

AMENDMENT NO. 1
CONSULTING SERVICES-CURRENT AND HISTORICAL ENVIRONMENTAL SITE
ASSESSMENT
(Clear Creek Associates LLC., Contract No. C20-0738)

This Amendment No. 1 (“Amendment”) to the Professional Services (“Agreement”) is made this _____ day of _____, 20____, (“Effective Date”), by and between the City of Glendale, an Arizona municipal corporation (“City”) and Clear Creek Associates, LLC., Arizona Limited Liability Company authorized to do business in Arizona (“Contractor”).

RECITALS

- A. City and Clear Creek Associates, LLC (“Contractor”) previously entered into Professional Services Agreement , Contract No. C20-0738, dated September 2, 2020 (“Agreement”); and
- B. The Agreement had an initial two-year term beginning September 2, 2020, through September 1, 2022, and provided the option to extend for three (3) additional one-years periods; and
- C. On January 7, 2021, the City and the Rudolph Johnson Family, LLC., entered into a settlement agreement which required, among other things, that the City submit a Voluntary Remediation Program application to ADEQ for the former Johnson Property located at approximately 99th Avenue and Olive Avenue.
- D. The City has requested contractors provide technical expertise and support for its activities related to the VRP application and subsequent activities
- E. On January 28, 2021, the litigation budget for Contractors to provide expert witness services was increased by \$45,000 pursuant to a change order.
- F. On October 12, 2022, City and Contractor entered into Contract Extension No. 1 extending the term of the agreement from September 2, 2022, through September 1, 2023

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

- 1. **Recitals.** The recitals set forth above are not merely recitals but form an integral part of this Amendment.
- 2. **Term.** The term of the Agreement is unchanged.

3. **Scope of Work.** The Scope of Work is amended to include tasks related to activities implementing the Voluntary Remediation Plan approved by ADEQ for the City's historic landfill located at 99th Avenue and Olive Avenue.
4. **Compensation.** The Compensation is being amended and the amount increased by the prior change order is being ratified. The new not-to-exceed amount of \$135,000.
5. **Insurance Certificate.** A certificate must be presented to the City before this Amendment can take effect.
6. **Non-discrimination.** Contractor 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. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.
7. **No Boycott of Israel.** To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.
8. **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.
9. **Ratification of Agreement.** City and Contractor hereby agree that except as expressly provided herein, the provisions of the Agreement shall be, and remain in full force and effect and that if any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment shall prevail.

[Signatures on the following page.]

CITY OF GLENDALE, an Arizona
municipal corporation

Kevin R. Phelps, City Manager

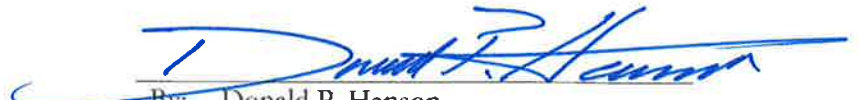
ATTEST:

Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

Clear Creek Associates, LLC,
An Arizona limited liability company


By: Donald P. Hanson
Its: Principal



*Practical Solutions
In Groundwater Science*

8777 N. Gainey Center Dr.
Suite 250
Scottsdale, Arizona 85258
480-659-7131 office
480-659-7143 fax
www.clearcreekassociates.com

November 3, 2022

Mr. Michael Carr
Deputy Director of Field Operations
City of Glendale
6210 W. Myrtle Avenue
Glendale, AZ, 85301

**City of Glendale Landfill
VRP Initiation & Supplemental Site Characterization
Parcel No. 142-55-006F
99th Avenue & Olive Avenue, Peoria, Arizona**

Dear Mr. Carr:

Clear Creek Associates ("Clear Creek") is pleased to provide this Scope of Work (SOW) and fee estimate to initiate Voluntary Remediation Program (VRP) activities with the Arizona Department of Environmental Quality (ADEQ). The City of Glendale Landfill (Site) is located south of Olive Avenue at the intersection of 99th Avenue and Olive Avenue. As part of a Settlement Agreement with the former property owner, the City of Glendale (City) acquired ownership of the Site and submitted an application to ADEQ for acceptance of the Site into the VRP. The Site was formally accepted on April 5, 2022.

The following tasks have been developed to initiate activities, develop plans and conduct additional site characterization activities.

Task 1.0 Project Start-up

Upon authorization from the City and receipt of a Notice to Proceed, Clear Creek will establish financial tracking and file management systems for project organization. We will also meet with the City (virtual) to discuss expectations, project schedule, data reviews, etc.

Task 2.0 Prepare Historical Document Submittal

Numerous historical documents related to the Site exist. These documents include but are not limited to Phase I and II Site Assessments, previous site characterization work for soil, soil vapor and groundwater, soil vapor and groundwater monitoring results, etc. To help establish the chemicals of concern (COCs) and types and locations of environmental impacts, Clear Creek will prepare a detailed summary of the pertinent reports including authors, dates, report type and information contained. ADEQ requires hard copies of all reports/submittals as well as electronic copies.

Clear Creek will prepare the summary table, compile the reports and prepare a formal submittal to ADEQ with a copy to the City.

Task 3.0 Develop Supplemental Site Characterization Work Plan

All work conducted under the VRP program requires ADEQ review and approval of a Work Plan (WP) and/or Sampling and analysis Plan (SAP) prior to implementation. In addition to the overall work tasks to be implemented, ADEQ requires that all work be conducted in accordance with:

- Quality Assurance Program Plan (QAPrP);
- Data Quality Objectives (DQOs);
- Standard Operating Procedures (SOPs) for the collection of environmental data; and
- Health and Safety Plan (HASP).

The WP also needs to identify remediation goals for the COCs for each impacted media (soil, soil vapor and groundwater), a schedule of activities, and Community Involvement in accordance with Arizona Revised Statute (ARS §49-176).

The major elements of the WP will include soil vapor sampling and groundwater monitoring and sampling.

Clear Creek will prepare the WP in draft form for review by the City. ADEQ also requires submittal of their *Voluntary Remediation Program Work Plan Checklist* with the WP. Once comments have been received from the City, the WP will be finalized for submittal to ADEQ along with the checklist.

Task 4.0 Quarterly Soil Vapor Sampling

Four vapor monitor wells, VW-1 through VW-4, are located on the Site and will be utilized for soil vapor sampling. The vapor wells will be purged prior to field measurements and sample collection.

A total of three volumes of tubing will be purged using a vacuum pump at a rate of less than 500 cubic centimeters per minute (cc/min) connected to an air-tight fitting of each wellhead. First, a GEM 2000 methane gas meter will be used to collect field measurements of methane in each well. Following methane measurements, a soil gas sample will be collected for volatile organic compounds (VOCs) in a 1-liter Summa canister in each well. Each soil gas sample will be labeled with the sample ID, date and time of collection, and the sampler's initials, logged onto a chain-of-custody form, and submitted to an Arizona Certified analytical laboratory for analysis of VOCs by EPA Test Method TO-15. For Quality Assurance/Quality Control (QA/QC) purposes, one blind duplicate sample will be collected, submitted and analyzed during each quarterly event.

Prior to collection of soil gas samples, a shut-in test will be conducted to check for leaks in the above ground fittings. A shut-in test will be conducted each time a sample is collected because a poor seal may result in soil gas samples that are diluted or contaminated with ambient air.

This task includes labor, equipment, expenses and subcontracted laboratory costs for four quarterly sampling events. We have assumed that the methane gas meter will be supplied by the City free of charge.

Task 5.0 Quarterly Groundwater Monitoring & Sampling

There are three existing groundwater monitor wells on the Site (MW-1, MW-2 and MW-3). The intent of groundwater monitoring and sampling is threefold.

1. Collect quarterly water level measurements to assess and confirm groundwater flow directions (this is important as a fourth downgradient monitor well will be required to establish the lateral extent of groundwater impacts).
2. Collect quarterly groundwater samples for VOCs and field parameters¹ using a standard 2-inch HS-2 HydraSleeve™ to establish whether seasonal variations in groundwater concentrations exist (this is also important to support the selection of a Monitored Natural Attenuation [MNA] remedy).
3. Collect one round of VOC vertical profile samples from monitor wells MW-1 and MW-2 using Passive Diffusion Bags (PDBs). Both monitor wells MW-1 and MW-2 have shown concentrations of TCE and/or PCE above aquifer water quality standards. The purpose of this effort will be to establish whether the vertical extent of groundwater impact can be determined without the installation of an additional deeper monitor well. Up to 10 PDBs will

¹ pH, temperature, and specific conductance.



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be installed in each well. After the manufacturer recommended saturation time, the PDBs will be removed and submitted to the analytical laboratory for analysis. Depending on the results, this may be repeated during the second quarter (ADEQ requires a minimum of two rounds of data).

All samples will be submitted under chain-of-custody protocols to an Arizona Licensed laboratory for analysis of VOCs using EPA Test Method 8260. This task includes labor, equipment, expenses and subcontracted laboratory costs for four quarterly sampling events.

Task 6.0 Data Management, Data Submittals & Site Characterization Report

Clear Creek will develop and maintain a database of all field data collected and all analytical laboratory results obtained for soil vapor and groundwater. In accordance with ADEQ VRP requirements, all groundwater data will be submitted to ADEQ's Groundwater Quality Database through the ADEQ website.

Clear Creek will also prepare quarterly data submittals to ADEQ. Data submittals will include water level data, groundwater contour and flow direction maps, soil vapor concentration tables for VOCs and methane, and groundwater concentration tables for VOCs. The data submittals will be submitted in draft form to the City for review and comment prior to submittal to ADEQ.

After the completion of the four sampling events, Clear Creek will prepare a Site Characterization Report summarizing the results. The report will include our interpretation of the nature and extent of soil vapor and groundwater impacts and will propose additional investigation/characterization, if necessary, to fully define the vertical and lateral extents of groundwater impacts in support of a final remedial action plan. The report will be prepared in draft form and submitted to the City for review and comment. Once comments have been received and incorporated, the report will be submitted to ADEQ for review.

Task 7.0 Project Management and Progress Meetings

Clear Creek will perform technical and financial project oversight of the Site through the duration of work listed in this proposal. This includes review of technical data and deliverables, project coordination and field staffing, and financial monitoring and monthly progress billings. This task also includes four (4) quarterly progress meetings with the City to review and discuss the results of the site characterization and to provide guidance for continuing activities.



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Task 8.0 Supplemental Technical Consulting (Allowance)

This task has been included as an allowance and is intended to provide supplemental technical consulting to the City not included in the above tasks. This may include strategic planning, development of support for preliminary remedial alternatives, additional meetings, etc. for costing purposes, we have assumed 8 hours of Principal Level time and 4 hours of Project Level support time.

Fee Estimate

Clear Creek will perform this work on a Time and Materials Not-to-Exceed basis for a total of **\$56,850** which will be invoiced monthly. Clear Creek can begin work on this project immediately upon receipt of written authorization. If you have any questions regarding this scope of work and fee estimate, please call me at (480) 659-7131.

Sincerely,

CLEAR CREEK ASSOCIATES, LLC

A handwritten signature in blue ink, appearing to read "Donald P. Hanson".

Donald P. Hanson, R.G.
Principal Hydrogeologist

Attachments

CC: Rebecca Brand, R.G. - CCA

ATTACHMENT A

Estimated Level of Effort (Hours) and Cost

**Environmental Support Services
Glendale Landfill
VRP Initiation and Supplemental Site Characterization
Peoria, Arizona**

Task	Clear Creek Associates Labor & Direct Costs	Subcontractor Costs	TOTAL Labor & Cost	
			Hrs	Cost
1.0 Project Start-up	\$ 1,495	\$ -	7	\$ 1,495
2.0 Prepare Historical Document Submittal	\$ 2,235	\$ -	12	\$ 2,235
3.0 Develop Work Plan	\$ 7,515	\$ -	38	\$ 7,515
4.0 Quarterly Soil Vapor Sampling	\$ 6,062	\$ 4,743	36	\$ 10,805
5.0 Quarterly GW Monitoring & Sampling	\$ 10,228	\$ 6,734	60	\$ 16,962
6.0 Data Management & Reporting	\$ 9,686	\$ -	60	\$ 9,686
7.0 PM and Meetings	\$ 5,332	\$ -	32	\$ 5,332
8.0 Supplemental Technical Consulting (Allowance)	\$ 2,820	\$ -	12	\$ 2,820
PROJECT TOTAL	\$ 45,373	\$ 11,477	257	\$ 56,850



ATTACHMENT B
Clear Creek Associates, LLC
Schedule of Hourly Billing Rates and Fees

Position	Hourly Billing Rate
Principal Hydrologist/Geologist	\$254.00
Senior Associate Hydrologist/Geologist	\$237.00
Senior Hydrologist/Geologist	\$217.00
Sr. Project Hydrologist/Geologist	\$197.00
Project Hydrologist/Geologist	\$174.00
Staff III Hydrologist/Geologist	\$148.00
Staff II Hydrologist/Geologist	\$142.00
Staff I Hydrologist/Geologist	\$128.00
Technician II	\$107.00
Technician I	\$100.00
Project Coordinator	\$98.00
Clerical	\$85.00

FIELD EQUIPMENT		
Identification	Per Day	Per Week
Water Level Indicator (<500 ft)	\$50	\$200
Water Level Indicator (500-1000 ft)	\$75	\$300
Water Level Indicator (>1000 ft)	\$100	\$400
pH/EC/Temperature Meter	\$25	\$100
Bailer, SS	\$6	\$24
Bailer, Disposable	\$15/ea.	\$15/ea.
Computer, Field	\$25	\$100
Flow Meter	\$30	\$120
Vacuum Pump (Air Sampling)	\$40	\$160
GPS	\$15	\$60
Pressure Transducer and Data Logger	\$150	\$600
Additional Transducer	\$50	\$250
Drilling Fluid Filter Press	\$12	\$48
Dual-Ring Infiltrometer	\$50	\$200
Field Truck (100 miles/day included, \$0.65 per mile thereafter)	\$95	\$380

MISCELLANEOUS EXPENSES		
Identification	Unit	Unit Cost
Black and White Printing / Photocopies	Page	\$0.10
Color Printing / Photocopies	Page	\$1.00
Flash Drives	Each	\$5.00
Automobile Mileage	Mile	Current federal rate
Subcontractor and Other Equipment and Expenses		Cost plus 15%

Notes: Effective through December 31, 2023

PROFESSIONAL SERVICES AGREEMENT
with Clear Creek Associates, LLC
For Litigation Support Services

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Clear Creek Associates, LLC an Arizona limited liability company, ("Consultant") as of the 2nd day of September, 2020 ("Effective Date").

RECITALS

- A. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit A, Scope of Work** ("Scope");
- B. 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 Scope of Work and
- C. 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 Services are completed timely and efficiently consistent within Scope of Work, 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, including outside counsel, 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 providing the required Services 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 perform the Services by Consultant will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to provide the Services 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 the Scope of Work is performed timely and efficiently manner and in accordance with any applicable Client-imposed or court deadlines.
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 Scope of Work 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. 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 for the litigation identified ("Coordinating Project Professionals").
 - b. Consultant will meet to review the in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure that the Services are being completed in a timely and adequate manner.
- 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.

3.6 Confidentiality of Work Product. Consultant is providing litigation support to the City Attorney's Office and its outside counsel consistent with the Scope of Work attached hereto as Exhibit A. Consultant agrees to treat and maintain all communications, correspondence, reports, analyses, memoranda that contain any opinions, theories or conclusions undertaken or developed in the course of its performance of the Scope of Work as privileged and confidential attorney work product and to prevent or protect from the disclosure of the same.

4. Compensation for the Services.

- 4.1 Compensation. Consultant's compensation for the Services, including those furnished by its Subconsultants or Subcontractors will not exceed \$25,000.00 as specifically detailed in Exhibit A ("Compensation").
- 4.2 Change in Scope of Work. The Compensation may be equitably adjusted if the originally contemplated Scope of Work 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 Work contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 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 City will be free of additional 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 the closeout and delivery of the required items or Services 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 or work necessary to complete the Services as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.

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

- a. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. **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 **\$1,000,000** for each claim and a **\$5,000,000** 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 Services.
- 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.

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 Services or Scope of Work 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 Scope of Work or the Services, 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 Scope of Work or Services.
- 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 Services being performed 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. No Boycott of Israel. The Parties agree that they are not currently engaged in and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393. Unless and until the District Court's injunction in *Jordahl v Brnovich*, 336 F.Supp.3d 1016 (D.Ariz. 2018) is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. §35-393.01 (A)) (if applicable to this agreement) is unenforceable and the City will take no action to enforce it.

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

12. Notices.

12.1 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.

12.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Services, and his or her address for Notice delivery is:

Donald P. Hanson, R.G.
Principal Hydrogeologist
Clear Creek Associates, LLC
6155 East Indian School Road, Suite 200
Scottsdale, AZ 85251
(480) 659-7131
dhanson@ccca-logic.com

- 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 Nancy A. Mangone
Assistant City Attorney
City Attorney's Office
5850 West Glendale Avenue, Ste. 450
Glendale, Arizona 85301
(623) 930-2990
nmangone@glendaleaz.com

With required copy to:

Michelle Woytenko
Director, Field Operations
6210 West Myrtle Avenue, Suite 111
Glendale, Arizona 85301
(623) 930-2613
mwoytenko@glendaleaz.com

- c. Concurrent Notices.
- (1) All notices to City's representative must be given concurrently.
 - (2) A notice will not be deemed to have been received by both City's representatives.
 - (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.

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 Scope of Work 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 Scope of Work or Services, 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.

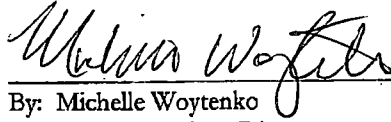
The term of this Agreement commences upon the effective date and continues for a two (2) year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement for three additional years, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.

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

Exhibit A Scope of Work


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

City of Glendale,
an Arizona municipal corporation

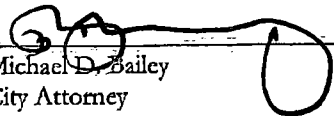


By: Michelle Woytenko
Its: Field Operations Director

ATTEST:


Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

Clear Creek Associates, LLC,
An Arizona limited liability company

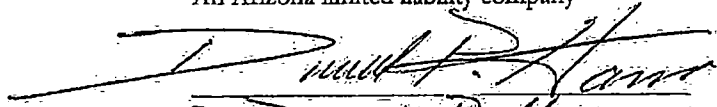

By: Donald P. Hanson
Its: PRINCIPAL

EXHIBIT A
Professional Services Agreement

SCOPE OF WORK



*Practical Solutions
In Groundwater Science*

Privileged and Confidential
Prepared at the Direction
of Legal Counsel

6155 East Indian School Rd.
Suite 200
Scottsdale, Arizona 85251
480-659-7131 office
480-659-7143 fax
www.clearcreekassociates.com

June 23, 2020

Nancy A. Mangone
Assistant City Attorney
5850 W. Glendale Avenue, Ste. 450
Glendale, AZ 85301

**Scope of Work and Fee Estimate
Litigation Support Services
Glendale/Johnson Matter
Glendale, Arizona**

Dear Ms. Mangone,

Clear Creek Associates, LLC (Clear Creek) is pleased to provide this scope of work and fee estimate to the City of Glendale for litigation support services related to the Glendale/Johnson matter. Clear Creek understands that we will be supporting the City of Glendale as the defendant and that the plaintiff is Rudolph Johnson Family L.L.C. A conflict of interest check was performed across all the Geo-Logic Associates member companies, that includes Clear Creek, and no conflicts were identified.

Scope of Work

Clear Creek will provide expert environmental site assessment and litigation support activities related to the identification of all Johnson property holdings, both current and historical in and around the 99th Avenue and Northern area. For investigation purposes, the study area will extend from Glendale to Olive Avenues between 91st and 107th Avenues, approximately four square miles. Current land uses in the area include vacant parcels, agricultural, residential, commercial and light to heavy industrial.

Clear Creek will perform research to identify historical land uses over time using the following available data sources:

- Phase I and II Environmental Site Assessment Reports
- Groundwater and Vapor Monitoring Reports
- Geotechnical and Site Characterization Reports
- Flood Insurance Rate Maps
- USGS 7.5-Minute Topographic Maps
- Aerial Photographs
- Fire Insurance Maps



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Prepared at the Direction
of Legal Counsel

June 23, 2020
Nancy A. Mangone
Assistant City Attorney
City of Glendale
Page 2

- Property Tax Files
- Land Title Records
- Building Department Records
- Zoning, Land Use Records
- Other Historical Records

Our findings will be summarized as directed by counsel in writing and in figures and tables. All work products will be marked as Privileged and Confidential.

Our scope of work also includes participation in meetings, teleconferences and video conferences as needed. Only local travel is assumed.

Fee Estimate

Clear Creek will conduct this work on a time and materials basis in accordance with the attached Schedule of Hourly Billing Rates and Fees. For cost estimating purposes we propose an initial budget of \$25,000. This estimate assumes 50 hours of Principal time, 40 hours of Senior Environmental Engineer time, and 30 hours of staff scientist time along with clerical and any outside expenses such as costs for obtaining historical aerial photography. The number of hours stated are only an estimate and may change depending on the amount of historical data available and initial findings. Clear Creek will notify the City once 80% of the budget has been expended (\$20,000).

Schedule

Clear Creek can begin work on this project immediately upon receipt of authorization to proceed.

Clear Creek appreciates this opportunity to provide environmental assessment and litigation support services to the City of Glendale. If you have any questions regarding this scope of work and fee estimate, please call me at (480) 659-7131.

Sincerely,

CLEAR CREEK ASSOICATES. LLC

A handwritten signature in black ink, appearing to read "Donald P. Hanson".

Donald P. Hanson, R.G.
Principal Hydrogeologist

Attachment A: Schedule of Hourly Billing Rates and Fees

ATTACHMENT A
Clear Creek Associates, LLC
Schedule of Hourly Billing Rates and Fees

Position	Hourly Billing Rate
Principal – Expert Testimony Services*	\$400.00
Principal Hydrologist/Geologist	\$223.00
Senior Associate Hydrologist/Geologist	\$211.00
Senior Hydrologist/Geologist	\$193.00
Sr. Project Hydrologist/Geologist	\$175.00
Project Hydrologist/Geologist	\$152.00
Staff III Hydrologist/Geologist	\$132.00
Staff II Hydrologist/Geologist	\$122.00
Staff I Hydrologist/Geologist	\$110.00
Technician II	\$92.00
Technician I	\$82.00
Project Coordinator	\$87.00
Clerical	\$74.00

Notes: Effective through December 31, 2020
Hourly base rate ranges are revised annually to reflect changes in the cost of doing business.

* Includes testimony, depositions, and preparation time with legal counsel.

ATTACHMENT A (continued)
Schedule of Hourly Billing Rates and Fees

FIELD EQUIPMENT		
Identification	Per Day	Per Week
Water Level Indicator (<500 ft)	\$50	\$200
Water Level Indicator (500-1000 ft)	\$75	\$300
Water Level Indicator (>1000 ft)	\$100	\$400
pH/EC/Temperature Meter	\$25	\$100
Bailer, SS	\$6	\$24
Bailer, Disposable	\$15/ea.	\$15/ea.
Camera (video)	\$25	\$100
Camera (digital)	\$10	\$40
Cellular Telephone	\$10	\$40
Computer, Field	\$25	\$100
Flow Meter	\$30	\$120
Vacuum Pump (Air Sampling)	\$40	\$160
GPS	\$15	\$60
Pressure Transducer and Data Logger	\$150	\$600
Additional Transducer	\$50	\$250
Drilling Fluid Filter Press	\$12	\$48
Brunton Compass	\$12	\$48
Distance Measuring Wheel	\$6	\$24
Field Truck (100 miles/day included; \$0.65 per mile thereafter)	\$95	\$380

MISCELLANEOUS EXPENSES		
Identification	Unit	Unit Cost
Black and White Printing / Photocopies	Page	\$0.10
Color Printing / Photocopies	Page	\$1.00
Automobile Mileage	Mile	Current federal rate
Subcontractor and Other Equipment and Expenses		Cost plus 15%

Effective through December 31, 2020.



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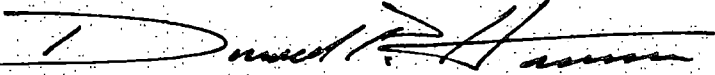
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Principal Hydrogeologist

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