

CITY CLERK ORIGINAL

C-10319
10/13/2015

PROFESSIONAL SERVICES AGREEMENT WITH SEGAL CONSULTING

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and The Segal Company (Western States) Inc., a Maryland corporation, d/b/a Segal Waters (hereinafter "Segal Waters") authorized to conduct business in the State of Arizona, ("Consultant") as of the 13 day of October, 2015 ("Effective Date").

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds Project (the "Project") that is more fully set forth in the Scope of Work ("Scope") attached as **Exhibit A**;
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached Scope of Work;
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. Key Personnel; Other Consultants and Subcontractors.

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
 - (2) The City must approve the designated Project Manager.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
 - c. Discharge, Reassign, Replacement.
 - (1) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.
 - (2) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of

competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

- d. **Subcontractors.** Consultant shall not engage any subcontractor for the work or services to be performed under this Agreement.
2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.
 3. **Consultant's Work.**
 - 3.1 **Standard.** Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.
 - 3.2 **Licensing.** Consultant warrants that:
 - a. Consultant currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
 - b. Neither Consultant nor any Subconsultant has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
 - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.
 - 3.3 **Compliance.** Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
 - 3.4 **City Non-Discrimination Policy.** Contractor must not discriminate against any employee or applicant for employment on the basis 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.
 - 3.5 **Coordination; Interaction.**
 - a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
 - b. Subject to any limitations expressly stated in the Project Budget, Consultant will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
 - c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.
 - 3.6 **Work Product.**
 - a. **Ownership.** Except to the extent they contain Consultant's proprietary software or trade secrets as defined in Arizona Trade Secrets Act, A.R.S. §44-401 et seq., all documents, data,

and other tangible materials authored or prepared and delivered by Consultant to the City under the terms of this Agreement (collectively, the "Deliverables") are the sole and exclusive property of the City. To the extent Consultant's proprietary information or trade secrets are incorporated into such Deliverables, the City shall have a perpetual, non-exclusive, world-wide, royalty free license to use, copy and modify Consultant's proprietary information and trade secrets as part of the Deliverables for their intended purpose.

- b. Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Deliverable infringes on third-party proprietary interests.
- c. Delivery. Consultant will deliver to City copies of the preliminary and completed Deliverables promptly as they are prepared.
- d. City Use.
 - (1) City may reuse the Consultant's proprietary information, trade secret or Deliverable at its sole discretion, provided the City uses reasonable means to protect the confidentiality or secrecy of the information or trade secret.
 - (2) In the event the proprietary information, trade secret or Deliverable 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 proprietary information, trade secret or Deliverable.
 - (3) In such case, City will also remove any seal and title block from the proprietary information, trade secret or Deliverable.

3.7 Business Associate Agreement. As more particularly agreed to in Exhibit D, Business Associate Agreement, the parties agree to comply with all requirements of federal law, including the Health Information Portability and Accountability Act of 1996 ("HIPAA"), as amended, and as codified at 45 C.F.R. Parts 160 and 164, to protect the privacy and personal health and financial information of any third party, including employees or former employees of the City. Exhibit D is specifically incorporate herein by reference and an enforceable part of this Agreement.

4. Compensation for the Project.

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors, will not exceed \$47,000.00 as specifically detailed in Exhibit B ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
 - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are contemplated in Exhibit B, but outside the Scope of Work contained in Exhibit A, may not be performed by the Consultant without prior written authorization from the City and an amendment of this Agreement.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 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
 - (2) Unconditional waivers and releases on final payment from all Subconsultants as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

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

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

6. Termination.

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

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

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

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than

the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provisions 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, Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Contractor, 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, or an equivalent approved by the City, 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 or an equivalent approved by the City. Consultant shall maintain liability coverage for bodily injury and property damage arising out of the use and/or operation of any owned, hired and non-owned vehicles used in the performance of the scope of work in this Agreement with limits no less than \$1,000,000 per accident.
- 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 \$2,000,000 annual aggregate limit.
- d. **Worker's Compensation:** Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. This limit may be met through a combination of Employers' Liability and Excess liability insurance.

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

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Contractor or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Project, the Contractor'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 Contractor'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.
- 8.3 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Contractor has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.
- 8.4 Waiver of Subrogation. Except for Professional Liability as provided in Section 8.1(c), Contractor hereby agrees to waive its rights of subrogation which any insurer may acquire from Contractor by virtue of the payment of any loss. Contractor 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 Contractor, its employees, agent(s) and subcontractor(s).
- 8.5 Verification of Coverage. Within 15 days of the Effective Date of this Agreement, Contractor 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 Contractor's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Contractor'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 Contractor to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.
- 8.6 Subcontractors. Contractor shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.
- 8.7 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Contractor, the Project or the insurer.

9. **Immigration Law Compliance.**

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

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

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

10. **Notices.**

10.1 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.

10.2 Representatives.

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

Amy J. Girardo, Vice President
Segal Consulting
P. O. Box 63610
Phoenix, AZ 85082-3610

With a copy to:

Segal Consulting
Attn: General Counsel
333 West 34th Street
New York, NY 10001-2402

- 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 Jim Brown
Human Resources & Risk Management Director
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

and Ms. Connie Schneider
Materials Management Division
City of Glendale
5850 West Glendale Avenue, Suite 317
Glendale, AZ 85301

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

c. **Concurrent Notices.**

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

d. **Changes.** Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

11. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

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

12.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

12.2 Interpretation.

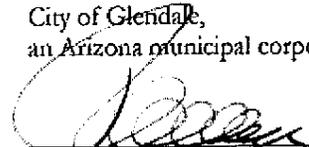
- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

- 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.
- 12.3 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 12.4 **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.
- 12.5 **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.
- 12.6 **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.
- 12.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
13. **Term.** The term of this Agreement commences upon the effective date and terminates on June 30, 2016. There are no renewals of this Agreement.
14. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.
15. **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 |
| Exhibit B | Compensation |
| Exhibit C | Dispute Resolution |
| Exhibit D | Business Associate Agreement |

(Signatures appear on the following page.)

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

City of Glendale,
an Arizona municipal corporation



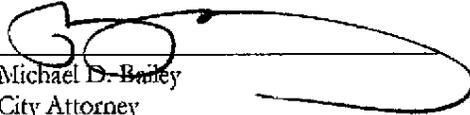
By: Richard A. Bowers
Its: Acting City Manager

ATTEST:



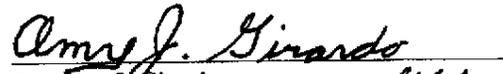
Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:



Michael D. Bailey
City Attorney

The Segal Company (Western States) Inc.,
d/b/a Segal Waters Segal Consulting,
a Maryland corporation,



By: Amy J. Girardo
Its: Vice President

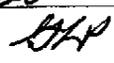


EXHIBIT A
SCOPE OF WORK

Contractor agrees to provide general employee benefits consulting services to the City of Glendale on an as-needed basis. Such services may include, but are not limited to, strategic planning, compliance assistance, including assistance on Health Care Reform requirements, and review and assistance in the preparation of *Requests for Proposals soliciting benefits providers*.

EXHIBIT B
COMPENSATION

Contractor will provide consulting services described in Exhibit A at an hourly rate of \$320 per hour. Services billed will not exceed \$47,000.00 for the term of this Agreement. Any additional services may not be provided by the Contractor without the parties entering into a mutually agreed upon amendment to this contract. Such amendment shall be entered into in accordance with all applicable terms and conditions of the Agreement including, but not limited to, Section 12.4.

EXHIBIT C
DISPUTE RESOLUTION

1. Disputes.

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

2. Arbitration.

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

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
 - 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
 - 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
 - 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.
 4. **Exceptions.**
 - 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
 - 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
 - 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.

EXHIBIT D
BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the date set forth below by and between The Segal Group, Inc., the parent of The Segal Company, for itself and on behalf of its operating subsidiaries and affiliates ("Segal") and the City of Glendale, Arizona ("Client").

WHEREAS Client is a group health plan or a plan sponsor of one or more group health plans, which group health plan(s) is a Covered Entity as such term is defined in 45 CFR §160.103. For purposes of this Agreement, the term Client refers to the group health plan(s) that is the Covered Entity;

WHEREAS Segal provides consulting services to Client in accordance with the underlying services agreement (the "Services Agreement"), and is a Business Associate, as such term is defined in 45 CFR §160.103, of the Client when it conducts such services (the "Services");

WHEREAS, to perform the Services, Segal needs to access, use, disclose and maintain Protected Health Information ("PHI"), as such term is defined below; and

WHEREAS access to, and use, disclosure and maintenance of, PHI, electronic transmission and storage of PHI, and security of PHI are regulated by the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Segal and Client desire to exchange and treat PHI in compliance with HIPAA and HITECH under the Privacy, Security and Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, Client and Segal hereby agree as follows:

I. Definitions

- A. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean The Segal Group, Inc
- B. **Covered Entity** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [Insert Name of Client].
- C. **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- D. All terms used and not otherwise defined herein shall have the same meaning as in the HIPAA Rules.

II. Permitted Uses and Disclosures by Segal

- A. Segal shall not use or disclose PHI other than as permitted or required by this Agreement and agrees to use and disclose the minimum necessary PHI required.

B In particular:

- i. Segal may use or disclose PHI as necessary to provide the Services set forth in the Services Agreement
- ii. Segal may use or disclose PHI as Required by Law.
- iii. Segal may not use or disclose PHI in a manner that would violate the Privacy Rule if done by Client, except for the specific uses and disclosures set forth herein at subsections iv, v and vi.
- iv. Segal may use PHI for its proper management and administration or to carry out its legal responsibilities.
- v. Segal may disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided the disclosures are Required by Law, or Segal obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Segal of any instances of which it is aware in which the confidentiality of the information has been violated;
- vi. Segal may use and disclose PHI for purposes of data aggregation services relating to the health care operations of Client.
- vii. Segal may de-identify PHI in accordance with the requirements of 45 CFR §164.514(a)-(c), and may use or disclose the information that has been de-identified.

III. Obligations and Activities of Segal

- A. Segal shall use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by the Agreement
- B. Segal will report to Client any use or disclosure of PHI not provided for by the Agreement of which it becomes aware.
- C. Segal shall comply with the Security Rule with respect to electronic Protected Health Information ("ePHI") and shall report to Client any Security Incident of which it becomes aware. For purposes of reporting under this Section, the definition of Security Incident shall be limited to the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- D. Segal shall report to Client, as soon as practicable, but no later than 30 days after discovery, any Breach of Unsecured PHI as required at 45 CFR §164.410. Such notice shall include all available information required, including:

- i. The identity of each Individual whose Unsecured PHI has been or is reasonably believed by Segal to have been accessed, acquired, used or disclosed during the Breach;
 - ii. A brief description of what happened, including the date of the Breach and the date of discovery if known;
 - iii. A description of the type of Unsecured PHI involved in the Breach;
 - iv. The steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - v. A brief description of the steps Segal is taking to investigate, mitigate harm, and protect against further breaches; and
 - vi. Contact information for follow-up questions
- E. If Segal uses subcontractors in the provision of the Services, Segal shall ensure that subcontractors who create, receive, maintain, or transmit PHI on its behalf agree to equivalent restrictions, conditions, and requirements as contained herein with respect to such information
- F. Segal shall make available to Client PHI in a Designated Record Set as necessary to satisfy Client's obligations under 45 CFR §164.524.
- G. Segal shall make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Client pursuant to 45 CFR §164.526, or take other reasonable measures as necessary to satisfy Client's obligations under 45 CFR §164.526.
- H. Segal shall maintain and make available to Client the information required to provide an accounting of disclosures, as necessary to satisfy Client's obligations under 45 CFR §164.528.
- I. Segal shall only carry out Client's obligations under the Privacy Rule as mutually agreed to by the parties. In such instances, Segal shall comply with the Privacy Rule requirements that apply to Client in the performance of such obligations.
- J. Subject to any applicable legal privileges or confidentiality agreements, Segal shall, upon reasonable notice and during normal business hours, make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules by Segal and/or Client.

IV. Obligations and Activities of Client

- A. Client shall notify Segal of any limitation(s) in its notice of privacy practices under 45 CFR §164.520, to the extent that such limitation may affect Segal's use or disclosure of PHI.

- B. Client shall notify Segal of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Segal's use or disclosure of PHI
- C. Client shall notify Segal of any restriction on the use or disclosure of PHI that it has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may affect Segal's use or disclosure of PHI
- D. Client shall not request Segal to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Client, except to the extent that such use or disclosure is for the purposes set forth above in Section II.B iv, v and vi.

V. Term and Termination

- A. The Term of this Agreement shall be effective as of the date set forth below and shall run concurrently with the Services Agreement, unless this Agreement is terminated earlier due to the violation of a material term as provided for in Section B below.
- B. Either party may terminate this Agreement if the other violates a material term of the Agreement, provided that the non-breaching party provides the breaching party with no less than 30 days in which to cure such violation prior to termination becoming effective. However, if the non-breaching party reasonably and in good faith determines that the violation is not curable, it may terminate this Agreement immediately upon written notice to the breaching party.
- C. Upon termination of this Agreement, the Services Agreement also shall terminate to the extent that it requires Segal to access, use, disclose and/or maintain PHI in order to provide the Services.
- D. Upon termination of this Agreement for any reason, Segal, with respect to any PHI either received from Client, or created, maintained, or received by Segal on Client's behalf, shall:
 - i. Where feasible, return or destroy the PHI, which Segal still maintains in any form. Client understands that Segal's need to maintain portions of the PHI in records of actuarial determinations and for other archival purposes related to memorializing advice provided will render return or destruction infeasible.
 - ii. Continue to use appropriate safeguards and comply with the Security Rule with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Segal retains the PHI; and
 - iii. Not use or disclose the PHI retained other than for the purposes for which such PHI was retained and subject to the same conditions set out in Section II.B iv and v of this Agreement which applied prior to termination.

- E. The parties' respective obligations under this Section V shall survive the termination of this Agreement.

VI. Miscellaneous

- A. Regulatory References A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended
- B. Amendment The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law Any amendment shall be in a writing duly executed by both parties.
- C. Interpretation Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules In the event of any inconsistency or conflict between this Agreement, and the Services Agreement or any other written agreement between the parties, the terms, provisions and conditions of this Agreement shall control and govern.
- D. Third Party Beneficiaries Nothing in this Agreement shall be construed to create any third party beneficiary rights in any person, including any participant or beneficiary of Client.
- E. Counterparts This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile or Portable Document Format (PDF) copies thereof shall be deemed to be originals.
- F. Informal Resolution If any controversy, dispute, or claim arises between the parties with respect to this Agreement, the parties shall make good faith efforts to resolve such matters informally.
- G. Notices All notices to be given pursuant to the terms of this Agreement shall be in writing and shall be sent certified mail, return receipt requested, postage prepaid or by courier service. If to Client, the notice shall be sent to the address set forth below Client's signature or such other address as Client notifies Segal of in writing If to Segal, the notice shall be sent to the Privacy Official, c/o General Counsel, The Segal Company, 333 West 34th Street, New York, New York 10001.