

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GLENDALE AND  
PLAZA DEL RIO MANAGEMENT COMPANY**

This Professional Services Agreement (“Agreement”) is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation (“City”) and Plaza Del Rio Management Corp., an Arizona Corporation (“Consultant”) as of the \_\_\_\_ day of \_\_\_\_\_, 21 (“Effective Date”). City and Consultant may be referred to as a “Party,” and collectively may be referred to as the “Parties.”

**RECITALS**

- A. City is the owner of certain real property located at the southeast corner of 95<sup>th</sup> Avenue and Cardinals Way in the City of Glendale, Arizona as depicted on the map attached hereto as Exhibit A (“**Property**”).
- B. The Property is subject to certain encumbrances associated with Arizona Cardinals, Arizona Sports and Tourism Authority and Epic Lagoons, LLC and the Parties acknowledge that the City must supply certain parking spaces in conjunction with the operation of neighboring venues and property.
- C. To assist in the potential development of the Property, City desires to retain professional services to perform certain specific duties and produce the specific work on an as needed basis.
- E. The City desires to engage Consultant and Consultant desires to be engaged by the City, as more particular set forth in this Agreement.

**AGREEMENT**

The parties hereby agree as follows:

**1. General Services**

Develop Marketing and Branding materials in collaboration with the city to facilitate the future development and marketing of the Property as set forth in the Scope of Services (“Services”) attached hereto as Exhibit B.

**2. Key Personnel; Other Consultants and Subcontractors.**

- 2.1 Professional Services. Consultant will provide Services, as directed by the City, in a timely and efficient manner within any specified requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 2.2 Project Team.
  - a. Project Manager.
    - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience, in the City’s opinion, 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 (which approval shall not be unreasonably withheld, conditioned or delayed).

- 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 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 (which consent shall not be unreasonably withheld, conditioned or delayed).
  - (2) 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 in accordance with all applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
  - (2) Consultant will remain fully responsible for Subcontractor’s services.
  - (3) Subcontractors must be approved by the City (which consent shall not be unreasonably withheld, conditioned or delayed).
  - (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

**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.

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- b. Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Coordination; Interaction.

- a. 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 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 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) Furthermore, The City acknowledges that the Work Product may be utilized for the benefit, use and obligation of property owners within a property association. In the event that a property association is formed that includes the Property within the association, the City will undertake commercially reasonable efforts to ensure that all members of the property association may utilize the Work Product so long as the members agree to be bound by the association.

**4. Compensation for the Project.**

- 4.1 Compensation. Consultant's compensation, including all expenses, for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed **\$26,100.00** ("Compensation").

**5. Billings and Payment.**

5.1 Applications.

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

5.2 Payment.

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

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

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

**6. Termination.**

- 6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.
- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
  - b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.
- 6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.
- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.
  - b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

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

8. **Insurance.** For the duration of the term of this Agreement, 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 in furtherance of this Agreement.

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

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. Professional Liability. Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by

Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liability, with a liability insurance limit of **\$2,000,000** for each claim and a **\$2,000,000** annual aggregate limit.

- d. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

## 8.2 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 to the extent resulting from the Indemnified Party's negligence or other fault attributable to the Indemnified Party.

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

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers,

officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.

c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

- 8.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.
- 8.5 Waiver of Subrogation. **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).
- 8.6 Verification of Coverage. Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.
- Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.
- 8.7 Subcontractors. Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.
- 8.8 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.

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

10. **Attestation of PCI Compliance.** When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

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:

Plaza Del Rio Management Corp  
9401 West Thunderbird Road, Suite 200  
Peoria, Arizona 85381  
Attention: Sharon Harper

- 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 Kevin R. Phelps  
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. **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 Property. City shall provide Consultant with prompt written notice of any such assignment. No assignment shall be permitted or allowed by Consultant except with the express, prior approval of the City Council, which may be given or withheld in the City's sole and absolute discretion.

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.

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 shall be for twelve (12) months. There are no automatic renewals of this Agreement.

15. **Dispute Resolution**. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

16. **No Agency Created**. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the Parties.

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

Exhibit A     Map of Property  
Exhibit B     Scope of Work

(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

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By: Kevin R. Phelps  
Its: City Manager

ATTEST:

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Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:

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Michael D. Bailey  
City Attorney

Plaza Del Rio Management Corp.,  
an Arizona Corporation



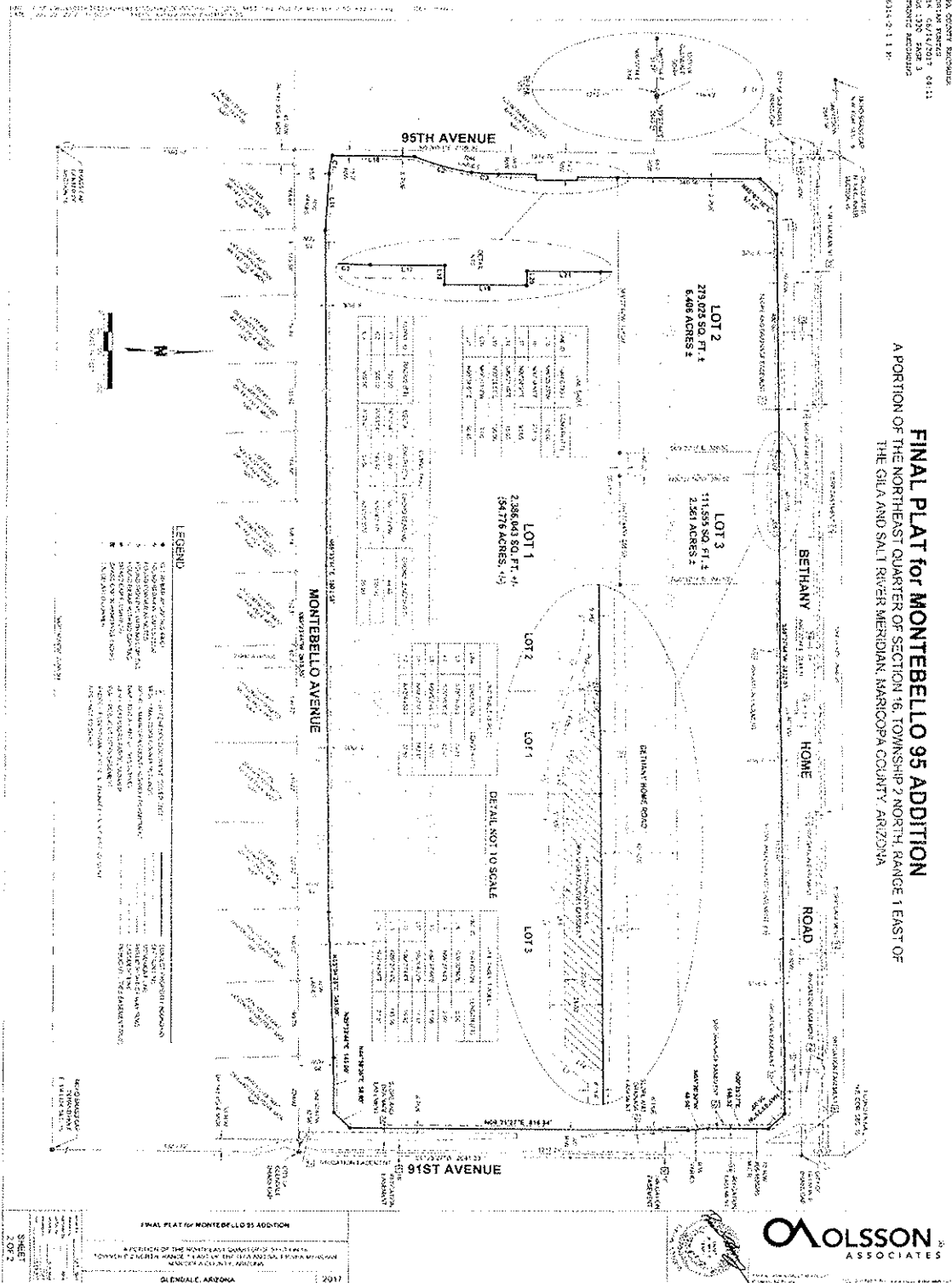
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By: Sharon Harper  
Its: CEO

# EXHIBIT A

OFFICIAL RECORD OF  
 MARICOPA COUNTY RECORDS  
 2013151010 - 04/14/2013 04:11  
 BOOK 1370 PAGE 3  
 14948000114-0-1-1-31  
 4/14/2013

## FINAL PLAT for MONTEBELLO 95 ADDITION A PORTION OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA



**EXHIBIT B**  
**SCOPE OF SERVICES**

Consultant shall:

1. Conduct a branding charette for the development of the project name, design concepts, graphics/logos, project identity, marketing and collateral materials and public art concepts for the Property.
2. Utilizing the results from the charette, develop for presentation to the City, no more than five logo design concepts for the City and development partners' consideration.
3. Develop three project names and present to the City and development partners for final approval and consensus prior to creation of promotional collateral.
4. Upon receiving feedback from the City and development partners, develop a final logo design for consideration by the City and development partners.
5. Prepare a brand style guide for the selected logo that will include core color palette, typography, brand voice, tagline, icons, value proposition, messaging pillars and differentiators. All to be presented to and approved by the City of Glendale and development partners.
6. Prepare a comprehensive manual setting forth the logo usage guidelines. Items to be included in the graphics standards guide are vertical and horizontal versions of the logo, full color palette and complete electronic files of type fonts which are copyrighted and licensed.
7. Prepare a comprehensive communications and marketing plan to promote the Property and available development opportunities to brokers, businesses, and other developers.