

PROFESSIONAL SERVICES AGREEMENT
Contract Transaction Privilege (Sales) and Use Tax Auditing Services
RFP 14-39

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Albert Holler & Associates, a Sole Proprietor, ("Consultant") as of the 24 day of June, 2014 ("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 **Exhibits A and B**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. Key Personnel; Other Consultants and Subcontractors.

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Consultant has designated Albert Holler, the Sole Proprietor of the Consultant, as Project Manager. The Project Manager warrants that he has sufficient training, knowledge, and experience to 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 has approved 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. 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 that a **minimum of thirty (30)** Transaction Privilege (Sales) and Use Tax audits will be performed on taxpayers doing business in the City of Glendale each year this Agreement remains in effect. These audits must be completed timely and efficiently in accordance with the Project as described in **Exhibit A and Exhibit B**.

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 any 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 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.

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- b. Consultant understands that the Arizona Department of Revenue and City are currently negotiating the terms of an Intergovernmental Agreement (IGA) that will govern the conduct of audit services beginning January 1, 2015. Consultant agrees that to the extent any terms of this Agreement are in conflict with the IGA, the terms of the IGA prevail and take precedence over and govern this Agreement.

3.4 Coordination; Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Consultant will meet to review the Project, Schedule and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its 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. Confidentiality.

- 4.1 General. The Parties acknowledge that the Consultant has and will have the following information: sales tax information, taxpayer business affairs, and other proprietary information (collectively, "Information") which are valuable, special and unique assets of City and need to be protected from improper disclosure pursuant to the City's tax code. In consideration for the confidential nature of the Information, Consultant agrees that Consultant will not at any time or in any manner, either directly or indirectly, use any Information for Consultant's own benefit, or divulge, disclose, or communicate in any manner any Information to any third party without the prior, written consent of the City. Consultant will protect the Information and treat it as strictly confidential, and Consultant will assure that any Contractors or Subcontractors performing work will protect and treat the Information as confidential.
- 4.2 Unauthorized Disclosure of Information. If it appears that Consultant has disclosed (or has threatened to disclose) Information in violation of the Agreement, City shall be entitled to an injunction to restrain Consultant from disclosing, in whole or in part, such Information, or from providing any services to any party to whom such Information has been disclosed or may be disclosed. City shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.
- 4.3 Confidentiality after Termination. The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.
- 4.4 Return of Records. Upon termination of this Agreement, Consultant shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in Consultant's possession or under Consultant's control and that are City's property or related to City's business.

5. Compensation for the Project.

- 5.1 Compensation. Consultant's total compensation for the Project, including those furnished by its Subcontractors must not exceed **\$122,400.00** per year each year this Agreement remains in effect, for a total contract value of **\$612,000.00** if all four extensions are executed, as specifically detailed in **Exhibit C** ("Compensation").
- 5.2 Change in Scope of Project. The Compensation may be adjusted by the Parties if the originally agreed-upon Scope of Work as contained in **Exhibit B** is significantly modified. Performance of a number of audits greater than the minimum amount in any year this Agreement remains in effect will not be considered a "significant" modification.

- 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 a prior, written authorization from the City in the form of an amendment to this Agreement.
- c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- d. Consultant understands that the Arizona Department of Revenue and City are currently negotiating the terms of an Intergovernmental Agreement (IGA) that will govern the conduct of audit services beginning January 1, 2015. Consultant agrees that to the extent any terms of this Agreement are in conflict with the IGA, including any terms related to Compensation, the terms of the IGA prevail and take precedence over and govern this Agreement. Such a change in Compensation may include a cost sharing or payment arrangement when one or more governmental entity participates in or pays for the performance of an audit of a taxpayer, as provided in A.R.S. § 6002.

5.3 Expenses. City may 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, provided:

- 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 cause Consultant's Compensation to exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

6. **Billings and Payment.**

6.1 Applications.

- a. Consultant will submit monthly progress report and an invoice for services rendered to City's Project Manager documenting the work performed, including the number of audits completed, during the preceding month. The City will remit payments to the Consultant as provided in **Exhibit C**.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.
- c. The amount of each invoice will be one-twelfth the total annual compensation.

6.2 Payment.

- a. After a full and complete monthly progress report and invoice 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 Subcontractors; and

- (2) Unconditional waivers and releases on final payment from all Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

6.3 Review and Withholding. City's Project Manager will timely review monthly progress reports and invoices.

- a. If the refuses to pay some or all of the costs billed in the invoice, 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.

7. **Termination.**

7.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the date such termination becomes effective.

- a. The effective date for termination for convenience may not be less than 15 days following the date of delivery of the City's notice. If the effective termination date is other than the last day of the month, compensation shall be paid on a pro-rata basis based on the number of days worked in the final month.
- b. For purposes of this section, "convenience" may include, but is not limited to, termination of this Agreement because Consultant's services are no longer required, or not required in the same amount, as a result of Intergovernmental Agreement (IGA) with the Arizona Department of Revenue that will govern the conduct of audit services beginning January 1, 2015.

7.2 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 Section 5 of this Agreement.
- 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.
- c. City may immediately terminate this Agreement with written notice on the day it discovers that Confidential Information has been disclosed to a third party without the City's consent. In the case of a breach of Section 4, the City need not provide any opportunity or period to cure such breach.

7.3 Payment Upon Termination. Consultant is entitled to Compensation for work performed prior to the date of any notice of termination. Consultant shall not be paid for any work performed during the pendency of any period between the date of the notice of termination and when such termination becomes effective pursuant to subsection 7.1 (Termination for Convenience) above or during the pendency of any cure period provided pursuant to subsection 7.2 (Termination for Cause) above.

8. **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.

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

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

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$2,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice (**\$4,000,000**) the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per Accident for bodily injury or disease.
- d. Professional Liability (Errors and Omissions) coverage appropriate to the Consultant's profession shall apply to liability for a professional error, act or omission arising out of the scope of services as defined with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

If any of the above required policies provide coverage on a claims-made basis, the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least two (2) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of two (2) years after completion of contract work.

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

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** on the automobile policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
- b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

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

- 9.4 Waiver of Subrogation. **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Contractor by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).
- 9.5 Verification of Coverage. Within 10 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.
- Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.
- 9.6 Subcontractors. Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.
- 9.7 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.

10. Immigration Law Compliance.

- 10.1 Consultant, and on behalf of any Subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 10.2 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.
- 10.3 City retains the legal right to inspect the papers of any Consultant 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.
- 10.4 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.
- 10.5 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 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.
- 10.6 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.

10.7 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.

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:

Albert Holler & Associates
c/o Albert Holler
18521 E. Queen Creek Road #105-425
Queen Creek, AZ 85142

- 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 Teresa Gordey
5850 W. 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 in subsection 3.3(b) and 5.2(d) and this Section 13, 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 in any **Exhibit**, 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 one (1) year from the anniversary of the Effective Date, unless the Agreement is terminated by a Party in accordance with Section 7 above. The City Manager may, at her option and with the approval of the Consultant, extend the term of this Agreement an additional four (4) years in one (1) year increments, renewable on the anniversary of the Effective Date of this Agreement. 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 term or any renewal Agreement period. There will be no price adjustments except by a written, signed amendment to this contract. There are no automatic renewals of this Agreement.

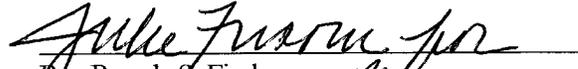
15. **Indemnification.** Consultant shall indemnify, defend, save and hold harmless the City of Glendale and its officers, officials, agents, volunteers and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Consultant agrees to waive all rights of subrogation against the Indemnitee for losses arising from the work performed by the Consultant.
16. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit D**. The final determination will be made by the City.
17. **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	Compensation
Exhibit D	Dispute Resolution

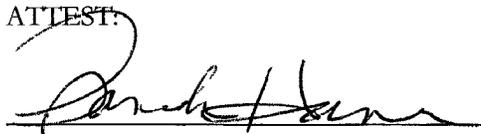
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The parties enter into this Agreement effective as of the date shown above.

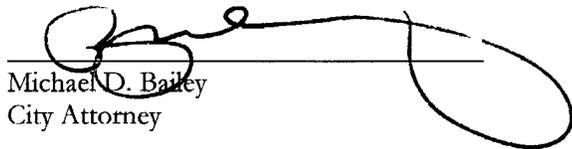
City of Glendale,
an Arizona municipal corporation


By: Brenda S. Fischer
Its: City Manager

ATTEST:


Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

Albert Holler & Associates,
a Sole Proprietor

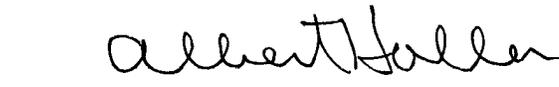

By: Albert Holler
Its: Owner

EXHIBIT A

**Professional Services Agreement
Contract Transaction Privilege (Sales) and Use Tax Auditing Services**

PROJECT

Auditing firm will perform **a minimum of thirty (30)** Transaction Privilege (Sales) and Use Tax audits per year for taxpayers conducting business in the City of Glendale, in compliance with all federal and state laws and regulations.

EXHIBIT B

Professional Services Agreement Contract Transaction Privilege (Sales) and Use Tax Auditing Services

SCOPE OF WORK

The Consultant will perform a minimum of **thirty (30)** Transaction Privilege (Sales) and Use Tax audits per year for taxpayers conducting business in the City of Glendale, as follows:

1. Independently conduct large scale, highly complex City Transaction Privilege (Sales) and Use Tax audits of a special or difficult nature according to Generally Accepted Accounting Principles, Generally Accepted Auditing Procedures, and the Multi-Jurisdictional Audit Coordination (MJAC) processes and procedures.
2. Compile spreadsheets, audit notes, analyze and file reports which meet all established audit policy requirements and procedures.
3. Estimate City Transaction Privilege (Sales) and Use Tax liability from taxpayer records or other available information.
4. Observe, compare, and review financial records of businesses to determine compliance with City of Glendale Tax Code and the Model City Tax Code statutes and regulations.
5. Attend meetings and/or work at the taxpayer's business location, or the taxpayer's appointed representative's location to compile financial information from the taxpayer's source documents and records.
6. Follow and document the audit trail in the audit file for each assigned audit.
7. Write audit findings and conclusion summaries.
8. Examine and verify accuracy of taxpayer's bookkeeping records such as invoices, sales journals, general ledgers, bank statements, and inventory records.
9. Search records to identify entries critical to tax liability or procedural propriety as it relates to internal controls and conformance to tax laws.
10. Attend tax hearings and give testimony regarding work performed and the basis of the assessments, findings or conclusions.
11. Educate business managers in computing and reporting taxes due by explaining legal requirements, rules, regulations, procedures, and ordinances of the City of Glendale and other agencies.
12. Promptly respond to telephone inquiries regarding the current status of all audit files as requested.
13. Work closely with the City of Glendale assigned Audit Project Manager to ensure successful and timely completion of all assigned audits.
14. Provide detailed work history summaries of all auditors that will be working on City of Glendale assigned audits.
15. Remain in compliance with all state and local auditing laws and regulations.
16. Perform all additional duties as listed in Consultant's Scope of Work Requirements in Consultant's offer in response to RFP 14-39.

EXHIBIT C

Professional Services Agreement Contract Transaction Privilege (Sales) and Use Tax Auditing Services

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Annual compensation is **\$122,400.00** to be paid in equal monthly payments of **\$10,200.00**, each due 30 days after presentation of a monthly progress report and invoice from Consultant.

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 **\$122,400.00** per year each year this contract remains in effect, for a total contract value of **\$612,000.00** if all four extensions are executed. Only additional costs or expenses approved in accordance with Section 5.3 of the Agreement shall be billed and paid by the City. The not-to-exceed amount includes any and all expenses such as hotel, car rental, meals, duplicating, postage, phone, fax, office supplies, etc.

DETAILED PROJECT COMPENSATION

Consultant understands that the Arizona Department of Revenue and City are currently negotiating the terms of an Intergovernmental Agreement (IGA) that will govern the conduct of audit services beginning January 1, 2015. Consultant agrees that to the extent any terms of this Agreement are in conflict with the IGA, including any terms related to Compensation, the terms of the IGA prevail and take precedence over and govern this Agreement. Such a change in Compensation may include a cost sharing or payment arrangement when one or more governmental entity participates in or pays for the performance of an audit of a taxpayer, as provided in A.R.S. § 6002.

EXHIBIT D
Professional Services Agreement

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

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

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

4. **Exceptions.**

- 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
- 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.