

PROFESSIONAL SERVICES AGREEMENT
(Not Construction Related)
WITH ARIZONA TRAINING & EVALUATION CENTER, INC.

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Arizona Training & Evaluation Center, Inc. , an Arizona non-profit corporation, authorized to do business in the State of Arizona, ("AZTEC") as of the 8 day of December, 2015 ("Effective Date").

RECITALS

- A. City intends to partner with AZTEC to train persons with disabilities in a specific occupational skill to allow such persons to learn job duties associated with materials recycling and waste disposal. This project will benefit the individual and the public and is more fully set forth in **Exhibit A**, Project (the "Project");
- B. AZTEC desires to provide City with a temporary labor force, staffing services and training and oversight of such workers ("Services") as an independent contractor as more fully described in **Exhibit A**, in order to complete the Project; and
- C. City and AZTEC desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. **Key Personnel; AZTEC Project Team and Subcontractors.**

- 1.1 Professional Services. AZTEC will provide all personnel necessary to assure the Services and conducted in a timely and efficiently manner, consistent with the 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 City employees or contractors.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) AZTEC will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, supervise and/or train the temporary workers being provided pursuant to this Agreement and handle all aspects of the Project to ensure all Services provided are consistent with applicable standards as detailed in this Agreement; and
 - (2) The City must approve the designated Project Manager.
 - b. Project Team.
 - (1) AZTEC's Project Manager will have responsibility for and will supervise all other personnel assigned to the Project by AZTEC.
 - (2) AZTEC will provide sufficient staff, including a "Job Coach," who will assist and oversee the trainees in the performance of their job duties and tasks, for the duration of the Project. Such staff along with the Project Manager will comprise the "Project Team."
 - c. Discharge, Reassign, Replacement.
 - (1) AZTEC will not discharge, reassign, replace or diminish the responsibilities of any of its assigned personnel who have been approved by City without City's prior

written consent unless that person leaves the employment of AZTEC, in which event the substitute must first be approved in writing by City.

- (3) AZTEC will change any of the members of the Project Team at the City's request if the performance of any person 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. AZTEC shall not engage any subcontractor for the work or services to be performed under this Agreement.

1.3 Independent Contractor. The personnel being providing by AZTEC to perform the Services described in Exhibit A of this Agreement are providing all such services as independent contractors. Personnel are being provided by AZTEC as temporary, part-time workers and are limited to working less than 30 hours a week. The City will have no liability whatsoever for such workers as employees. AZTEC shall indemnify the City in accordance with Section 8.8 below for any claim or demand based on the theory that the personnel or trainee provided by AZTEC is a City employee.

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. **AZTEC's Work.**

3.1 Standard. AZTEC must perform training and oversight of all persons providing 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. AZTEC warrants that:

- a. AZTEC currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither AZTEC nor any 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 AZTEC's contracting ability.
 - (2) AZTEC must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the AZTEC 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, AZTEC 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, AZTEC 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, AZTEC will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

4. Compensation for the Project.

- 4.1 Compensation. AZTEC's compensation for the Project, including those furnished by any subcontractors will not exceed **\$35,000.00** per year this Agreement remains in effect, or a total of **\$175,000.00** if all renewals periods are exercised as provided in Section 13 herein, and as specifically detailed in **Exhibit B** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of Services provided herein 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 AZTEC 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 Expenses. City will not reimburse AZTEC for any other out-of-pocket.

5. Billings and Payment.

- 5.1 Applications.
 - a. AZTEC 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 AZTEC and its subcontractors; and
 - (2) Unconditional waivers and releases on final payment from all 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 or AZTEC 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. AZTEC will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. AZTEC 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.

7. **Conflict.** AZTEC 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 AZTEC 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.
- 8.8 Indemnification.
- a. To the fullest extent permitted by law, AZTEC 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. AZTEC 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 AZTEC, 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 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 AZTEC, subcontractor, or employee who performs work under this Agreement to ensure that the AZTEC, subcontractor, or any employee, is compliant with the warranty under this section.
- 9.4 City may conduct random inspections, and upon request of City, AZTEC will provide copies of papers and records of AZTEC demonstrating continued compliance with the warranty under this section. AZTEC 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 AZTEC agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon AZTEC and expressly accrue those obligations directly to the benefit of the City. AZTEC 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 AZTEC'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. AZTEC. AZTEC's representative (the "AZTEC's Representative") authorized to act on AZTEC's behalf with respect to the Project, and his or her address for Notice delivery is:

Donna Ohling
Arizona Training & Evaluation Center, Inc.
7400 W. Olive Avenue, Suite 24
Peoria, AZ 85345
(623) 412-2888 ext. 126

- 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 Jacob Romero
6210 W. Myrtle Avenue
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 AZTEC identifying the designee(s) and their respective addresses for notices.

- d. Changes. AZTEC 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 AZTEC and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

12.2 Interpretation.

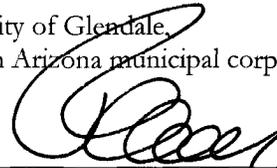
- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
 - c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.
- 12.3 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 12.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
- 12.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 12.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
- 12.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
13. **Term.** The term of this Agreement commences upon the Effective Date and continues for a one (1) year initial period. The City may, at its option and with the approval of the AZTEC, extend the term of this Agreement four (4) additional one-year periods, renewable on an annual basis. AZTEC will be notified in writing by the City of its intent to extend the Agreement period at least thirty (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 and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.
14. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between AZTEC 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.)

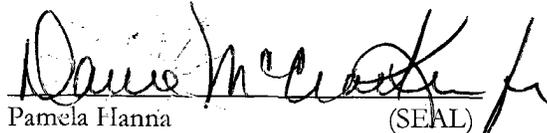
The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation

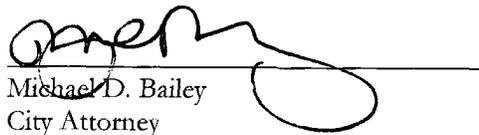


By: Richard A. Bowers
Its: Acting City Manager

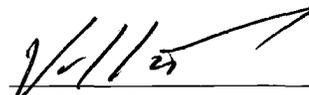
ATTEST:


Pamela Flanna (SEAL)
City Clerk

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

Arizona Training & Evaluation Center, Inc.,
an Arizona non-profit corporation



By: Dr. Vincent A. Scott
Its: Executive Director/President

EXHIBIT A
Professional Services Agreement

PROJECT

Arizona Training & Evaluation Center, Inc., an Arizona non-profit corporation ("AZTEC") is providing occupational trainees to the City of Glendale as temporary, part-time workers for certain tasks associated with the City recycling and waste management operations. This program allows persons with disabilities to learn and develop a specific occupational skill. The ultimate goal for each trainee is competitive placement with either the company providing the training or a similar company within the community.

Under this Agreement, AZTEC will provide trainees the opportunity to learn the job duties previously discussed and agreed upon by both AZTEC and Glendale. It will also provide a job coach to assist and oversee the trainees in the performance of their job duties for the duration of this agreement. Because these trainees are and shall remain independent contractors, AZTEC will ensure that trainees perform agreed upon work tasks and assignments every weekday 8:00 a.m. to 12:00 p.m., but in no instance, will such temporary, part-time laborers work more than 30 hours a week. AZTEC accepts full responsibility for all trainees who work at a Glendale worksite.

Under this Agreement, Glendale will provide trainees and AZTEC staff such assistance necessary to learn all aspects of the position through the designated job coach. The City shall also assist AZTEC in determining progress of each trainee and provide feedback/input on each trainee's performance.

EXHIBIT B
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

The City will pay AZTEC for Services rendered on a monthly basis, as provided in Section 5 of the Agreement.

NOT-TO-EXCEED AMOUNT

AZTEC's compensation for the Project, including those furnished by any subcontractors will not exceed **\$35,000.00** per year this Agreement remains in effect, or a total of **\$175,000.00** if all renewals periods are exercised as provided in Section 13 herein.

DETAILED PROJECT COMPENSATION

AZTEC shall bill the City for the work performed by the trainee on an hourly basis. For each hour worked by the Trainee, Glendale will pay AZTEC the federal minimum wage or the Arizona minimum wage, whichever is higher. Requested wage increases greater than the federal or state minimum wage will be evaluated and/or negotiated between AZTEC and Glendale. Once the City has paid AZTEC for the monthly invoice, it is the sole responsibility of AZTEC to disburse wages to the trainees. At no time will Glendale directly pay the wages to a trainee. Wages are paid based on actual hours worked, not on any promised or expected number of hours.

AZTEC will not bill the City a separate charge for the work performed by its Project Manager or its Job Coach.

EXHIBIT C
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, AZTEC 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 AZTEC in accordance with this Agreement.

4. **Exceptions.**

4.1 Third Party Claims. City and AZTEC 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 AZTEC.

4.2 Liens. City or AZTEC 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.