be addressed over the phone, no meeting will be held.

KHA will provide meeting minutes and a summary of comments/comment resolution.

Task 8 Deliverables:

1. 95% PS&E
2. 95% comment review meeting minutes and comment resolution forms

Task 8 – Prepare 100% Plans, Specifications and Estimate

Task 8.1 – Comment Review Meeting

KHA will set up a comment review meeting to discuss unresolved comments to the 95% PS&E from the City and ADOT. To minimize meeting time KHA will work to resolve as many comments as possible prior to the meeting. KHA will provide meeting minutes. If comments can be addressed over the phone, no meeting will be held.

Task 8.2 – Prepare 100% PS&E

Based on the 95% review comments and information obtained from the utility clearance process, the plans, special provisions, and estimates will be finalized.

Task 8.3 – Submit 100% PS&E

It is anticipated that both ADOT and the City will require a CD with all submittal documents and up to two (2) 11"x17" plan sets. It is also anticipated that one set of original sealed final contract documents will be submitted to ADOT for bid. Based on the final quantities, KHA will prepare and provide a bid item schedule.

KHA will also prepare and submit a comment response form which will document comments received to the 95% plans as well as the Consultant's response to each comment.

Upon project closeout, KHA will provide electronic versions of the final plans (in AutoCAD format), special provisions estimate of probable cost and bid schedule to the City.

Task 8 Deliverables:

1. One set of the final plans – 100% submittal with comments resolved. Sealed and signed full size vellum sheets.
2. One set of the special provisions in Word format
3. One set of estimate of probable cost in Excel format
4. Bid schedule in Excel format
5. Up to two (2) 11"x17" plan sets
6. Upon City approval, two (2) full size copies of final plans
7. One CD of all electronic AutoCAD files

Task 9 - Post Design Support Services

This task covers the post design services that could be requested of KHA during the implementation of the City of Glendale Olive/Northern/51st Avenue ITS project. The level of effort included in this proposal is approximately 1.25% of the programmed construction amount of \$900,000.

The Contractor for City of Glendale Olive/Northern/51st Avenue ITS project construction will furnish and install the equipment and services needed to complete the field construction contract. KHA will provide assistance to the construction administrator, ADOT and/or City of Glendale, during this project as needed. This assistance will include review of contractor submittals, respond to requests for information (RFI), participation in project meetings, providing technical assistance, preparing a conform set of record drawings based upon the Contractor's red line as-built set, and will provide consultation services related to the construction of the project as needed.

This task is based on the understanding that the day-by-day inspection of construction will be the responsibility of the construction administrator, ADOT and/or City of Glendale, with KHA providing technical assistance, and that the construction administrator, ADOT and/or City of Glendale, will provide all standard construction administration functions including processing appropriate forms, documents, and logs; and keeping quality control logs, records, and inspection reports, for each identifiable part of the system.

Listed below is a sample of the typical types of services that could be provided by KHA in support of the City of Glendale Olive/Northern/51st Avenue ITS project. The following services will be provided on an hourly basis within the constraints of the project budget:

A. Post Design Services

1. Review material submittals, fiber test results, and recommend appropriate action
2. Review shop drawings and recommend appropriate action
3. Review Contractor RFI's and provide responses as required
4. Attend meetings between as requested.

B. Technical Engineering Support

KHA can provide other types of engineering and technical support during the City of Glendale Olive/Northern/51st Avenue ITS project, as needed. These activities may include, but are not limited to the following:

1. Additional design, which may arise as a result of unforeseen field occurrences.
2. Integration technical services.
3. Utility coordination assistance including coordination with other agencies communications infrastructure.
4. Coordination activities with other projects.
5. Prepare conform set record drawing CADD files based on the Contractor's redline markups of as-built conditions. CADD files will be provided to the City of Glendale.
6. Any additional engineering, integration, and technical support tasks requested by the construction administrator, ADOT and/or City of Glendale, that have not already previously been addressed.

C. As-Built Preparation

The Contractor for the City of Glendale Olive/Northern/51st Avenue ITS project and the ADOT VISION Field Office will provide the plans containing the field redline changes that are to be incorporated onto the as-built plans by the Consultant. Plan sheets accompanying addenda will replace the original plan sheets. Plan changes initiated by supplemental agreements will be incorporated into the plans as additional sheets with an alpha designation, such as 32A, 32B, etc. The original plan sheet that has been changed will have an "X" drawn across the sheet and will be retained in the as-built plans package.

KHA will not conduct an independent field investigation, and is not responsible for documenting any other "as-built" conditions except those shown on the Contractor and

ADOT VISION Field Office redline markups and as described above for addenda plan sheets and supplemental agreement plan sheets.

The following deliverables will be prepared:

1. The original set containing the field redlines sent by the construction office will be returned.
2. One (1) half size (11" x 17") set of the prepared As Built plans will be submitted to the Resident Engineer for the Resident Engineer's approval prior to items 3 and 4 below.
3. One (1) half-size (11" by 17") prints of the final prepared, with original seal and signed, As Built plans set.
4. Two (2) electronic copies containing the created, sealed and signed, As Built Plans scanned onto CD(s) in PDF format (Adobe Portable Document Format).

BILLING

KHA will complete the services outlined above for a fee not to exceed \$162,420.00. Please refer to the attached Estimate of Cost for Proposed Design Services table for the derivation of this fee.

Tasks 1-8 Billing Type: Lump Sum

Task 9 Billing Type: Not to Exceed

Billing Cycle: Monthly

BASIS OF DESIGN

The following project assumptions have been developed for this Scope of Services based on discussions with City Staff:

1. The City will provide KHA with electronic copies of the latest version of any details relevant to this project which may have been recently updated.
2. The plan set for this assignment will be prepared in English units.
3. The plan set for this assignment will be prepared using AutoCAD and Microstation software.
4. This project (construction only) does involve the use of Federal CMAQ funding.
5. All submittals will be in accordance with the requirements outlined for each stage of submittals as outlined on ADOT's Local Government Website.
6. It is assumed that the comments to the 100% plans will primarily involve verifying that the comments to the 95% plans have been adequately addressed and will not involve a redirection of design or significant additional comments not previously identified.

7. No post design technical support, Construction Engineering or shop drawing review will be provided as part of this Scope of Services. These services will be included as an amendment to this agreement.
8. Other design issues that arise during the design of this project which are not described in this Scope of Services and are reasonably not expected to be included will require a contract addendum to cover the Consultant's additional hours and costs.
9. The Consultant's Representative and named Project Manager will be John Kissinger, PE, who is a registered Civil Engineer licensed to practice in the State of Arizona. (Arizona Registration No. 27128)
10. The Consultant will endeavor to provide a project schedule to meet the City's construction schedule.

EXHIBIT C
Professional Services Agreement

SCHEDULE

(Cover Page)

Fee Estimate Summary

**City of Glendale, AZ
Olive - Northern - 51st Ave ITS
December 17, 2014**

LABOR

<u>Classification</u>	<u>Billing Rate</u>	<u>Total Hours</u>	<u>Cost</u>
Project Manager	\$ 198.00	80	\$ 15,840.00
Sr. Engineer	\$ 180.00	70	\$ 12,600.00
Project Engineer / Designer	\$ 148.00	229	\$ 33,892.00
Analyst	\$ 105.00	344	\$ 36,120.00
Technician	\$ 80.00	0	\$ -
Admin.	\$ 105.00	48	\$ 5,040.00
Total		921	\$ 127,492.00

	<u>Unit Cost</u>	<u>Quantity</u>	<u>Cost</u>
EXPENSES			
Full Size Plots (Vellum)	\$ 5.00	48	\$ 240.00
EDR Database Search	\$ 750.00	1	\$ 750.00
Total			\$ 990.00

SUBCONSULTANTS	<u>Total Cost</u>
ACS	\$ 5,703.00
SIG	\$ 28,235.00
Total	\$ 33,938.00

TOTAL (to nearest \$1) \$ 162,420.00

Estimate of Cost for Proposed Design Services

City of Glendale, AZ
 Olive - Northern, 51st Ave ITS
 December 17, 2014

Task Description	Rates and Hours										Total Cost	Task Subtotal	
	Principal	Project Manager	Sr. Engineer	Project Engineer / Designer	Enviro. Planner	Analyst	Technician	Admin.	Total Hours	Sub-consultant Expense			KHA Outside Expense
	\$210.00	\$198.00	\$180.00	\$148.00	\$180.00	\$105.00	\$80.00	\$105.00					
Task 1: Project Administration													
1.1 Project Schedule		2	2	4									\$ 988
1.2 Kick-off Meeting		5	13	6	3								\$ 2,210
1.3 Project Status Reports		6	6	6				12					\$ 3,336
1.4 Project Coordination and Progress Meetings		12	12	6	6								\$ 6,384
Task 1 Total													\$ 12,918
Task 2: Prepare Project Assessment													
2.1 Field Review of Existing Conditions		1	2	8		11							\$ 2,897
2.2 Project Assessment		4	10	15	30	20							\$ 7,962
2.3 Prepare Base Plans		2	5	12	25	20							\$ 30,631
2.4 Prepare 30% Plans (16 Sheets @ 40 Scale)		2	2	2	2	10							\$ 5,957
2.5 Prepare Preliminary Estimate of Probable Cost		2	2	2	2	4							\$ 2,102
2.6 Submit 30% Plans and Estimate		2	2	2	2	4							\$ 1,532
2.7 30% Comment Review Meeting		2	2	4	4								\$ 988
Task 2 Total													\$ 51,809
Task 3: Environmental Documentation													
3.1 General Coordination/Meetings					4								\$ 840
3.2 Public/Agency Scoping Letters					15								\$ 2,400
3.3 Field Reconnaissance (2 people)					10								\$ 1,600
3.4 Urban Project Biological Evaluation					8								\$ 1,280
3.5 Hazardous Materials - PISA					20								\$ 3,950
3.6 Cultural Resources Report					10								\$ 7,303
3.7 Prepare Draft CE includes plan review time					54								\$ 8,540
3.8 Prepare Final CE includes plan review time					20								\$ 3,200
Task 3 Total													\$ 29,013
Task 4: Utility Coordination													
4.1 Obtain Records from Utility Companies					1	5		4					\$ 1,093
4.2 Show Utilities on 80% Plans					5	20							\$ 3,038
4.3 Distribute Forms, Collect Responses, Obtain Clearance		1			2	10		4					\$ 1,964
4.4 Include Contact Information in Special Provisions					1	2							\$ 365
Task 4 Total													\$ 6,453
Task 5: Right of Way Coordination													
5.1 Prepare Right of Way Certification Documents - Olive Ave		1	1	10		16							\$ 3,538
5.2 Prepare Right of Way Certification Documents - 51st Ave		1		10		16							\$ 3,388
5.3 Prepare Right of Way Certification Documents - Northern Ave			1	4		8							\$ 1,812
5.4 Right of Way Coordination with ADOT		1		5		2							\$ 1,148
Task 5 Total													\$ 9,886

EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

The consultant will be paid on a time and materials basis according to the attached work hour estimate.

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 \$162,420.

DETAILED PROJECT COMPENSATION

See attached spreadsheet for cost estimate.

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.