

**SERVICES AGREEMENT  
(Not Construction Related)**  
Action Target, Inc.

This Services Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City") and Action Target, Inc., a Delaware, Corporation ("Consultant") as of the 2 day of August, 2016 ("Effective Date").

**RECITALS**

- A. City intends to undertake a project for the benefit of the public and with public funds (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 A, Quotation, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with services ("Services") consistent with industry-best 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 **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.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project. Nevertheless, this Agreement terminates two years from the effective date, but it may be extended by the City for three additional one year terms.

**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 currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Consultant nor any Subconsultant 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.

- a. 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.
- b. Consultant must not discriminate against any employee or applicant for employment on the basis of 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. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Work Product.

- a. **Ownership.** Upon receipt of payment for Services furnished, Consultant grants to City 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 \$30,273.00 as specifically detailed in **Exhibits A and B** ("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 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 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.

**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
  - (2) Unconditional waivers and releases on final payment from all Subconsultants 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 provisions 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, Consultant 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 Consultant, 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 Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant'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 **Consultant'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 Consultant'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 Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.4 **Waiver of Subrogation.** Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire from Consultant by virtue of the payment of any loss. Consultant 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 Consultant, its employees, agent(s) and subcontractor(s).

8.5 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Consultant 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 Consultant'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.

Consultant'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 Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.6 **Subcontractors.** Consultant 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 Consultant, the Project or the insurer.

9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrants its compliance and that of its Subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or Subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and Subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The Consultant and Subconsultant shall cooperate with the City's random inspections, including granting the City entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

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:

c/o

- 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 Chief of Police  
6835 N. 57<sup>th</sup> Drive  
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.

**11. Entire Agreement; Survival; Counterparts; Signatures.**

11.1 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, if any, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

11.2 Interpretation.

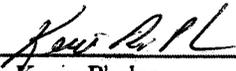
- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

- 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.
- 11.3 **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.
- 11.4 **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.
- 11.5 **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.
- 11.6 **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.
- 11.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
12. **Term.** The term of this Agreement commences upon the effective date and continues for a two year period. There are no automatic renewals.
13. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.
14. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.
- |           |                    |
|-----------|--------------------|
| Exhibit A | Quotation          |
| Exhibit B | Compensation       |
| Exhibit C | Dispute Resolution |

[SIGNATURES ON FOLLOWING PAGE.]

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

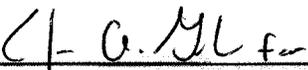
City of Glendale,  
an Arizona municipal corporation

  
\_\_\_\_\_  
By: Kevin Phelps  
Its: City Manager

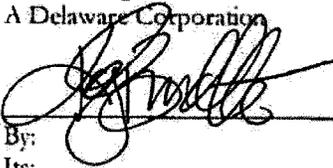
ATTEST:

  
\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Action Target, Inc.,  
A Delaware Corporation

  
\_\_\_\_\_  
By:  
Its:

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

QUOTATION



# Quotation

San Jose, Penn. UT 8485-0256 861-277-8233 FAX: 861-277-8286

*Private and Confidential*

Order: 95248  
Date: 2016-Jun-28  
Client: 10760  
Sales: Stephanie Sheldon  
PO: Email request from PO / Signed contract  
Printed: 2016-Jun-28

Shipping Terms: n/a	Payment Terms: PO / Signed contract	Installation Terms: Maintenance Technician	Status: work
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<b>Bill To:</b> Accounts Payable Glendale Police Department 11550 W. Glendale Av Glendale, AZ 85307 USA	<b>Ship To:</b> Sgt. Jerry McDaniel Glendale Police Department 11550 W. Glendale Ave Glendale, AZ 85307 USA
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Ln	Qty	Ship	Mtr	Description	Each	Price
1	3			Three - One Day Service Visit per year - 1st year - (8 hours maximum, no minimum) for an Annual Maintenance Agreement. No parts included unless specifically listed on the quote.  Option 1. Semi-Annual Agreement is 2 visits per year for \$1950 per visit for a total of \$3900.  Option 2. Quarterly Agreement is 4 visits per year for \$1850 per visit for a total of \$7400.  Option 3. Three single day visits per year for \$1900 per visit for a total of \$5700.  Contact Person _____ Range Address _____  Project Type (COM, MIL, LE, INT) _____ Contract Award Date _____ Number of Visits _____ Equipment to be serviced _____  DISCOUNT NOTE: If you "PRE-PAY" the Service Agreement, sending the payment with the contract, then the prices are reduced \$100/visit. For example, the Single year visit si \$2500. and the Semi-annual visits are \$1850 each and the Quarterly visits are \$1750 each.	1,900.00	5,700.00
2	3			Three - One Day Service Visit - 2nd year -(8 hours maximum, no minimum) for an Annual Maintenance Agreement. No parts included unless specifically listed on the quote.	1,957.00	5,871.00

3	3	Three - One Day Service Visits - 3rd year - (8 hours maximum, no minimum) for an Annual Maintenance Agreement. No parts included unless specifically listed on the quote.	2,015.00	6,045.00
4	3	Three - One Day Service Visit - 4th year - (8 hours maximum, no minimum) for an Annual Maintenance Agreement. No parts included unless specifically listed on the quote.	2,078.00	6,234.00
5	3	Three - One Day Service Visit - 5th year- (8 hours maximum, no minimum) for an Annual Maintenance Agreement. No parts included unless specifically listed on the quote.	2,141.00	6,423.00

**Comments:**

Service Visit 5 year contract, Currently Three visits per year, can be changed to four visit per year at same pricing . no parts included. NOTES: \* Parts are not included in the above rates and will be billed separately as needed and approved. \* Rates include all labor, travel, lodging, and other expenses. \* Extraordinary repairs or materials may require additional work days billed above and beyond the scheduled maintenance days. \* Range must be cleaned prior to the Tech's arrival for service. \* Please email pictures of the range and equipment to ssheldon@actiontarget.com prior to visit. Other Exclusions: Bonds, Permits, and Taxes. Structural Design. Site Preparation. Concrete: including cutting, coring, and patching. Field Painting. Site Utilities. Waste Disposal, including removal or disposal of old equipment. Mandatory Wage Requirements. TERMS AND CONDITIONS: Payment: Payment for individual maintenance plan visits and resulting parts (if necessary) will be invoiced immediately following the visit. All payments are due with contract to get the lowest price. (See note in quote body for terms after work is performed with a higher rate for Service). Parts: Unless included with this proposal (and specifically called out), all parts used during maintenance visits are extra. Parts will not be used or ordered without approval from the facility personnel. ATI will utilize spare parts the facility has on hand to accomplish minor repairs. Should a subsequent extra visit be required to install ordered parts, additional charges will be incurred. Scheduling: Please call ATI to request a date for the visit allowing for at least 6 weeks lead time. A visit occurring with less lead time may incur additional travel charges. Scope of Work: ATI will service ATI furnished devices/parts/systems only. Maintenance visits are "NOT renovations or remodels" (like Bullet Trap plate changes, Chamber changes, Auger dropping and servicing under the Chambers only). ATI's work is limited to functionality testing, reasonable repairs, adjustments, safety check, and overall operational maintenance. Lead Remediation: Unless incorporated specifically into this proposal, ATI is not responsible for cleaning the facility of lead. The facility is responsible for disposal and recycling of lead and waste from House keeping services. Exclusions: 1. ATI is not responsible for the following: ATI system parts, devices, air compressors, or structures that are damaged due to accidents, normal wear and tear, abuse, negligence, acts of God, absence of recommended cleaning, lubrication, absence of recommended preventative maintenance, and ballistic damage (due to inappropriate ballistic application). 2. Prevailing Wage or premium time labor. 3. Any material or labor not included in the foregoing. 4. All required line power. 5. Permits, engineering, drawings, or reports not listed above. 6. Collection and removal of lead and/or lead dust or fragments. 7. We do not dig out or clear the dirt away from targets on outdoor ranges. This must be done prior to our arrival. If this is something we have to do, an additional charge will be added. 8. A service visit does not require the Tech being at the range for a minimum number of hours. ?Use or Disclosure Statement: Any and all information and data contained herein is the property of Action Target Inc (ATI); and shall not for any reason, whether tangible or intangible, be disclosed, duplicated, or used, in whole or in part, for any reason other than to evaluate this quote.? Fax this signed proposal to 801-377-8096 to begin scheduling your maintenance visits, or mail it to: Action Target / ATTN: Maintenance Plans / PO Box 636 / Provo, UT / 84601 Contact Stephanie Sheldon 801-396-1199 or ssheldon@actiontarget.com with additional questions or for more information. Maintenance Plan Approval Signature: \_\_\_\_\_

Shipping	0.00
Sales Tax	0.00
<b>Total</b>	<b>30,273.00</b>

Printed Name: \_\_\_\_\_ Approval Date: \_\_\_\_\_

**Terms and Conditions:**

You must reference the Order Number above on your purchase order to secure best price. Price will be honored for 60 days from the quotation date if no other date is specified herein. Action Target reserves the right to adjust installation costs based upon the actual site conditions encountered. Unless explicitly itemized, price does not include taxes, bonds, fees, assessments, licenses, mandatory wage requirements or other regulatory costs which may be applicable to the job site.

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

**COMPENSATION**

**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 \$30,273.00

**DETAILED PROJECT COMPENSATION**

See Exhibit A.

**EXHIBIT C**  
**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.