



CITY OF GOODYEAR
PROFESSIONAL SERVICES CONTRACT
CON-22-6035

OFFICE OF PROCUREMENT
P.O. Box 5100
Goodyear, Arizona 85338
Phone: 623-882-7893

DESCRIPTION OF SERVICES: Bullard Wash Irrigation Tailwater Study Project

OFFER

To the City of Goodyear: The undersigned Contractor hereby offers and agrees to furnish the goods and/or services in compliance with this Contract, as the term Contract is defined in this document.

By signing and submitting this Offer, Contractor certifies and warrants that Contractor: has read, understands and agrees to comply with the Contract as defined here; Contractor is qualified to perform all Services required herein; has no known, undisclosed conflict of interest; has not made an offer of any gift(s), payment(s) or other consideration to any City employee, elected official who has or may have had a role in the procurement process for this Contract; pursuant to A.R.S. § 41-4401, Contractor and its subcontractors will comply with all immigration laws and regulations that relate to its employees and A.R.S. § 23-214; and the signatory is an officer or duly authorized agent of the Contractor with full power and authority to submit binding offers for the goods and/or services as specified herein.

Arizona Transaction (Sales) Number:

Arizona Contractor License Number:

City of Goodyear Business Registration No.:

Privilege Tax License Number:

Sign: _____

Contractor's Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City

State

Zip Code

Title

Date

Telephone

Email

ACCEPTANCE OF OFFER - CITY OF GOODYEAR AND HOA

Contractor's Offer is hereby accepted and a Contract awarded by the City and the HOA. Contractor is now bound to provide the goods and/or services as specified in Scope of Work of this Contract. Contractor shall not start any billable work or provide any material/services until the Contractor receives an executed purchase order or written notice to proceed.

City Manager, City of Goodyear (if applicable)

Eff. Date: _____

Attested by:

Jacque Behrens, Procurement Manager

Date

Darcie McCracken, City Clerk

Approved as to form:

City Seal

Official File

Roric Massey, City Attorney

Pebblecreek Golf Resort Homeowners Association No. 1, Inc., an Arizona non-profit corporation

By: _____

Its: _____

**PROFESSIONAL SERVICES CONTRACT
STANDARD TERMS AND CONDITIONS**

CON-22-6035

This Professional Services Contract ("Contract"), is made on this _____ day June, 2021 ("Effective Date"), by and between the City of Goodyear, an Arizona municipal corporation ("City"), and PEBBLECREEK GOLF RESORT HOMEOWNERS ASSOCIATION NO. 1, INC., an Arizona non-profit corporation (the "HOA"), and, a (n) ("Contractor"). The City and the HOA engage the Contractor to perform professional services for the project known as: Bullard Wash Irrigation Tailwater Study Project ("Project"). The City, the HOA and Contractor may be referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the City is authorized by the City Charter to execute contracts for professional services;

WHEREAS, the Contractor represents that Contractor has the requisite expertise, and is qualified to perform the services described in this Contract;

WHEREAS, a portion of the services are being performed on and with regard to property owned by the City and a portion of the services are being performed on and with regard to property owned by the HOA and the HOA and the City are sharing the cost of the services with the HOA paying 27.5% and the City paying 72.5% for said services; and

WHEREAS, the City, the HOA and Contractor desire to memorialize their agreement with this Contract.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1 DEFINITIONS

- 1.1 "Contract" means this Professional Services Contract, including the standard terms and conditions, special terms and conditions, specifications/scope of work, fee schedule/price sheet, the solicitation documents, instructions to offerors (including documents referenced and included therein) and any attachments, exhibits and addendum referenced herein, the offer and any best and final offer as accepted by the City, and any amendments.
- 1.2 "Contractor" means the individual, partnership, entity, firm, company or corporation who, as a result of the competitive process, is awarded a contract by the City of Goodyear.
- 1.3 "Days" means calendar days unless otherwise specified herein.
- 1.4 "Litigation Expense" means any court filing fee and costs, arbitration fees or costs, witness fee, arbitration fees, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Contract, including, without limitation, in each case, attorneys' fees, professional fees, disbursements and each other fee and cost of investigating and defending, appealing or asserting any claim for indemnification under this Contract.
- 1.5 "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge, other than a litigation expense.
- 1.6 "Services", "Work" or "Project" means the subject matter of this Contract as set forth in the Scope of Work.

- 1.7 “Subcontract” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any goods or services required for the performance of the Contract.
- 1.8 “Work Product” means but is not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original Mylar drawings, computer aided drafting and design (CADD) file, computer disks and/or other electronic records and media, and all “architectural work” and “works made for hire” as defined herein and by the United States Copyright Act, 17 U.S.C. § 101, *et seq.*

SECTION 2 SERVICES PROVIDED BY CONTRACTOR

- 2.1 Scope of Work. Contractor shall provide those “Services” described in **Exhibit “A”** (Scope of Work) attached hereto and incorporated herein by reference. Additional Services, which are outside the scope of basic services contained herein shall not be performed by Contractor without prior written consent of both the City and the HOA. Authorized additional Services shall be compensated for by a fee mutually agreed upon between the City, the HOA and Contractor.
- 2.2 Professional Practices. All Services shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professionals in similar fields and circumstances in accordance with sound professional practices. Contractor is responsible for knowing and complying with all applicable laws, rules, and regulations, including all applicable building regulations, license and permits requirements.
- 2.3 Performance to the Satisfaction of the City and the HOA. Contractor agrees to perform all Services required by this Contract to the complete satisfaction of the City and the HOA and as required herein. If the quality of work is not satisfactory to the City or the HOA, in addition to any and all other remedies available by law, the City and/or the HOA, each in its discretion, has the right to do any or all of the following: (i) Meet with Contractor to review quality of work and resolve the matters of concern; (ii) Require Contractor to repeat the work at no additional fee until it is satisfactory to the City and the HOA; and/or (iii) Terminate the Contract as provided herein.
- 2.4 Investigation. Contractor warrants and agrees familiarity of the work is required to perform the Services, is satisfied as to the conditions under which it is to be performed, is competent to perform the Services and enters into this Contract based upon the Contractor’s own investigation.

SECTION 3 CONTRACT TERM

- 3.1 The Contract term shall be one (1) year commencing the Effective Date, unless terminated sooner in accordance with the provisions herein. The Contract may be extended for additional consecutive terms, not to exceed a total of five (5) years, subject to appropriations and the mutual agreement of all of the Parties.

SECTION 4 COMPENSATION AND BILLINGS/PAYMENTS

- 4.1 Compensation. Contractor’s total compensation, including those Services furnished by its Subcontractors, shall not exceed \$76,630, in accordance with the Fee Schedule found in Contractor’s offer. The Compensation shall be paid 72.5% by the City and 27.5% by the HOA.
- 4.2 Method of Billing. Contractor will invoice the City and the HOA separately with the City’s invoices reflecting/paying 72.5% of the Services and with the HOA’s invoices reflecting/paying 27.5% of the Services. Contractor will send said invoices by the 10th day of each month for Services provided during the prior month. Invoices shall contain itemized hourly fees and specifically describe the Services performed, the name of the person(s) performing the Services, and supporting documentation.
- 4.3 Review and Withholding. City’s Project Manager and the HOA’s general manager shall review invoices to certify payment requests. If an invoice is rejected, the City Project Manager or the HOA’s general manager will issue a notice of the items not approved for payment. If during the course of the Contract, Services performed do not meet the requirements set forth in the Contract, Contractor shall correct or modify the

work to comply with the Contract requirements and the City and the HOA shall have the right to withhold payment for such work until Contractor complies with the requirements of the Contract to the reasonable satisfaction of the City.

- 4.4 Payment. The City and the HOA shall pay Contractor within 30 days from the date each receives a complete, correct and approved invoice.
- 4.5 Advance/Late Payments. Advance payments are not authorized. Neither the City nor the HOA will be obligated to honor any invoices or claims which are tendered more than one (1) year after the last item of the account accrues.
- 4.6 Fund Appropriation Contingency. Funds may not presently be available for performance under this Contract beyond the City's current fiscal year starting July 1 and ending on June 30th of the following year. If payment for Contract Services extends into a new fiscal year, the City's obligation to pay for such performance is contingent upon approval of future appropriations by City Council to fund this Contract. The City shall have no legal liability to pay funds due for performance under the terms of the Contract until and unless such funds are appropriated.
- 4.7 Free on Board ("FOB") Destination. All prices are F.O.B final destination, unless otherwise provided.
- 4.8 Taxes. Contractor is solely responsible for any and all tax obligations that may result from Contractor's performance of this Contract.

SECTION 5 PROJECT TEAM/SUBCONTRACTORS/CITY PROJECT MANAGER

- 5.1 Project Team Selection. Prior to the start of any Services, Contractor shall provide the City and the HOA detailed resumes of the proposed project manager, team members, and all subcontractors Contractor wishes to assign or use to perform the Contract Services for review and final approval by the City. Contractor will maintain an adequate and competent staff of qualified persons with sufficient training, knowledge and experience consistent with applicable standards as required by this Contract. The project manager shall be responsible for and supervise all project team members and any other employees and subcontractors assigned by the Contractor. Contractor agrees that, once assigned to work under this Contract, the project manager and team shall not be removed or replaced without prior written consent of the City.
- 5.2 Discharge, Reassign, Replacement. Contractor will not discharge, reassign, replace or diminish the responsibilities of any team member approved by the City without the City's prior written consent unless that person leaves the employment of Contractor, in which case the substitute must be approved by the City. Contractor will promptly remove any project team member at the request of the City or the HOA if that member's performance does not equal or exceed the level of competence the City may reasonably expect of a person performing those duties or if the City or the HOA reasonably believes the acts or omissions of that person are detrimental to the development of the Project.
- 5.3 Coordination; Interaction. Contractor's project team are expected to work in close consultation and cooperation with all professionals working on the Project.
- 5.4 Subcontracts. Contractor shall not enter into any subcontract for the performances of any Service for this Contract without the prior approval of the City's Project Manager or the HOA. Contractor shall identify all proposed subcontractors and subcontractor's proposed responsibilities. All subcontracts shall incorporate by reference all terms and conditions of this Contract. Contractor is solely responsible for the performance and payment of its subcontractors.
- 5.5 City Project Manager. The City will designate a City Project Manager to act on behalf of the City during the term of this Contract. The City Project Manager has the authority to administer this Contract and shall oversee and monitor compliance with all Contract terms and conditions. All requests for information or decisions to be made by the City for this Contract shall be directed to the City Project Manager.

SECTION 6 LICENSING, DEBARMENT AND SUSPENSION

- 6.1 Licensing/Permits. Contractor warrants and certifies that Contractor and its Subcontractors will maintain valid licenses, registrations, permits, and other approvals necessary to perform the Services required under this Contract ("Approvals"). Contractor shall immediately advise the City and the HOA in writing of any change in information provided by Contractor or its subcontractors as it relates to any Approvals. Noncompliance with this provision is a material breach of Contract.
- 6.2 Debarment/Suspension. Contractor warrants and certifies neither Contractor nor any of its subcontractor:
- Are presently debarred, suspended, proposed for debarment, declared ineligible or otherwise legally excluded from contracting with any federal, state or local government entity; and
 - Have not been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property within a three (3) year period preceding this Contract;
 - Are not, or have not been, indicted of or otherwise criminally charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing any public transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and
 - Have not had one or more public transaction (federal, state or local) terminated for cause or default.
- 6.3 Neither the HOA nor the City has an affirmative duty or obligation to confirm or deny the existence or issuance of any Approvals or Debarments, or to examine Contractor's contracting ability.

SECTION 7 WORK PRODUCT/CONFIDENTIALITY/ENCRYPTION

- 7.1 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this Contract and/or any related subcontract ("Intellectual Property") shall be work made for hire and the City and the HOA jointly shall be considered the creator of such Intellectual Property. The City shall own the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the City and the HOA, within 30 days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to vest ownership of the Intellectual Property jointly in the City and the HOA and shall take no affirmative actions that may have the effect of vesting all or part of the Intellectual Property in any entity or person other than the City and the HOA. If applicable, Contractor shall place the professional seal of Contractor on all plans and documents prepared in the performance of this Contract. This section is intended to apply to all original designs, plans and specifications exclusively developed for the City and the HOA by Contractor and not intended to apply to standard details, systems and specifications developed and used by Contractor which shall remain the property of Contractor and may be used with other projects without the consent of the City or the HOA. Contractor warrants, and agrees to indemnify, hold harmless and defend the City and the HOA for, from and against any claim that any Work Product infringes on third-party propriety rights. It is expressly agreed by Contractor that the covenants in this section are irrevocable and perpetual.
- 7.2 Confidential/Proprietary. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Contract are confidential, proprietary information owned by the City and the HOA. Contractor shall not disclose data generated in the performance of the Services to any third person without the prior written consent of the City Manager and the HOA.
- 7.2.1 Contractor, its employees and subcontractors, in the course of their duties, may have access to financial, accounting, statistical, and personnel data of private individuals and employees of the City or the HOA. Contractor covenants that all such data, documents, discussion, or other information developed or received by Contractor or provided in performance of this Contract, whether electronic format or hard copy, are deemed confidential or restricted City information or confidential HOA information, as the case may

be, and shall be secured and protected to avoid unauthorized access, and not be disclosed by Contractor, its employees or subcontractors without prior written authorization from the City or the HOA, as the case may be.

7.2.2 At a minimum Contractor shall ensure all electronic transmissions of confidential data are encrypted and any cryptographic algorithm implementations used have been validated by the National Institute of Standards and Technology (NIST). The use of proprietary encryption algorithms will not be allowed for any purpose. The export of encryption technologies is restricted by the U.S. Government.

7.2.3 In the event that Contractor reasonably believes that any Confidential Data has been compromised, Contractor shall notify the City Attorney and the HOA immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. Similarly, Contractor agrees to reimburse the HOA for any costs incurred by the HOA to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

7.2.4 Contractor agrees to comply with this section and the Information Technology Non-Disclosure Agreement attached hereto and incorporated herein by reference; noncompliance is a material breach of Contract.

- 7.3 Use by the City and the HOA. The City and the HOA may reuse the Work Product provided by Contractor and its subcontractor pursuant to this Contract at each of their respective sole discretion. In the event the Work Product is used for another project or modified by the City without further consultation with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of such use of the Work Product. In such case, City will also remove any seal and title block from the Work Product. Similarly, in the event the Work Product is used for another project or modified by the HOA without further consultation with Contractor, the HOA agrees to indemnify and hold Contractor harmless from any claim arising out of such use of the Work Product. In such case, HOA will also remove any seal and title block from the Work Product.

SECTION 8 TERMINATION

- 8.1 Termination. The City or the HOA may terminate this Contract in whole or in part, with or without cause and for any reason, including the convenience of the City or the HOA, upon thirty (30) days written notice to the Contractor.
- 8.2 Compensation. In the event of termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for Services performed to the date of such termination, the Contractor shall receive a fee for the percentage of services actually performed to the satisfaction of the City and the HOA. This fee shall be in the amount mutually agreed upon by the Contractor, the HOA and City, based on the Scope of Work and fee schedule. If there is no mutual agreement, the City Project Manager and the HOA shall jointly determine the percentage of work performed for each task detailed in the Scope of Work, with Contractor's compensation based on such determination and the fee schedule included herein.
- 8.3 Acts of Insolvency/Other. The City may terminate this Contract immediately by written notice to Contractor if any of the following occurs: Contractor becomes insolvent; makes a general assignment for the benefit of creditors; suffers or permits the appointment of a receiver for its business or assets; becomes subject to any proceeding under any bankruptcy or insolvency law, foreign or domestic; is wound up or liquidated, voluntarily or otherwise; persistently or repeatedly refuses or fails to complete the work required herein; persistently disregards law, rules or regulations; or fails to make prompt payment to subcontractors for material or labor.
- 8.4 Documents/Work Product. In the event of termination of this Contract, all documents and work product prepared by Contractor pursuant to this Contract including, but not limited to, finished or unfinished design, development and constructions documents, studies, drawings, maps and reports, shall be delivered to the City and the HOA within ten (10) days of the delivery of the termination notice to Contractor, at no cost to the City or the HOA. Any use of uncompleted documents without specific written authorization of

Contractor shall be at City's sole risk and without liability or legal expense to Contractor. Similarly, any use of uncompleted documents without specific written authorization of Contractor shall be at the HOA's sole risk and without liability or legal expense to Contractor.

SECTION 9 INSURANCE

- 9.1 Minimum Scope and Limits of Insurance. Contractors shall obtain and maintain in full force and effect during the life of this Contract, and any warranty period, all of the following minimum scope of insurance coverages with an insurance company duly licensed by the State of Arizona with a current A.M. Best Company, Inc rating of not less than A- or above and a category rating of not less than "VIII" with policies and forms satisfactory to the City and the HOA. Use of alternative insurers requires prior written approval from City and the HOA.

9.1.1 Commercial General Liability. Commercial General Liability insurance with a limit of not less than \$1,000,000, for each occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for premises-operations, products/completed operations, contractual covering, personal injury/bodily injury, property damage, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office policy form CG 00 01 07 98 or any replacement thereof. The certificate of insurance for the Commercial General Liability insurance policy shall expressly cover the indemnification obligations of indemnification required by this Contract. A general liability insurance policy may not be written on a "claims made" basis. These limits may be met through a combination of primary and excess liability coverage.

9.1.2 Automobile Liability. Commercial and Business Automobile Liability insurance for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than \$1,000,000, combined single limits, per occurrence for bodily injury and property damage. Coverage will be at least as broad as coverage Code 1 "any auto" under Insurance Service Office policy form CA 00 01 10 01 or any replacement thereof.

9.1.3 Workers' Compensation. Workers' Compensation as required by State and federal law statutes having jurisdiction over its employees engaged in the performance of any Services herein. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, the HOA and their respective officers, agents, employees, and volunteers arising from work performed by Contractor for the City and the HOA and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

9.1.4 Professional Liability ("E&O"). E&O liability insurance with policy limits of not less than \$1,000,000 each claim and \$2,000,000 annual aggregate limit. Contractor shall obtain and maintain, such E&O liability insurance during the life of this Contract and for three years after completion of the work hereunder.

9.1.5 Umbrella/Excess Liability. Contractor and Subcontractor shall maintain Umbrella and Excess Liability insurance with an limit of not less than \$2,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above. Primary per occurrence coverage may be used to fulfill this requirement.

- 9.2 Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City or the HOA.
- 9.3 Notice of Cancellation. Each certificate for each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage by endorsement to limits lower than those required by this Contract, except after prior written consent from the City and the HOA. Notice will be sent as required herein.
- 9.4 Endorsements/Certificates of Insurance. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

9.4.1 Additional Insureds. “The City of Goodyear, Pebblecreek Golf Resort Homeowners Association No. 1, Inc. and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of, or related to, activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor.”

9.4.2 Additional Insured – Goodyear Ballpark and Recreational Complex. Any Contracts addressing, or related to, the Goodyear Ballpark and Recreational Complex shall also identify the Cleveland Indians Baseball Company, and the Cincinnati Reds, LLC as additional insured and endorse the same.

9.4.3 Primacy of Coverage. Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of insurer’s liability. Contractor’s policy shall be primary and non-contributory.

9.4.4 Certificates of Insurance. Contractor shall provide the City and the HOA certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City and the HOA, prior to performing any services under this Contract. The insurance certificates shall be attached hereto and incorporated hereby by this reference.

9.5 No Representation of Coverage Adequacy. The insurance requirements herein are *minimum requirements*. Neither the City nor the HOA in any way warrants that the minimum requirements are sufficient to protect Contractor from liabilities that might arise out of the performance of the Work under this Contract by Contractor, and the Contractor is free to purchase additional insurance. Any insurance coverage carried by the City, the HOA or its employees is excess coverage and not contributory coverage to that provided by the Contractor. The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnification obligations under this Contract.

9.6 Non-Waiver. The City and the HOA each reserve the right to review any and all insurance policies and/or an endorsement required by this Contract, but has no obligation to do so. Failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract. Any failure of Contractor to comply with the reporting provisions of the policies shall not affect coverage provided to the City, the HOA or their respective officers, officials, agents, employees and volunteers.

9.7 Notice of Cancellation. Each certificate for each insurance policy required by this Section shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage by endorsement to limits lower than those required by this Contract except after prior written consent from the City and the HOA.

9.8 Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City and the HOA.

9.9 Other Contractors or Vendors. Contractor shall ensure its subcontractors and any vendors that may be contracted with in connection with the Project procure and maintain insurance coverage as is appropriate for their particular contract and properly endorse the City and the HOA as required in this Section 9.

SECTION 10 INDEMNIFICATION/RISK OF LOSS

10.1 Indemnification. Contractor shall indemnify, defend and hold harmless the City, and its officers and employees, as well as the HOA and its affiliates and their respective owners, officers, directors, employees, agents and representatives for, from and against all liabilities, damages, losses and costs, including reasonable attorneys’ fees and court costs, arising from or caused by the negligence, recklessness or intentional wrongful conduct of Contractor and any of Contractor’s subcontractors or design professionals, in any tier, who perform work or provide labor, services, and materials.

- 10.2 Indemnification – Patent, Copyright and Trademark. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, save and hold harmless the City, its elected officials, officers, agents, and employees as well as the HOA and its affiliates and their respective owners, officers, directors, employees, agents and representatives (hereinafter referred to as "Indemnitee") individually and collectively at Contractor's own expense, for, from and against any liability, including any and all expenses, losses, royalties, profits, judgments, damages, including all legal costs and expenses, court costs and attorney fees, for infringement of any patent, copyright, trademark and other proprietary rights of any third parties arising out of, related to or resulting from this Contract or use by the City or the HOA of materials furnished or Services performed under this Contract. The City may be represented by, and actively participate through, its own counsel in such suit or proceedings, if it is so desires. Similarly, the HOA may be represented by, and actively participate through, its own counsel in such suit or proceedings, if it is so desires.
- 10.3 Cooperation. In the event any claim or action is brought against the City and/or the HOA relating to Contractor's Services, Contractor shall provide the City and/or the HOA, as applicable, with any and all reasonable assistance and cooperation which the City and/or the HOA, as applicable, may require or request.
- 10.4 Title and Risk of Loss. Title and risk of loss of goods and Services shall not pass to the City or the HOA until the City and HOA authorized personnel actually receives and accepts the goods or Services at the point of delivery; and such loss, injury or destruction shall not release the Contractor from any obligation hereunder. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming goods shall remain with the Contractor regardless of receipt.
- 10.5 Acceptance. All material and Services are subject to final inspection and acceptance by the City and the HOA. Material or Services failing to conform to the specifications of this Contract shall be held at Contractor's risk and may be rejected by the City or the HOA. If returned or rejected, all costs are the responsibility of the Contractor.
- 10.6 Force Majeure. No Party shall be in default by reason of any failure in performance of this Contract if such failure arises out of causes beyond their reasonable control and without the fault or negligence of said Party including, unforeseeable Acts of God; terrorism or other acts of public enemy; war and epidemics or quarantine restrictions. If any Party is delayed at any time in the progress of the Work by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in the notice. The notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this contract.

SECTION 11 REPRESENTATIONS

- 11.1 Representations. Contractor represents that all Services provided under this Contract shall fully conform to the specifications of this Contract and all representations of the Contractor.
- 11.2 Safety. Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of law, rules, and regulations. If applicable, Contractor shall erect and properly maintain at all time, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post signs warning against known or unusual hazards.
- 11.3 Responsibility for Errors. Contractor shall be responsible for its work and results under this Contract. Contractor, when requested, shall furnish clarification and/or explanation as may be required by the City's Project Manager and the HOA's general manager regarding any Services rendered under this Contract at no additional cost to the City or the HOA. In the event that an error or omission attributable to Contractor occurs, Contractor shall, at no cost to the City or the HOA, provide all necessary design drawings, estimates and other professional services necessary to rectify and correct the matter to the sole satisfaction of the City

and the HOA.

- 11.4 Noncompliance with Section 11 is a material breach of Contract. Section 11 shall survive the termination or expiration of this Contract.

SECTION 12 CONTRACTOR REPRESENTATIONS

- 12.1 Compliance with law. Contractor, its employees and subcontractors shall provide all Services under this Contract in compliance with all applicable laws, rules, regulations, building codes, life safety codes, and other standards and criteria designated by the City and the HOA.
- 12.2 Non-Discrimination. Contractor shall not discriminate against any person on the basis of race, color, religion, age, gender, or national origin in the performance of this Contract, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354 as amended; the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989 and Arizona Executive Order 2009-09 as amended, in performing this Contract and to permit the City and the HOA to verify such compliance.
- 12.3 E-Verify. Pursuant to the provisions of the Federal Immigration and Nationalization Act and A.R.S. § 41-4401, as amended, Contractor hereby warrants to the City and the HOA that the Contractor and each of its subcontractors will comply with all federal immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. § 23-214. The City and/or the HOA may request verification of compliance from Contractor and any of its subcontractors under this Contract. The City and the HOA reserves the right to confirm compliance. Should the City and/or the HOA suspect or find that the Contractor or any of its subcontractors are not in compliance, the City and/or the HOA may pursue any and all remedies allowed by law, including, but not limited to suspension of Services, termination of the Contract for breach or default, and suspension and/or debarment of the Contractor. All costs necessary for compliance shall be solely borne by the Contractor.
- 12.4 Evidence of lawful presence in the United States. In accordance with A.R.S. §§ 1-501, 1-502, as amended, and as a condition of entering into this Contract, a natural person shall execute an affidavit, and present one of the identification documents identified by statute, verifying their lawful presence in the U.S. Failure to execute this affidavit upon submittal of the Contract documents shall be considered nonresponsive and shall result in rejection of the submitted response and automatic cancellation of this Contract. Companies, corporations, and limited partnerships (anyone other than an individual) are not required to complete and submit this form prior to receiving a public benefit.
- 12.5 Liens. Contractor shall hold the City and the HOA harmless from claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the Services required under this Contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied before the City and/or the HOA will make final payment.
- 12.6 Notice of Action/Suit. Contractor shall give the City prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Contract and/or which may affect the Contractor's performance under this Contract.
- 12.7 Advertising. Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the City Manager and the HOA.
- 12.8 Logos/Marks of the City and the HOA. Contractor shall not use any trade name, trademark, service mark, or logo of the City (or any name, mark or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent. Contractor shall not use any trade name, trademark, service mark, or logo of the HOA (or any name, mark or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the HOA's express prior written consent.
- 12.9 Public Records. Contractor acknowledges all Contract documents provided to the City may be subject to disclosure pursuant to Arizona Public Records laws.

- 12.10 Conflict of Interest. Offerors shall fully disclose all known and potential conflicts that could influence or appear to influence their judgment or the quality of their services.
- 12.11 Continuation of Services - Israel: Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in a boycott of Israel, as that term is defines in A.R.S. § 35-393.

SECTION 13 RIGHTS/REMEDIES

- 13.1 Right of Assurance. Whenever one Party to this Contract in good faith has reason to question the other Party's intent or ability to perform, that Party questioning performance may demand that the other Party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding Party may treat this failure as an anticipatory repudiation of the Contract.
- 13.2 Stop Work Order. The City or the HOA may, at any time by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for period(s) of days indicated by the City or the HOA after the order is delivered to the Contractor. The order shall be specifically identified as a Stop Work Order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer and the HOA shall jointly make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 13.3 Non-Exclusive Remedies. The rights and remedies of the City and the HOA under this Contract are non-exclusive.
- 13.4 Right of Offset. The City and/or the HOA shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the City and/or the HOA, or damages assessed by the City and/or the HOA concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.
- 13.5 Strict Performance. Failure of either Party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of goods or Services, obligations imposed by this Contract or by law shall not be deemed a waiver of any right of any Party to insist upon the strict performance of the Contract.

SECTION 14 GENERAL PROVISIONS

- 14.1 Modification. No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by all of the Parties with authority to do so.
- 14.2 Delegation and Assignment. No Party may delegate, assign, sublet or transfer any of its rights, or performance under this Contract, except with the prior written consent of the other Party which shall not be unreasonably withheld. Any purported assignment or delegation in violation of this Section is void.
- 14.3 Third Party Beneficiary. Nothing under this Contract shall be construed to give any rights or benefits in this Contract to anyone other than the City, the HOA and the Contractor, except as set forth in the indemnities and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of City, the HOA and the Contractor, and not for the benefit of any other Party.
- 14.4 Disputes, Governing Law, Attorney Fees. This Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of Arizona, without regard to choice of law or conflicts of laws principles thereof. Any action arising out of this Contract shall be commenced and maintained in Maricopa County Superior Court, Arizona. In the event of litigation in a U.S. District Court,

exclusive venue shall lie in the U.S. District Court located in Phoenix, Maricopa County, Arizona. The prevailing Party shall be reimbursed by the other Party for all attorney fees and all costs and expenses, including but not limited to all service of process, filing fees, court and court report costs, investigative costs, and expert witness fees which are incurred in any legal proceeding whatsoever arising out of this Contract, including, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing.

- 14.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of any Party the Contract shall forthwith be physically amended to make such insertion or correction.
- 14.6 Entire Agreement. This Contract constitutes the entire agreement of the Parties and supersedes all previous representations, written or oral, with the respect to the subject matter, goods and Services specified herein. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded by this Contract. This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the drafting Party. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Contract.
- 14.7 Severability. If any provision in this Contract or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 14.8 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following shall prevail in the following order: 1. Standard Terms and Conditions; 2. Statement or Scope of Work; 3. Solicitation, Instructions to Offerors (including other documents referenced or included); 4. Offer; 5. Fee Schedule/Price Sheet; and 6. Attachments, Addendums and Exhibits
- 14.9 Independent Contractor. Each Party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee, agent, subcontractor or subcontractor of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.
- 14.10 Ambiguities Not Held Against Drafter. This Contract having been freely and voluntarily negotiated by all Parties and the rule of contract construction that ambiguities, if any, in any term or condition of an agreement are held against the drafter of the agreement is not applicable to this Contract.
- 14.11 Waiver. The delay or failure of either Party at any time to require performance of compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Contract shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence of event shall not be deemed a waiver of any right a waiver of any right or remedy in respect to any occurrence or event, nor shall any waiver constitute a continuing waiver.
- 14.12 Survival. The Parties agree that each Party shall remain obligated to the other Party under all provisions of this Contract that expressly or by their nature extend beyond and survive the expiration or termination of this Contract. This includes by way of example, but not limitation, the provisions addressing insurance, indemnification, warranties, damage, Information Technology Nondisclosure, and audit provisions.
- 14.13 Time is of The Essence. Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence. Contractor is providing Services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.

- 14.14 Non-Exclusive Contract. Any subsequent Contract resulting from the solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City and the HOA. Contractor acknowledges that the City and/or the HOA may enter into agreements with other contractors to obtain the same or similar services that are the subject of this Contract or may have its own employees perform services similar to those services contemplated by the Contract.
- 14.15 Audit of Records. Contractor, and its subcontractors that perform any work under this Contract, shall retain all books, accounts, reports, files and any and all other records relating to the Contract for six (6) years after completion of the Contract and upon written request, shall make such records available to the City and/or the HOA for review, inspection, and audit. Contractor shall deliver all records, at no cost to the City or the HOA, to the Goodyear City Hall, 190 N. Litchfield Road, Goodyear, Arizona, or to such other City facility within the City as designated by the City. If approved by City Attorney in writing, photographs, microphotographs, or other authentic reproductions may be maintained instead of original Contract Documents.
- 14.16 Audit/Billing and Expenses. The City and the HOA each reserve the right to request supporting documentation for all hourly amounts or reimbursable expenses charged to the City and/or the HOA. Such records will be subject to audit at any time during the term of this Contract and for a period not to exceed two (2) years after any amount is billed. Within thirty (30) days of receiving a request, Contractor will furnish to the City and the HOA original invoices and payroll records to support all charges. The City and the HOA each reserve the right to audit all supporting evidence necessary to substantiate charges related to this Contract, both direct and indirect costs, including overhead allocations if they apply to hourly costs associated with this Contract. If requested by the City or the HOA, Contractor will provide supporting records electronically in addition to a hard copy. If the audit reveals overcharge, the Contractor will reimburse the City and the HOA upon demand for the amount of such overcharges plus interest thereon from the date paid by the City and/or the HOA as applicable through the date of reimbursement. If the overcharges exceed 5% of Contractor's compensation, Contractor shall also reimburse the City and the HOA for the cost of the audit. Contractor shall include this subsection in all contracts with subcontracts providing materials/Services for this Contract.
- 14.17 Headings/Captions. Headings and captions appearing in this Contract have been inserted for convenience of reference only and in no way define, limit, or enlarge the scope or meaning of this Contract or any provision hereof.
- 14.18 Conflict of Interest. This Contract is subject to cancellation by the City, without penalty or further obligations, pursuant to the provisions of A.R.S. § 38-511, as amended.
- 14.19 Notices. Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally delivered to the Party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified postage prepaid and properly addressed as follows:

To Contractor:

W. Scott Ogden, P.E., CFM
Project Manager / President
8400 S Kyrene Road, Ste 201
Tempe, AZ 85284

To City:

Chris Hamilton
Public Works Department
City of Goodyear
190 N. Litchfield Road
Goodyear, AZ 85338

Copy to:

City Attorney
City of Goodyear
190 N. Litchfield Road
Goodyear, AZ 85338

To HOA:
Bill Barnard, General Manager
Pebblecreek Golf Resort Homeowners Association No. 1, Inc.
3645 PebbleCreek Clubhouse Drive
Goodyear, AZ 85395

- 14.20 Modification or Waiver. Any changes, alterations, or modifications to this Contract, including agreed upon interpretation of meaning and other mutually agreed upon conditions provided for in this Contract, shall be made by written instrument executed by all Parties and adopted in the manner by which this Contract was adopted.
- 14.21 Counterparts. This Contract may be executed by the Parties in any number of separate counterparts, each of which when executed and delivered shall be deemed an original, and all such counterparts shall together constitute one original document. All signatures need not be on the same counterpart.
- 14.22 Authorization. Each Party warrants and represents that it has full power and authority to enter into and perform this Contract and the person signing on behalf of each Party has been properly authorized and empowered to enter this Contract. Each Party further acknowledges it has read this Contract, understands it, and agrees to be bound by it.
- 14.23 Electronic Signature. The signatures on this Contract may be an original signature, or an original signature that has been replicated by photocopy, electronic or other digital means or fax.

END OF STANDARD TERMS AND CONDITIONS

**EXHIBIT A
SCOPE OF WORK
JE FULLER BULLARD WASH IRRIGATION
TAILWATER STUDY QUOTE
DATED APRIL 28, 2021**

ATTACHED ON NEXT PAGE



April 28, 2021

Mr. Chris Hamilton
City of Goodyear – Utilities / Public Works Department
4980 S. 157th Avenue
Goodyear, AZ 85338

RE: Bullard Wash Irrigation Tailwater Study – Design Concept Report

Dear Chris:

Thank you for requesting this scope and fee proposal for professional engineering services from JE Fuller/Hydrology and Geomorphology, Inc. (JE Fuller). It is our understanding that the City, in partnership with Pebble Creek HOA (PC), has decided to pursue development of a design concept report (DCR) for identifying proposed project improvements and selecting a preferred alternative for advancement to full design. The following tasks are envisioned to accomplish this work:

SCOPE OF WORK

Task 1 – Project Coordination and Meetings

General project management and regular coordination with the City and PC officials via web conferencing, in person meetings, and phone and email correspondence, will be conducted as a normal part of the work. This task also includes time for conducting up to 4 special purpose meetings and presentations to City staff, PC Board members, and others as requested by the City.

TASK 2 – Data Collection and Review

Data collection will be performed to augment the existing body of data collected during the prior investigation phase. Anticipated efforts and data include:

- Recent PC obtained video and report of the existing pipe through Pebble Creek.
- Further information regarding farm usage, irrigation deliveries, and changes or alterations to the irrigation network contributing to the Bullard Wash system.
- Documentation of recent improvements/repairs/maintenance
- Information / as-builts for system south of RID Canal crossing and channelization.
- Establishing a design discharge for the project

TASK 3 – Topographic Mapping and Survey

Bare ground topography resulting in 1-foot or better ground surface mapping for the project area, sealed and certified by an AZ RLS. Deliverables will include:

- Letter of accuracy certification sealed by an AZ RLS or a contour map sealed accordingly with a certification of accuracy statement.
- Digital contours compiled to 1-foot intervals with 5-foot indexes.

- One-foot raster DTM data for building a surface model.
- Project control survey to establish a horizontal and vertical datum, basis of bearing, and benchmarks. Control as follows:
 - Horizontal: NAD 1983 State Plane Coordinates, Arizona Central Zone, International Feet (GRID)
 - Vertical: NAVD 88 (using Maricopa GDACS)
- Location survey for roadway elements (curb, gutter, sidewalk, pavement, etc.), drainage structures (catch basins, storm drain manhole rims and pipe inverts and sizes at MH, concrete valley gutters and sidewalks within channel, golf cart paths, RID canal overchute, etc.)
- Sufficient property corners adjacent to Bullard Wash to allow fitting of GIS parcel data.
- Inclusion of rectified orthophotos of the entire strip map reach.

TASK 4 – Design Concept Alternatives

JE Fuller shall prepare concept designs for the two scenarios discussed below. The designs shall include concept plan and typical section sketches, cost estimates and a pro-versus-con evaluation. The design and cost estimates shall be segregated into City and PC segments to aid in determining the division of expenses. All concepts shall be configured to preserve the existing 100-year flood conveyance properties of the Bullard Wash corridor and not adversely impact the FEMA delineated floodplain.

4.1 – Full Conveyance in Storm Drain (no surface flows)

This concept will look at the required augmentation necessary to provide storm drain capacity for the full design tailwater flow for the whole reach from Camelback Road to the outlet south of I-17. The design will leverage the existing storm drain to greatest extent possible.

4.2 – Combined Storm Drain and Surface Flow

This concept will evaluate leveraging the existing storm drain to the greatest extent possible including minor alterations or augmentation and providing conveyance for the remainder of flows as surface water. The surface flow elements shall include designs to mitigate the maintenance issues along the reach, PC golf course and roadway crossings. The reach for the surface water may be shortened to extend from Camelback to just downstream of McDowell Road.

4.3 – Draft Design Concept Report and Concept Selection Workshop

The results of Tasks 2 through 4 shall be compiled and summarized in a working draft of the design concept report (DCR) and shall be submitted to the project stakeholders for review and comment. Within 2-weeks of the submittal, the project stakeholders shall meet in workshop format to discuss the results and select a preferred alternative.

TASK 5 –Final Design Concept Report and 30% Design

The preferred alternative from Task 4.3 shall be designed to a 30% level to include line and grade plan and profile sheets, typical sections, and simple quantity, material, and cost estimates. The 30% design will consider utility conflicts, identify any easement or property needs, and any other special design considerations. The results of the 30% design shall be summarized in the project DCR and submitted to the stakeholders for review and comment. Comments on DCR will be addressed and the Final DCR will be delivered. Some comments on the 30% design may be addressed during final design.

TASK 6 –Final Design Scope and Fee

In a separate document, JE Fuller shall provide a proposed scope and fee estimate to prepare the final design plans, specifications, and cost estimates.

FEE AND SCHEDULE ESTIMATE

Labor and direct expenses for performing the work are detailed in Exhibit A will be billed on a time and material basis with an estimated Not-To-Exceed limit of \$76,630. No fees will be billed beyond that limit without prior written authorization from the City. JE Fuller will perform the above tasks within the following timeframes after receipt of an official notice-to-proceed (NTP):

TASK No.	Weeks from NTP																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
TASK 1																		
TASK 2																		
TASK 3																		
TASK 4																		
TASK 4 Review																		
TASK 5																		
TASK 5 Review																		
TASK 6																		

We greatly appreciate the opportunity to serve the City in this project and will be ready to begin work upon receipt of a notice to proceed. If you have any questions regarding this proposal, please do not hesitate to contact me.

Sincerely,

JE Fuller/Hydrology and Geomorphology, Inc.



W. Scott Ogden, P.E., CFM
Project Manager / President

EXHIBIT A

ESTIMATED MAN-HOURS AND DIRECT LABOR

CONSULTANT NAME: JE Fuller/Hydrology and Geomorphology, Inc.

Contract Number: CON-18-4151

PROJECT NAME: Bullard Wash Irrigation Tailwater Study – Design Concept Report

DIRECT LABOR CLASSIFICATIONS							
	Project Manager	Senior Engineer	Project Engineer	Junior Engineer/E IT	Admin		
CONTRACT TASK/PHASE	\$165.00 (\$/HR)	\$145.00 (\$/HR)	\$130.00 (\$/HR)	\$95.00 (\$/HR)	\$68.00 (\$/HR)	TOTAL MAN-HRS	TOTAL LABOR
TASK 1. PROJECT COORDINATION AND MEETINGS	40	8	8		8	64	\$9,344.00
TASK 2. DATA COLLECTION AND REVIEW	4	16		8		28	\$3,740.00
TASK 3. TOPOGRAPHIC MAPPING AND SURVEY	2			8		10	\$1,090.00
TASK 4. CONCEPT DESIGN ALTERNATIVES	8	20	20	40		88	\$10,620.00
TASK 5. DESIGN CONCEPT REPORT AND 30% PLANS	20	8	20	40	4	92	\$11,132.00
TASK 6. FINAL DESIGN SCOPE AND FEE	4					4	\$660.00
Sub Total	78	52	48	96	12	286	\$36,586.00
DIRECT AND OUTSIDE EXPENSES							
DIRECT EXPENSE ITEMS							AMOUNT
Reproduction and Copies							\$500.00
Mileage							\$200.00
Topographic Mapping and Survey Sub-Consultant							\$29,344.00
Professional Services Contingency							\$10,000.00
TOTAL LABOR AND DIRECT EXPENSES							
Total Labor							\$36,586.00
Allowances							\$40,044.00
Total Not To Exceed Fee:							\$76,630.00

4/28/2021



*Civil, Water, Wastewater, Drainage, Transportation and
Electrical/Controls Engineering • Construction Management • Surveying
California • Arizona*

April 9, 2021

Mr. Scott Ogden, PE CFM
JE Fuller
8400 S Kyrene Road, Ste 201
Tempe, AZ 85284

Sent Via Email: scott@jefuller.com

**Subject: Proposal For
Bullard Wash ITS Mapping – Surveying Services
Civiltec Proposal No. PX21026.00**

Dear Mr. Ogden:

Civiltec Engineering, Inc. (Civiltec) appreciates the opportunity to submit this proposal to JE Fuller (Client) to provide professional surveying services for the above referenced project.

PROJECT UNDERSTANDING

The project is located along Bullard Wash, between I-10 and Camelback Road in Goodyear. A strip map approximately 4 miles in length including about 250 acres is needed by JE Fuller to complete the project.

Civiltec will provide:

1. Aerial mapping and imagery; 1" = 40', 1' contour interval (5' index contours), orthorectified 4cm imagery. Deliverables will include 2D and 3D AutoCAD file of the contours and plan, 3D AutoCAD file of the DTM, ASCII format files of the DTM, Civil 3d XML surface, and orthorectified imagery.
2. Letter of accuracy certification sealed by an AZ RLS or a contour map sealed accordingly with a certification of accuracy statement.
3. Project control survey to establish a horizontal and vertical datum, basis of bearing, and benchmarks. Control as follows;
 - Horizontal: NAD 1983 State Plane Coordinates, Arizona Central Zone, International Feet (GRID)
 - Vertical: NAVD 88 (using Maricopa GDACS)



4. Location survey for roadway elements (curb, gutter, sidewalk, pavement, etc.), drainage structures (catch basins, storm drain manhole rims and pipe inverts and sizes at MH, concrete valley gutters and sidewalks within channel, golf cart paths, RID canal over chute, etc.)
5. Sufficient property corners adjacent to Bullard Wash to allow fitting of GIS county parcel data.

SCOPE OF SERVICES

Based on our understanding and professional experience, we have identified the following scope of services.

Phase 1 – Surveying Services

Task 1 – Aerial Mapping

Civiltec will subcontract with Cooper Aerial to provide the photogrammetry and mapping for the project. We will coordinate with Cooper through the delivery of the final mapping product.

Task 2 – Field Survey

We will provide the survey control, panels (16) and supplemental field survey as described in the Project Understanding. We will coordinate our field survey with JE Fuller to ensure all relevant and necessary field data is obtain for the completion of the project.

ASSUMPTIONS

1. All submittals for Civiltec's services will be made to the Client in an electronic formats (PDF). The Client will be responsible for submittals to all agencies.
2. Site boundary and easement information (GIS) will be obtained by JE Fuller. Civiltec will provide monumentation found in the field for a best fit of the GIS data. Our services do not include a boundary survey.

SCHEDULE

Civiltec is available to immediately after receiving a signed proposal. We anticipate receiving the mapping product approximately 4 weeks after the flight. We will provide most of the supplemental field survey while the mapping is being processed and will reserve some filed survey time for additional field survey once JE Fuller reviews the mapping and determines areas where additional filed survey data is needed.

FEE SCHEDULE

Civiltec's services will be provided on a fixed fee basis. The fixed fee is provided below based on our understanding of the services requested by the Client. A detailed breakdown of our fee estimate is attached.

Fee Estimate for Professional Services \$29,344.00

JE Fuller
Bullard Wash ITS Mapping
April 9, 2021
Page 3 of 6



BILLING AND PAYMENT FOR SERVICES

Civiltec will bill monthly for all work performed on behalf of the project. Payment for invoices are due within 30 days of the date of the invoice. Invoices will be provided by email (PDF).

We are looking forward to working with you and will schedule your project workload upon receipt of the signed Proposal Acceptance Sheet.

Sincerely,
CIVILTEC ENGINEERING, INC.

A handwritten signature in blue ink, appearing to read 'Chris Dusza', is written over a faint, larger blue signature.

Chris Dusza, PE, CFM
Principal

PROPOSAL ACCEPTANCE SHEET

Project Name: Bullard Wash ITS Mapping

Project Location: Goodyear, AZ

Date: April 9, 2021

Client Information:

Name: JE Fuller

Address: 8400 S Kyrene Road, Ste 201
Tempe, AZ 85284

Contact: Mr. Scott Ogden
Phone #: 480.222.5717
Email: scott@jefuller.com

SPECIAL INSTRUCTIONS: Per attached Proposal

SCOPE OF SERVICES: Per attached Proposal

CONTRACT AMOUNT: \$29,344.00

PROPOSAL ACCEPTANCE:

The Terms and Conditions of the Proposal and this page, including the TERMS AND CONDITIONS on the attached pages are:

Accepted this _____ day of _____ 2021.

Accepted by Authorized Client Representative:

Name and Title

Date



8. CLIENT DISCLOSURE. Client agrees to advise Civiltec upon execution of this Agreement of any hazardous substance or any condition, known or that reasonably should be known by Client, existing in, on, or near the site that present a potential danger to human health, the environment, or equipment. By virtue of entering into this Agreement or providing services hereunder, we do not assume control of or responsibility for the site or the person in charge of the site, or undertake responsibility for reporting to any federal, state or local public agencies any conditions at the site that may present a potential danger to public health, safety or the environment.

9. INDEMNITY. To the fullest extent permitted by law, the Client shall indemnify and hold harmless Civiltec, Civiltec's officers, employees, directors, shareholders, subconsultants, and subcontractors from and against all claims, damages, losses, expenses, and other costs, including costs of defense and attorney's fees resulting from the active, passive, or comparative neglect of the Client. In connection with toxic or hazardous substances or constituents and to the maximum extent permitted by law, Client agrees to defend, hold harmless and indemnify Civiltec from and against any and all claims and liabilities unless caused by our negligence or willful misconduct, resulting from:

- a) Client's violation of any federal, state or local statute, regulation or ordinance relating to the management or disposal of toxic or hazardous substances or constituents;
- b) Client's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified at the site;
- c) Toxic or hazardous substances or constituents introduced at the site by Client or third persons before or after the completion of services herein; and
- d) Allegations that Civiltec is a handler, generator, operator, treated, storer, transporter, or disposer under the Resource Conservation and Recovery Act of 1976 as amended or any other similar federal, state or local regulation or law due to the services provided under this Agreement.

10. DOCUMENTS. Civiltec will furnish to Client the agreed upon number of reports and supporting documents. These instruments of services are furnished for Client's exclusive internal use and reliance in connection with the project or services provided for in this Agreement, not for advertising or other type of distribution or general publication, and are subject to the following:

- a) For any other purposes, all documents generated by Civiltec under this Agreement shall remain the sole property of Civiltec. Upon request and payment of the costs involved, Client is entitled to copies of all papers, documents and drawings provided Client's account is paid current. Client agrees to obtain our written permission for any exception for use not described here. Any unauthorized use or distribution shall be at Client's and recipients' sole risk and without liability of Civiltec;
- b) Client shall furnish documents or information reasonably within Client's control and deemed necessary by us for proper performance of our services. Civiltec may rely upon Client-provided documents in performing the services required under this Agreement; however, Civiltec assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of Client.

11. CLAIMS. The parties agree to attempt to resolve any dispute without resort to litigation. However, in the event a claim is made that results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in defending the claim, including all reasonable attorney's fees of both parties. The claim will be considered proven if the judgment obtained and retained through any applicable appeal is at least ten percent greater than the sum offered to resolve the matter prior to the commencement of trial.

12. OPINIONS OF COST. If requested, Civiltec will use its best efforts and experience on similar projects to provide realistic opinions or estimates of costs for installation of materials, remediation or construction as appropriate based on reasonably available data, our designs or our recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation unless specifically agreed otherwise in advance, in writing with Civiltec. Client understands actual costs of such work depend heavily on regional economics, local construction practices, material availability, site conditions, weather conditions, Contractor skills, and many other factors beyond our control.

13. CONFIDENTIALITY. Civiltec will maintain as confidential any documents or information provided by Client indicated to be confidential and will not release, distribute, or publish to any third party without prior permission from Client, except as compelled by order of a court or regulatory body of competent jurisdiction and then only after notice to Client.

14. SEVERABILITY. In the event that any provision of this Agreement is found to be unenforceable, the other provisions shall remain in full force and effect.

15. SURVIVAL. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and Civiltec shall survive the completion of the services and their termination of this Agreement.

16. INTEGRATION. This Agreement, the attached Proposal and documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

17. GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of Arizona.

18. FEES. Client shall pay the costs of outside checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soil testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprint and reproductions, and all other charges not specifically covered by the terms of this Agreement. *****END OF DOCUMENT*****



TERMS AND CONDITIONS

1. **SERVICES TO BE PROVIDED.** Civiltec Engineering, Inc. (hereinafter Civiltec) is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in our proposal. Civiltec reserves the right to terminate services at any time. Payment for services rendered prior to the time of termination of services shall be due pursuant to the payment terms as described.

2. **PAYMENT TERMS.** Client agrees to pay our invoice upon receipt. If payment is not received within 30 days from the invoice date, Client agrees to pay a service charge on the past due amount at the prevailing legal rate (1 ½ percent monthly), including reasonable attorney's fees if collected by an attorney, and Civiltec reserves the right to suspend all work until payment is received. No deduction shall be made from our invoice on amount of liquidated damages or other sums withheld from payments to Contractor or others. These payment terms may be amended in the Proposal.

Either party may terminate this Agreement without cause upon 30 days written notice. In the event Client requests termination prior to completion of the proposed services, Client agrees to pay Civiltec for all costs incurred plus reasonable charges associated with the termination of the work. In this event, Client also agrees to release Civiltec from all liability for services rendered.

In the event all or any portion of the services or work product prepared or partially prepared by Civiltec be suspended, abandoned, or terminated, Client shall pay Civiltec for all fees, charges, and services provided for the project, not to exceed any contract limit specified herein. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services, which shall be paid for by Client as extra services.

3. **STANDARD OF CARE.** Civiltec will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of our profession practicing in the same or similar locality. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY OUR PROPOSAL OR BY OUR ORAL OR WRITTEN REPORTS.

4. **INSURANCE.** Civiltec maintains Insurance coverage as follows:

- a) Worker's Compensation - Statutory; Employers' Liability \$1,000,000 each accident/disease/policy limit;
- b) Professional Liability - \$5,000,000 per claim, \$5,000,000 aggregate;
- c) Commercial General Liability - \$1,000,000 per occurrence, \$2,000,000 aggregate;
- d) Umbrella Liability - \$5,000,000 per occurrence, \$5,000,000 aggregate;
- e) Automobile Liability Insurance - \$1,000,000 each accident.

5. **PROFESSIONAL LIABILITY.** Client agrees that Civiltec's liability to Client or any third party due to any negligent professional acts, errors or omissions or negligent breach of contract will be limited to an aggregate of \$50,000 or our total fee, whichever is greater. If Client prefers to have higher limits of professional liability, we agree to increase the limit up to a maximum of \$5,000,000 upon Client's written request at the time of accepting our proposal, provided Client agrees to pay an additional consideration of ten percent of our total fee, or \$1,000, whichever is greater. The additional charge for the higher liability limit is because of the greater risk assumed by us and is not a charge for additional professional liability insurance.

6. **SITE OPERATIONS AND SOIL CONDITIONS.** Client will arrange for right-of-entry to the property for the purpose of performing studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

Civiltec makes no representations concerning soil conditions and is not responsible for any liability that may arise out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing.

If a Contractor (not a subcontractor of Civiltec) is involved in the project, Client agrees, in accordance with generally accepted construction practices, that the contractor will be solely and completely responsible for the working conditions on the job site, including the safety of all persons and property during performance of the work, and compliance with OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that Civiltec will not be responsible for job or site safety on the project, other than for our employees and subcontractors.

Client acknowledges that Civiltec is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors. Client further agrees to defend, indemnify and hold Civiltec harmless from any and all liability, real or alleged, in connection therewith, excepting liability arising from the negligence of Civiltec.

7. **UNFORSEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered, which could substantially alter the necessary services or the risks involved in completing our services. If this occurs, we will promptly notify and consult with Client, but will act based on our sole judgment where risk to our personnel is involved. Possible actions could include:

- a) Complete the original Scope of Services in accordance with the procedures originally intended in our Proposal, if practical in our judgment;
- b) Agree with Client to modify the Scope of services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;
- c) Terminate the services effective on the date specified by us in writing.

Attachment A

Breakdown of Time and Fees

PX21026.00-JEF - Bullard Wash ITS Mapping
Goodyear, AZ
Time and Fee Estimate

Date: April 9, 2021
Table 13

	HOURS BY PIC	HOURS BY PM	HOURS BY PE	HOURS BY D	HOURS BY 2MS	HOURS BY SM	HOURS BY SS	Sub Consultant Cost x 1.15	TOTAL COST
Scope of Work	\$ 195.00	\$ 181.00	\$ 149.00	\$ 127.00	\$ 175.00	\$ 146.00	\$ 125.00		
Phase 1 - Surveying Services									\$ 29,344.00
Task 1 - Aerial Mapping								\$ 12,400.00	\$ 14,260.00
Task 2 -Field Survey					80	4	4		\$ 15,084.00
HOURS	0	0	0	0	80	4	4		88
BUDGET	\$ -	\$ -	\$ -	\$ -	\$ 14,000.00	\$ 584.00	\$ 500.00	\$ 14,260.00	\$ 29,344.00

PIC = Principal Engineer
SIC = Senior Engineer
PE = Project Engineer
D = Designer
DB = Draftster
CO = Construction Observer
1MS = One Person Survey Crew

PM = Project Manager
PHEL = Principal Electrical Engineer
SE = Staff Engineer
DS = Designer/Draftster
CS = Civil Surveyor
SM = Survey Manager
2MS = Two Person Survey Crew

Civiltec Project Manager

Chris Dusza 

Prepared by CIVILTEC ENGINEERING 4/9/2021

Page 1



PROJECT MANAGER
Emily Martin
602.678.5111 ext 215
emily@cooperaerial.com

Cost Proposal for Bullard Wash

Chris Dusza PE, CFM
CIVILTEC Engineering Inc.-0000
9299 West Olive Avenue Suite 405
Peoria, Arizona 85345
623.582.0970
cdusza@civiltec.com

Proposal Date:
04/08/2021
Project Location:
Goodyear, AZ

Cooper Aerial Surveys Co. is pleased to provide its cost proposal for aerial mapping and related services. This proposal is valid for thirty days from issuance date. The following is a summary of services to be provided. Please sign below and return the approved proposal to your Cooper Aerial Project Manager as acceptance of scope of services, proposed cost, and agreement to payment terms (30 days from completion of the work and provision of deliverables.)

Project Scope

Survey Services	Client will set 16 aerial targets and post-process data
Flight Services	Acquire 4cm photography for mapping and imagery
Mapping Services	1"=40' scale map with a 1 Ft CI collection of DTM, Contours & Plan
Imagery Services	Orthorectified 4cm GSD file

Estimated Duration*

18 working days from the receipt of flight and verification of control

*As COVID-19 has spread, we are potentially seeing slight delays with our mapping production team. In the short term, this is having an impact on how we serve our customers. The case may be that some of our delivery promises are longer than usual. We have taken every step to have our staff continue their work from home and are working around the clock with our IT and supporting staff to make sure Cooper Aerial stays on top of tasks and deliverables. Your projects are important to us and we intend on expediting as much as possible.



COOPER AERIAL SURVEYS CO.

PROJECT MANAGER
Emily Martin
602.678.5111 ext 215
emily@cooperaerial.com

Deliverables for Bullard Wash

2D and 3D AutoCAD file of the contours and plan, 3D AutoCAD file of the DTM, ASCII format files of the DTM, Civil 3d XML surface, Orthorectified Imagery

Sincerely,

Emily Martin

CLIENT ACCEPTANCE

Printed Name:

Title:

Signature:

Date:

TOTAL FEE: \$12,400.00

(plus taxes where applicable)