

**CITY CLERK
ORIGINAL**

C-8124
08/14/2012

PROFESSIONAL SERVICES AGREEMENT
NORTH GLENDALE PARK AND RIDE / TRANSIT CENTER PLANNING SERVICES
City Project No. GL2012-01

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and DICK & FRITSCHER DESIGN GROUP, Inc., an Arizona corporation, authorized to do business in the State of Arizona, ("Consultant") as of the 14th day of August, 2012 ("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

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Consultant 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. Federal regulations applicable to federally funded transit projects are attached as **Exhibit F**.

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. Subject to any limitations expressly stated in the Project Budget, Consultant 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, 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.

- a. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$722,735, of which \$565,135 is designated for the required professional Services as specifically detailed in Exhibit D ("Compensation");
- b. In the event that the City, in its sole discretion, declines the initial site and decides to examine the feasibility of another site, the City has allocated a supplemental budget not to exceed \$100,000 for the analysis of a second, alternative site as set forth in greater detail in Exhibit D. The Consultant is not authorized to spend these monies without a prior written directive, separate from this Agreement, from the City's Project Manager.
- c. In the event that the City requires additional design refinement for a selected site, the City may, in its sole discretion, allocate from its supplemental budget a not-to-exceed amount of \$57,600 for any such additional design details as set forth in greater detail in Exhibit D. The Consultant is not authorized to spend these monies without a prior written directive, separate from this Agreement, from the City's Project Manager.

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.

4.3 Allowances. An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.

- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
- b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
- c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
- d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:

- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
- b. The Reimbursable Expenses in this Section are approved in advance by City in writing; and
- c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

5. **Billings and Payment.**

5.1 Applications.

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

5.2 Payment.

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

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

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

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

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

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

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

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

8. Insurance.

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

- a. Consultant and Subconsultants and Subcontractors. Consultant, and each Subconsultant or Subcontractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Consultant's Policies"), until each Party's obligations under this Agreement are completed.
- b. General Liability.
 - (1) Consultant must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate limit.
 - (2) Subconsultants and Subcontractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.

- (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. Professional Liability. Consultant must maintain a professional errors and omissions liability policy providing a minimum limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
- d. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Consultant and \$1,000,000 per accident for Subconsultants and Subcontractors and covering owned, non-owned and hired automobiles.
- e. Workers' Compensation and Employer's Liability. Consultant must also maintain a workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- f. Notice of Changes. Consultant's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Consultant's Policies;
 - (2) Reduction of the coverage limits of any of Consultant's Policies; and
 - (3) Any other material modification of Consultant's Policies related to this Agreement.
- g. Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Consultant must deliver to City Representative certificates of insurance for each of Consultant's Policies, which will confirm the existence or issuance of Consultant's Policies in accordance with the provisions of this Section, and copies of the endorsements of Consultant's Policies in accordance with the provisions of this Section.
 - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Consultant's Policies, or to examine Consultant's Policies, or to inform Consultant, Subconsultant, or Subcontractor in the event that any coverage does not comply with the requirements of this Section.
 - (3) Consultant's failure to secure and maintain Consultant's Policies and to assure Consultant's Policies as required will constitute a material default under the Agreement.
- h. Other Contractors or Vendors.
 - (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
 - (2) This insurance coverage must comply with the requirements set forth above for Consultant's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- i. Policies. Except with respect to workers' compensation and employer's liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this Section.
 - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.

- (2) All insurance policies obtained pursuant to this Section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Subconsultants and Subcontractors.

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

8.3 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

- 9.1 Consultant, and on behalf of any Subconsultant or Subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 9.2 Any breach of warranty under this Section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Consultant, Subconsultant, or Subcontractor employee who performs work under this Agreement to ensure that the Consultant, Subconsultant or any Subcontractor is compliant with the warranty under this Section.
- 9.4 City may conduct random inspections, and upon request of City, Consultant will provide copies of papers and records of Consultant demonstrating continued compliance with the warranty under this Section. Consultant agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not

deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section.

- 9.5 Consultant agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Consultant and expressly accrue those obligations directly to the benefit of the City. Consultant also agrees to require any Subconsultant or Subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 9.6 Consultant's warranty and obligations under this Section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.
- 9.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

10. Prohibitions. Consultant certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

11. Notices.

11.1 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.

11.2 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:

Michael Schmitt
Dick & Fritsche Design Group, Inc.
4545 East McKinley Street
Phoenix, Arizona 85008

- 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 Jamsheed Mehta, Transportation Director
5850 West Glendale 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 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.

12. **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.

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

13.1 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.

13.2 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.

13.3 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.

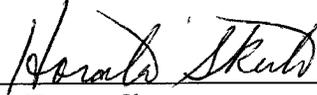
13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

- 13.5 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.
- 13.6 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.
- 13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
14. **Term.** The term of this Agreement commences upon the effective date and continues for a two (2)-year initial period. The City may, at its option, extend the term of this Agreement in the event additional time only is necessary to complete the Scope of Work (Exhibit B). 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 Agreement period. There are no automatic renewals or re-negotiations of this Agreement.
15. **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.
16. **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 |
| Exhibit F | Federal Regulations |

(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: Horatio Skeete
Its: Acting City Manager

ATTEST:



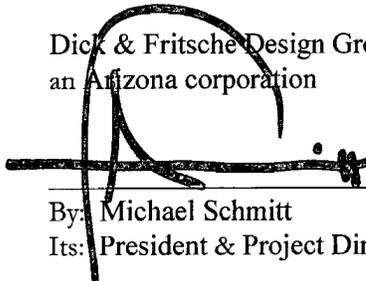
Pam Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Craig Tindall, City Attorney

Dick & Fritsche Design Group Inc.,
an Arizona corporation



By: Michael Schmitt
Its: President & Project Director

EXHIBIT A
Professional Services Agreement

PROJECT

(Cover Page)

EXHIBIT A
Professional Services Agreement

NORTH GLENDALE TRANSIT CENTER

NEEDS ASSESSMENT, ENVIRONMENTAL ANALYSIS AND SITE SELECTION

Needs Assessment, Environmental Analysis and Site Selection

North Glendale transit facilities are part of a regional plan to encourage ridesharing to reduce congestion and improve air quality. The focus of this project is to conduct a transit demand analysis, needs assessment, an analysis of alternatives for a transit facility in accord with the National Environmental Policy Act (NEPA) requirements and advancing the preferred concept to 30% design.

All phases of this project will utilize federal funds provided by the Federal Transit Administration (FTA). Given the fact that federal funds will be used for this phase as well as during final design and construction, the consultant must conform to federal and state regulations.

The City of Phoenix (regional federal recipient of FTA funds in Maricopa County) has not established a DBE participation goal for this phase of the project however they extend to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Consultant will endeavor to comply with the intent of the DBE participation program.

BACKGROUND

The City of Glendale operates local and express bus service in north Glendale. These services provide transportation to residents and visitors in the northwest valley and are focused in the Bell Road and Loop 101 area. The City of Glendale is interested in improving transit facilities in north Glendale to support bus service and enhance carpool opportunities.

A multitude of transit services begin and end in the north Glendale area, all of which go into Arrowhead Towne Center, located approximately on the northwest corner of 75th Avenue and Bell Road. This transit center is on the north side of the mall and is currently served by two express routes and three local routes. The express buses operate Monday through Friday with service in the AM/PM peak hours. Express service does not operate on weekends or holidays. Local buses operate seven days per week. Local service has been operating at this location since the mall opened in 1993. The MAG Regional Transportation Plan (RTP) and the Glendale Transportation Plan show additional local and express bus service planned for the area in the future.

A second express bus location in north Glendale is at the Community Church of Joy at Loop 101 and 75th Avenue. This location is served by the two express routes that also serve Arrowhead Towne Center. This location is the starting point for one express route, and the second stop for the other express route – both of which proceed with

commuter service to downtown Phoenix. An informal verbal agreement is in place with this facility to allow parking for express service.

Currently no formal transit facility exists in or around the Arrowhead/north Glendale area. Buses serve these locations (Arrowhead Towne Center and Church of Joy) without facility improvements to help support the transit services or passengers. These minimal facilities are not currently meeting needs and improvements are necessary to enhance the quality of transit service.

SERVICES REQUIRED

Needs Assessment, Environmental Analysis and Site Selection This scope of work first evaluates demand and need, then alternatives will be formulated and evaluated in accord with NEPA requirements. The preferred alternative will be developed to the 30% level of design.

Once is the Needs Assessment, Environmental Analysis And Site Selection are completed, the City may at it's option, enter into negotiations with the selected architect, (Dick & Fritsche Design Group, Inc.) to prepare the Final Design and provide Construction Administration services.

See the following *Scope of Work* for detailed description of Needs Assessment, Environmental Analysis And Site Selection.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

(Cover Page)

EXHIBIT B
Professional Services Agreement
Needs Assessment, Environmental Analysis And Site Selection
SCOPE OF WORK

The City of Glendale (City) has selected Dick & Fritsche Design Group (Architect) to provide the services required under this Contract. The Architect will work closely with the other team members and City staff during the *Analysis and Study Phase of this Project*, to assess demand and need, identify and analyze potential sites, test feasibility and manage the mandatory agency review processes. The architect will make Council presentations and conduct public meetings and other related public involvement activities identified in the detailed scope. In the course of the this project, the Architect will employ the team members professionals to provide planning, analytical and design services for the required components and systems. These could include, but are not limited, to the following:

- a) Transportation Planning
- b) Environmental
- c) Geotechnical
- d) Surveying
- e) Civil
- f) Landscape Architecture
- g) Structural
- h) Electrical
- i) Mechanical (Plumbing and HVAC)
- j) Information Technologies (systems for phone, cable television and internet services)
- k) Traffic Engineering (systems for traffic signals and interconnect duct systems for City fiber connection, if applicable)
- l) Security and Access Control Systems
- m) Interior Design (if applicable)

The following information is a description of the Scope of Work that the Architect and the team members will be required to perform. The services listed in this Scope of Work are described as "Tasks" and include the following:

A. Task Zero, Project Management and Administration

Includes the Architect's day-to-day oversight and coordination of all the Tasks listed below, ensuring that the extended team is on-target to meet scheduled milestones, and provide the required deliverables, as detailed below:

1. Coordination with the Project Team during the project.

2. Conduct project meetings, as necessary, to maintain the project budget and schedule, chairing periodic regular meetings; setting agendas and preparing and distributing meeting minutes. Meetings under basic services may include:
 - a) **Meetings with City Project Management Team:** For this study, we anticipate that the Architect and extended team will meet weekly with the City, as needed, distributing an agenda ahead of each meeting, and summary meeting notes subsequent to each meeting.
 - b) **Internal Design Team Meetings:** The Architect and extended team will meet internally as needed, either in person or via conference call, to discuss the needs of the project. The purpose of these meetings is to facilitate team-wide collaboration and to integrate various areas of expertise to prepare for meetings and to execute project objectives. The Architect and extended team will meet with the City Team, at each milestone deliverable, to present team members with the tasks findings up to 5 meetings for the duration of the project.
 - c) **Up to Five (5) Meetings with City Management,** as needed.
3. Preliminary coordination with private, public and City utilities (i.e., APS, SRP, Qwest, Southwest Gas, Cox Communications, City Information Technology Department, and City Water and Sewer Services Department, etc.) regarding the preferred site developed in Task 7.
4. Submit and retrieve all required documents to and from the various reviewing agencies.
5. Prepare and maintain an initial project schedule, after meeting with the designated City Project Team, determine appropriate submittal deadlines, and coordinate project submissions. The Architect will be responsible for the master scheduling.

Submit a written monthly Progress Report to the City during the project, including project schedule update and status report and quarterly project cash flow schedules for both design and construction phases.

Deliverables: Schedule, meeting agendas, meeting summary notes, monthly progress reports.

B. Task One – Compilation of Existing Information

Task one will consist of data collection activities to include documents and resources pertaining to previous studies in the project influence area.

1. The Annual Transit Ridership Report (FY10-11), the recently completed 2010/2011 Origin and Destination Study, and the 2010 Census Transportation Planning Package (CTPP), if available, will be analyzed to identify travel pattern characteristics.
2. Land use development data in the project area will be gathered to help identify additional candidate sites.
3. All documents from previous studies will be summarized to provide a synopsis of the findings pertaining to the project influence area.
4. After the data review, our team will identify if any additional data is needed to perform the subsequent tasks.
5. We will perform an environmental scan of the study area to identify any fatal flaws that could potentially influence the site selection analysis.
6. We will prepare a present-day conceptual level cost estimate for Concept C.1, presented in the 2008 Parsons / OTAK study, as a means to benchmark the present cost of this type facility.
7. We will perform a review of the MAG regional travel demand model to assess existing travel patterns based on our data findings, which will help shape efforts in Task Two. Understanding the regional and sub-regional travel patterns and sensitivities early will help streamline our considerations for both location analyses and transit improvements in future tasks.
8. We will document the data collection efforts and summarize key findings. Maps will be created of transit services, transit travel flows, general travel patterns (peak and off-peak), and thematic maps of land use, socioeconomic, demographic and employment conditions relative to existing and proposed transportation and transit infrastructure and services.

Deliverables: Working Paper on Related Studies (including thematic maps)

C. Task Two - Demand Assessment

1. We will use the MAG regional travel demand model to assess existing and future transit demand for the study area and the influence area.
2. We will include transit routes in the application and analysis of travel patterns in the region that impact the study area.
3. The travel demand information will be compiled with the thematic maps developed in Task One to assess up to ten site locations/scenarios including: Arrowhead Towne Center transit center, the Church of Joy Park and Ride, the Lund Cadillac location, the Ultimate Electronics' location, and the 99th Avenue and Glendale Avenue Park and Ride.

4. In addition to using the travel demand data, we will utilize the results of our data gathering effort by examining on/off/on-board data by stop and time of day, existing origin-destination data and park-and-ride lot usage. This information will be compiled and used to assess travel patterns influencing the study area and proposed park-and-ride locations.
5. To assess transit rider propensity to use a North Glendale park-and-ride lot, we will develop a survey instrument and survey administration plan and complete an on-board survey of related routes, if identified in Task One.
6. We propose to conduct a transit user survey at the Arrowhead Transit Center 99th Avenue and Glendale park-and-ride and the Church of Joy for the peak and off peak periods to gather the public sentiment regarding the facility need and services. The transit survey would determine origin, destination, and mode of access, trip purpose, and city of residence.
7. We will develop GIS based maps of the transit user origins and destinations.
8. We will project future transit ridership for local and express routes and usage/parking requirements for the park and ride locations examined.

Deliverables: Working Paper on Demand Assessment (Demand Estimation Report); Survey Instruments; Survey Results

D. Task Three Needs Assessment

1. We will assess the transportation needs in the North Glendale travel-shed in terms of:
 - a) The performance of existing services and facilities.
 - b) Future demand for facilities and services. In particular, we are interested in assessing how transit travel can be improved (travel times and service attractiveness) through both operational and facility enhancements.
2. We will examine the impacts of each site in terms of adding or reducing transit service hours and operational costs. Service hours are influenced by both adding additional directional route miles to transit and by taking means to *prioritize transit travel to increase transit speeds and reduce travel times.*
3. We will examine: efficient ingress, on-site and egress circulation for transit vehicles; providing for HOV and/or managed lanes for transit; and application of transit signal and queue jump capabilities in the travel corridors.
4. We will document existing conditions at the three current transit facilities and estimate the existing and future capacities of these park-and-ride facilities relative to estimated future demand.

5. We will prepare an initial assessment of the three current park-and-ride site locations relative to travel demand, capacity, impacts on transit ridership and operating costs.

Deliverables: Working Paper on Needs Assessment (Needs Assessment Findings Report)

E. Task Four – Site Identification

1. We will examine and select an initial set of potential sites for the park-and-ride facility based on the travel demand, transit operations, and information from the previous tasks. Selection of the sites will involve the balancing of social, economic, environmental, fiscal, and policy costs and benefits.
2. To assist us in the examination, assessment, and selection of potential sites and the final site, we will develop an evaluation tool and selection methodology. The evaluation tool will include selection criteria that quantifies the disparate goals and objectives related to minimizing adverse and maximizing positive impacts associated with each site. Our approach will involve:
 - a) An iterative process
 - b) Key factors identified and defined as simply and practicable, tying the criteria to the goals and objectives of the project.
 - c) The first review of potential sites will be screened for clear fatal flaws, upon which clear potential sites will be evaluated with increased detail. This approach continues through the study effort and includes future task analysis, evaluation, and decision requirements. The final approach will be developed and approved with staff.
3. The evaluation criteria will be defined and reviewed with staff prior for approval. Site selection factors will include, but are not limited to:
 - a) Available land in northwest Glendale (acres, value, ownership status, willingness to sell)
 - b) Proximity of site to transit and roadway network and interchanges
 - c) Existing and assumed future Level of Service (LOS) of surrounding roadways
 - d) Potential for investments to improve transit travel times (gross)
 - e) Impacts to transit service hours and Operation and Maintenance (O&M) costs
 - f) Compatibility with surrounding land use
 - g) Potential for Transit Oriented Development (TOD) and economic development

- h) Potential for drive, walk and transit access
 - i) Impacts on the community (gross)
 - j) Impacts on the environment (gross)
 - k) Cost per passenger served
4. We will examine with respect to civil limitations up to five (5) of the initial set of potential (assumed to be up to ten [10]) sites for the park-and-ride facility. Examinations will consider the following:
 - a) Potential for future facility expansion
 - b) Impacts on drainage and utilities (gross)
 - c) Fiscal Impacts (capital, operation, and maintenance costs)
 5. We will conduct an initial fatal flaw assessment of potential sites utilizing the data gathered in Task One. For example, sites that are not large enough or are not adjacent to other parcels sufficient to create a large enough development footprint can be eliminated. Sites that do not have practicable access to the highway and roadway network can be eliminated. Sites that have clear adverse impacts to the community or the environment can also be eliminated.
 6. After the fatal flaw analysis, we will focus on locations that have more realistic prospects for development as a park-and-ride or transit center facility. In subsequent iterations, we will review and consider in more detail the sites relative to the evaluation criteria.

Deliverables: Working Paper on Site Identification (Evaluation Criteria and Site Selection Methodology and Site Review and Selection Report).

F. Task Five – Development and Analysis of Alternatives

1. With the examined set of two-three sites identified and selected in Task Four, we will conduct a streamlined alternatives analysis of the following options:
 - a) The no-build option, which will analyze future demand if no new site is constructed.
 - b) Enhance the three existing park-and-ride facilities
 - c) Create a combined transit center/park-and-ride facility at Arrowhead Mall
 - d) Develop a new transit center/park-and-ride facility in North Glendale (up to three [3] sites)
2. The alternatives analysis will include developing a conceptual site plan for each option (up to five [5]), except the no build alternative.
3. Each facility will be developed to be evaluated based on NEPA criteria. We will evaluate the alternatives in an iterative two-step screening process. The initial screening will be at sufficient detail to clearly distinguish and discern

distinctions between the alternatives. The alternatives (up to three [3] new sites; or up to two [2] new sites plus the enhancement of the existing three [3] park-and-ride facilities) with the least impacts and greatest benefits will be advanced to a second and more detailed level of definition and evaluation. The detailed civil evaluation will include the following:

- a) Conceptual site plan (assume line drawing on aerial image)
 - b) Transit facility amenities analysis and list
 - c) Analysis of site-specific environmental impacts (drainage etc.)
 - d) Access plan drawings
 - e) Circulation plan drawings
 - f) Utilities extensions analysis
 - g) Estimated construction costs for the facilities
 - h) Partnering opportunities (TOD, Economic Development)
 - i) Estimated capital and maintenance costs (facilities and transit operations)
4. The alternatives with the least impacts and greatest benefits, based on the two-step screening process, will be advanced to a second and more detailed level of definition and evaluation
 5. We will reflect the evaluation criteria and scores in a matrix for side-by-side comparison of each alternative evaluated and prepare a recommendation for a preferred alternative/site.

Deliverables: Working Paper on Development and Alternatives Analysis (Alternatives Evaluation and Selection Report); Site Plans for Each Alternative.

G. Task Six – Financial Analysis & Programming

1. We will assess the fiscal impacts and financial feasibility of the preferred alternative and develop a funding program to build and maintain the facility and related transit capital and service improvements.
2. The financial analysis will identify: programmed funding sources (capital and O&M); potential sources (capital and O&M); a fiscal plan to serve near- and long-term costs.
3. The financial plan will assess existing sources, potential sources, likely revenue generation and partnering opportunities. Our team suggests assessing fiscal costs and potential funding for each alternative as part of the alternatives analysis and evaluation process. By doing so, fiscal feasibility is assessed as part of the winnowing process before detail financial estimates are required.

4. In this task, we will also develop a detailed fiscal analysis and funding plan for the preferred alternative.

Deliverables: Working Paper on Financial Analysis (Fiscal Cost, Revenue Analysis and Funding Plan).

H. Task Seven – Refinement of Preferred Site

For the purpose of the basic scope of services, our effort and fees are based on the assumption that the preferred solution will be a surface park-and-ride lot/transit center, similar to the existing facility at Glendale Avenue and SR-101L. If needed, our team can provide, with a supplemental fee amount, design for a structured parking solution. In either case, the documents we prepare will be well resolved site and architectural concepts, but will not include civil, structural, MEP engineering or landscape architecture. General description of these systems will be provided in a narrative form.

1. Based on the results and reviews with staff of the work completed in Tasks One through Six, we will advance the selected preferred alternative to concept level plans and the costs will be updated. It is assumed that the facility will be situated on one (1) contiguous site. In addition, we will confirm the availability of land for the preferred alternative and the willingness of the sellers. This will need to be done according to State and Federal guidelines as not to potentially prejudice future funding and to assure we maintain compliance with the “Uniform Act”.
2. We will also confirm the potential and willingness for TOD and other joint-use and economic development partnerships. We propose that this be accomplished in cooperation with the City and County Economic Development Office.
3. A Concept Plan and Report will be prepared for the selected preferred alternative for City review and approval. The concept report will include the following information for the civil aspect only:
 - a) Facility Concept Site / Civil Plans at 30 percent
 - b) Access and circulation plan drawings for pedestrians, automobiles, and transit vehicles.
 - c) Architectural concept drawings to communicate recommended passenger facility amenities and features, and transit operations facilities. (Concept drawings include approximately 20% complete design drawings (without supporting engineering).
 - Plan and elevation views and 3-D illustrations as necessary.
 - d) If the recommended solution requires a parking structure, concept drawings will include floor plans of each level, building elevations that

communicate the planned architectural character and selection of primary materials.

- e) We will prepare 3 – 5 (as necessary) color, rendered perspective drawings to communicate the design intent.
- 4. Fiscal Plan
 - a) Concept level capital cost estimates
 - b) O&M cost estimates
 - c) Funding Program
- 5. Supporting Studies
 - a) Environmental Impacts and Categorical Exclusion (EI and CE)
 - b) LEED certification opportunities
 - c) Transit operations plan
 - d) Confirmation of land availability
 - e) Identification of partnering opportunities
- 6. We will work with staff and present the designs and supporting studies to the City for review, comments and approval. We will coordinate with staff and prepare exhibits and information to be presented to City Management and the City Council for their approval.

Note the NEPA documentation referenced will be developed in Task Eight.

Deliverables: Preferred Alternative 30 percent plan drawings (for civil); Preferred Alternative architectural Concept Plans.

I. Task Eight – NEPA Documentation

This task reports, prepared through the identification and development and evaluation of alternatives (and the selection process), will document the NEPA compliance reviews and a NEPA Categorical Exclusion (CE) checklist and supporting documentation. The CE documentation does not need to be substantial; rather, it is preferred by FTA if the documentation is clear and concise using mapping and specific narratives for support the findings for each category. The CE will include discussion of existing conditions and potential impacts, both beneficial and adverse, for the following resources.

- 1. Land Acquisition and Displacement
 - a) Identification of existing right-of-way (ROW)
 - b) Analysis of ROW impacts (partial and full acquisition) and identification of anticipated relocations
 - c) Text discussion of availability of replacement housing, if applicable
- 2. Land Use and Zoning/Secondary Development/Consistency with Local Plans
 - a) Determine existing and future land uses and zoning in the project area.

- b) Develop assumptions for indirect (project induced) land use for the alternatives analyzed in the CE.
 - c) Analyze if the proposed project is consistent with existing land use, zoning and local and regional plans.
3. Air Quality – Determine impacts, if any
- a) Coordinate with the Maricopa County Air Quality Department and Federal Transit Administration (FTA) to conduct a conformity determination
 - b) Collect existing data (meteorology, monitoring data, etc)
 - c) Conduct CO and PM₁₀ hot spot analyses.
 - d) Provide qualitative discussions for ozone and mobile source air toxics (MSATs).
 - e) Determine potential impacts
 - f) Recommend mitigation measures, if applicable.
4. Noise and Vibration – Determine impacts, if any
- a) Identify all noise sensitive receptors within the appropriate screening distance for the project.
 - b) Take short-term (1-hour) and long-term (24 hour) field noise measurements at sensitive receptor locations. (assumes maximum of two measurements)
 - c) Analyze existing data and conduct a general noise assessment to estimate the project noise exposure.
 - d) Determine potential moderate and/or severe noise impacts (assumes moderate impacts).
 - e) Recommend mitigation measures, if applicable.
5. Water Quality
- a) Identify all water resources in the project area
 - b) Determine if any water bodies are on 303d list for water quality impairments.
 - c) Analysis of impacts to water resources and water quality.
 - d) Discuss plans for water quality control and drainage features
 - e) Discuss commitments to short term and long term water quality measures – per permit requirements.
 - f) Wetlands and Other Waters of the U.S.
 - g) Assumed not present, due diligence to include aerial photo interpretation and windshield survey for wetlands and other waters of the U.S.
6. Flooding
- a) Obtain information on any FEMA-mapped floodplains.
 - b) Analysis of probable impact to 100-year FEMA-designated floodplains and develop possible mitigation actions for adverse impacts.
7. Navigable Waterways and Coastal Zones
- a) Assumed not present.

8. Ecologically Sensitive Areas
 - a) Conduct field survey to identify potential areas.
 - b) Analysis of all potential impacts to mammal, amphibian, fish and plant species and critical habitat.
 - c) Assume no sensitive habitat is present.
9. Endangered Species
 - a) Review United State Fish and Wildlife Service (USFWS) lists.
 - b) Assume no habitat or species is in the area.
10. Traffic
 - a) Analysis of traffic volumes and impacts to traffic operations to include existing and future volumes with and without the project, assessment of traffic operations (LOS) with and without the project at all intersections surrounding the area, commitment to mitigation, assessment of VMT with and without the project, and assessment of parking impacts.
11. Energy Requirements and Potential for Conservation
 - a) Coordination with Valley Metro regarding their current energy conservation practices.
 - b) Analysis of construction energy usage, and energy usage during operation.
12. Historic Properties and Parklands
 - a) Archaeological, paleontological and historical resources in the project area will be identified through field surveys, archival research, coordination with the SHPO, and other methods, as appropriate. Cultural Resources Reports will be prepared for review and concurrence.
 - b) Analysis of impacts and discussion of mitigation for historic, archaeological, and paleontological resources. Prepare reports as required. Coordination with Arizona State Historic Preservation Office (SHPO), as necessary.
13. Prime and Unique Farmlands
 - a) Coordinate and obtain any prime and unique farmland data from Natural Resources Conservation Service (NRCS) and evaluate
 - b) Assume no prime or unique farmland is impacted
14. Construction
 - a) Definition of anticipated impacts during construction and identification of appropriate mitigation measures. Discussion to include traffic impacts, noise impacts, visual impacts, etc.

J. Task Nine – Public Involvement

1. In consultation with the City, we will prepare a Public and Stakeholder involvement plan detailing the actual scope and implementation schedule for the public and stakeholder outreach.

2. We will work with City staff to identify key stakeholders to invite at the two public meetings scheduled for this project. . The stakeholders should be recognized leaders in the community, represent residents, commercial interests, community services, educational and health care interests, and transit ridership. The more inclusive the stakeholders group, the more likely the resulting project will reflect the diversity of the community.
3. Throughout the study we will conduct up to 5 presentations to the Citizens Transportation Oversight Commission (CTOC) and present findings of the project milestones.
4. Throughout the project, we will prepare the materials necessary to provide information on the project. These include up to three project newsletters/fact sheets to be distributed electronically with 100 copies printed for distribution. We will also prepare a copy of the newsletter for posting to the City website. The copy will be updated at the completion of each project milestone to include maps or graphics depicting the project phases and/or findings.
5. After the completion of Task 5, we will present to the public the study findings a solicit their input during the first public meeting. We will plan and facilitate an open house format within the Arrowhead Mall (a central location for the area's residents). Residents will have an opportunity to review the concept plans on display boards and provide input to the project team.
6. Prior to the completion of the preferred alternative 30 percent civil plans and the structure concept plan, we will conduct the second public meeting in a open house format within the Arrowhead Mall (a central location for the area's residents). Residents will have an opportunity to review the concept plans on display boards and provide input to the project team.
7. We will prepare a news release and display advertising, to be included in the Glendale Star to promote the open house. Copy will also be available to the council member to distribute to their constituent email lists.
8. We will prepare a Final Public Involvement Report which will document the outreach activities, summaries of the meetings, and public input received

End of Exhibit B

EXHIBIT C
Professional Services Agreement

SCHEDULE

(Cover Page)

**EXHIBIT C
Professional Services Agreement**

SCHEDULE

The schedule presented below represents approximate time frames for completion of the Tasks described in Exhibit B, Scope of Work. Our team will work closely with the City of Glendale to refine the schedule as we commence work. The overall schedule duration for Phase I of the project is estimated to require nine (9) months from Notice to Proceed.

ESTIMATED SCHEDULE – ANALYSIS AND STUDY SERVICES

Phase I	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9
Task 1 - Compilation of Existing Information	█	█							
Task 2 - Demand Assessment	█	█	█						
Task 3 - Needs Assessment	█	█	█						
Task 4 - Site Identification		█	█						
Task 5 - Development & Analysis of Alternatives			█	█	█				
Task 6 - Financial Analysis & Programming				█	█	█	█		
Task 7 - Refinement of Preferred Site						█	█	█	
Task 8 - NEPA Documentation						█	█	█	
Task 9 - Public Involvement	█	█	█	█	█	█	█	█	█

EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

By task based upon an hourly rate plus allowable reimbursable expenses.

NOT-TO-EXCEED AMOUNT

The total amount of compensation that may be paid to Consultant for full completion of all work required by the Project during the entire term of the Project will not exceed \$722,735.

DETAILED PROJECT COMPENSATION

BASIC SERVICES

Task 0 Project Management:	\$ 84,357.00
Task 1 Compile Existing Data	\$ 30,590.00
Task 2: Demand Assessment	\$ 46,900.00
Task 3: Needs Assessment	\$ 31,450.00
Task 4: Site Identification	\$ 24,405.00
Task 5: Development and Analysis of Alternatives:	\$101,330.00
Task 6: Financial Analysis & Programming	\$ 20,972.00
Task 7: Refinement of Preferred Site	\$ 101,540.00
Task 8: NEPA Documentation	\$ 46,924.00
Task 9: Public Involvement	\$ 56,667.00
Direct Expenses Allowance:	\$ 20,000.00

BASIC SERVICES TOTAL \$565,135.00

SUPPLEMENTAL SERVICES

Concept Design for Structured Parking Solution:	\$ 57,600.00
Allowance for Additional Sites Analysis:	\$100,000.00

PROJECT TOTAL \$722,735.00

EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Compensation shall be hourly rate plus allowable reimbursable expenses.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$722,135.00.

DETAILED PROJECT COMPENSATION

BASIC SERVICES

Task 0 Project Management:	\$ 84,357.00
Task 1 Compile Existing Data	\$ 30,590.00
Task 2: Demand Assessment	\$ 46,900.00
Task 3: Needs Assessment	\$ 31,450.00
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Task 6: Financial Analysis & Programming	\$ 20,972.00
Task 7: Refinement of Preferred Site	\$101,540.00
Task 8: NEPA Documentation	\$ 46,924.00
Task 9: Public Involvement	\$ 56,667.00
Direct Expenses Allowance:	\$ 20,000.00
BASIC SERVICES TOTAL – Not to Exceed	\$565,135.00

SUPPLEMENTAL ALLOWANCES

Allowance - Concept Design for Structured Parking Solution	\$ 57,600.00
Allowance - Additional Sites Analysis:	\$100,000.00

PROJECT TOTAL - Not to Exceed **\$722,735.00**

**PROFESSIONAL SERVICES AGREEMENT FOR THE
NORTH GLENDALE PARK AND RIDE / TRANSIT CENTER PLANNING SERVICES**
Schedule of Hourly Rates

Classification	Avg. Hourly Rate	Multiplier	Billing Rate
DFDG			
Project Principal	\$53.00	3.03	\$160.59
Project Manager	\$53.00	3.03	\$160.59
Graphic Designer	\$34.00	3.03	\$103.02
Project Architect	\$27.00	3.03	\$81.81
CADD Technician	\$27.00	3.03	\$81.81
Administration	\$20.00	3.03	\$60.60
Jacobs			
Transportation Planning Lead	\$68.00	2.64	\$179.52
Sr. Transportation Planner	\$50.00	2.64	\$132.00
Transportation Planner	\$34.00	2.64	\$89.76
GIS Analyst	\$25.00	2.64	\$66.00
Sr. Project Engineer	\$60.00	2.64	\$158.40
Project Engineer	\$44.00	2.64	\$116.16
Design Engineer	\$38.00	2.64	\$100.32
CADD/Technician	\$24.00	2.64	\$63.36
Financial Analyst	\$55.00	2.64	\$145.20
Environmental FTA/NEPA Expert	\$80.00	2.64	\$211.12
Environmental Planner II	\$33.00	2.64	\$87.12
Environmental Planner III	\$40.00	2.64	\$105.60
Environmental Planner I	\$37.00	2.64	\$97.68
Environmental Planner I-Air/ Noise	\$35.00	2.64	\$92.40
Biologist	\$45.00	2.64	\$118.80
Archeology Lead	\$46.00	2.64	\$121.44
Archeologist	\$35.50	2.64	\$93.72
Administration	\$26.00	2.64	\$68.64
Nelson Nygaard			
Principal - Transit Lead	\$84.09	2.64	\$222.00
TDP/Parking Specialist	\$60.01	2.64	\$158.43
Associate Project Planner/GIS	\$45.46	2.64	\$120.00
Associate II	\$36.74	2.64	\$97.00

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 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 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 ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party 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.

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 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 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 ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party 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.

EXHIBIT F
Federal Transit Administration Certifications and Assurances

1. OVERALL FEDERAL REGULATION COMPLIANCE

FTA Circular 4220.1F
FTA Master Agreement §15.a

All contractual provisions required by USDOT, as set forth in the FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Recipient requests which would cause the Recipient to be in violation of the FTA and City of Phoenix grant terms and conditions.

2. FLY AMERICA REQUIREMENTS

49 U.S.C. §40118 41 CFR Part 301-10
FTA Master Agreement §14.c

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

3. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq. 49 CFR Part 18
FTA Master Agreement §26

The Contractor agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that

the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and conservation Act.

4. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

FTA Master Agreement §25.c

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Contractor agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

5. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or

award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

6. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i) 4

9 CFR 633.17

FTA Master Agreement §15.t

The following access to records requirements apply to this Contract:

1. *Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.*
2. *Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.*
3. *Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.*
4. *Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation*

and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

7. FEDERAL CHANGES

49 CFR Part 18

FTA Master Agreement §2.c(1)

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

8. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

FTA Master Agreement §25.b

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

9. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES

FTA Master Agreement §2.f

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

FTA Master Agreement §3.f

THESE REQUIREMENTS ARE APPLICABLE TO ALL CONTRACTS.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

11. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

FTA Master Agreement §11

a. Termination for Convenience: The Recipient may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Recipient to be paid the Contractor. If the Contractor has any property in its possession belonging to the Recipient, the Contractor will account for the same, and dispose of it in the manner the Recipient directs.

b. Termination for Default [Breach or Cause]: If the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Recipient that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Recipient, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure: The Recipient in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Recipient's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Recipient setting forth the nature of said breach or default, Recipient shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. **Waiver of Remedies for any Breach:** In the event that the Recipient elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the Recipient shall not limit the Recipient's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. **Termination for Convenience:** The Recipient, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. **Termination for Default:** If the Contractor fails to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

i. **Termination for Convenience or Default (Architect and Engineering):** The Recipient may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

12. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR PART 29
EXECUTIVE ORDER 12549

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the proposer is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Recipient. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

13. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.
FTA Master Agreement §12

Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

14. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

FTA Master Agreement §52

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Recipient. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Recipient. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Recipient shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Recipient, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Recipient and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Recipient is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Recipient or Architect/Engineer shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

15. DISADVANTAGED BUSINESS ENTERPRISE

- i) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal of 0% DBE participation has been established for this phase of the procurement.
- ii) The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Glendale deems appropriate. Each subcontract the

contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

While the project goal for this phase of the project has been set at 0% the City of Phoenix reasonably believes DBE participation can be achieved through race and gender neutral DBE outreach efforts in the trade areas of Phase I of this project to a proposed overall DBE availability of 20.69% of certified firms.

16. AMERICANS WITH DISABILITIES ACT OF 1990 REQUIREMENTS

FTA Master Agreement §12.g

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

17. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1E

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions. mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

18. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq.
49 CFR Part 41
FTA Master Agreement §23.e

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

19. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

The Contractor agrees to comply with the following requirements:

- a) 49 U.S.C. 5301(d), which states the federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy.
- b) Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C 12101 which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act.
- c) And any subsequent amendments thereto:
 - I. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37.
 - II. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - III. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility

Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

IV. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

V. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

VI. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

VII. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

VIII. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

IX. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and

X. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; Any implementing requirements FTA may issue.

XI. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

20. CARGO PREFERENCE

The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include

these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

21. PRIVACY ACT

- i. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:
- ii. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

22. PROMPT PAYMENT

The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) business days after the Contractor has received payment from the City of Glendale.

23. RECYCLED PRODUCTS

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

24. CONTRACT WORK HOURS AND SAFETY STANDARDS

- i. The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3) (A)(iii). The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below. The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

25. BUY AMERICA (GREATER THAN \$100,000)

- i. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.
- ii. Completion of the respective buy America certification.

26. BONDING REQUIREMENTS (GREATER THAN \$100,000)

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows: (a) A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. (b) A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. (c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows: (1) 50% of the contract price if the contract price is not more than \$1 million; (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or (3) \$2.5 million if the contract price is more than \$5 million. (d) A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

27. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below. The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.