

**CITY CLERK  
ORIGINAL**

C-11344  
11/22/2016

**PROFESSIONAL SERVICES AGREEMENT  
(Not Construction Related)  
HACH REAGENTS, INSTRUMENTS AND SERVICE**

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and HACH Company, a Delaware corporation, authorized to do business in the State of Arizona, ("Consultant") as of the 22 day of November, 2016 ("Effective Date").

**RECITALS**

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

**AGREEMENT**

The parties hereby agree as follows:

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

1.1 **Professional Services.** Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.

1.2 **Project Team.**

a. **Project Manager.**

- (1) Consultant 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 acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
- (2) 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.

- (3) 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.

Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 **Coordination: Interaction.**

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with any other professionals retained by City 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.

### 3.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
  - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
  - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
  - (1) City may reuse the Work Product at its sole discretion.
  - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
  - (3) In such case, City will also remove any seal and title block from the Work Product.

## 4. Compensation for the Project.

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$250,000 annually for a maximum of \$1,250,000 for the term of the agreement as specifically detailed in Exhibit D ("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 outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
  - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 Allowances. An "Allowance" may be identified in Exhibit D only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.
  - a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in Exhibit D and any unused allowance at the completion of the Project will remain with City.
  - b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
  - c. Consultant will not use any portion of an Allowance without prior written authorization from the City.

- d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

4.4 **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, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.
- 8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:
- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
  - c. Professional Liability. Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liability, with a liability insurance limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
  - d. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
- 8.2 **Indemnification.**
- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or

the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.

- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

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

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

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

8.5 **Waiver of Subrogation.** **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).

8.6 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

- 8.7 Subcontractors. Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.
- 8.8 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.
9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrant their compliance and that of its subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
10. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.
11. **Notices.**
- 11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
  - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
  - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
    - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
    - (2) As of the next business day after receipt, if received after 5:00 p.m.
  - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
  - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.
- 11.2 **Representatives.**
- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:  
  
HACH Company  
c/o Michael Hernandez  
5600 Lindbergh Drive  
  
Loveland, CO 80538

- 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 Anthony Weathersby  
7070 W Northern Ave  
Glendale, Arizona 85301

With required copy to:

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

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

- c. Concurrent Notices.

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

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

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

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

**13.1 Integration.** This Agreement contains, except as stated 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.

**13.2 Interpretation.**

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

**13.3 Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every

other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

- 13.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
- 13.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 13.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
- 13.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
14. **Term.** The term of this Agreement commences upon the effective date and continues for a two (2) year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional three (3) years, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.
15. **Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.
- |           |               |
|-----------|---------------|
| Exhibit A | Project       |
| Exhibit B | Scope of Work |
| Exhibit C | Schedule      |
| Exhibit D | Compensation  |

(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



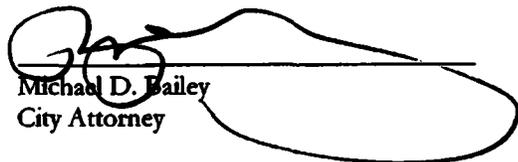
By: Kevin R. Phelps  
Its: City Manager

ATTEST:



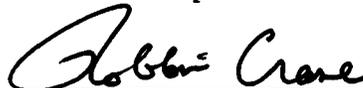
Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:



Michael D. Bailey  
City Attorney

HACH Company,  
a Delaware corporation



By: Robbin Crane  
Its: Service Product Line Manager

\*\*Subject to contract addendum attached hereto

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| Exhibit D | Compensation  |

(Signatures appear on the following page.)

**EXHIBIT A**  
**Professional Services Agreement**

**PROJECT**

Purchase of HACH reagents, instruments, parts and service for the City of Glendale's Water Services Department. These items will be used in water quality testing. HACH Company is the sole authorized manufacturer and direct distributor of HACH reagents and instruments. See attached Exhibit A.

HACH instruments and reagents are used throughout all of Water Services. HACH reagents and parts are required for the HACH instruments to work properly.

**Contract Addendum to Contract Forms  
[SMALL PURCHASE CONTRACT ] (HACH393873)**

**Parties:** CITY OF GLENDALE ("Customer")  
Hach Company ("Supplier")

**Date:** \_\_\_\_\_, 2016

**Recitals:** Customer and Supplier are entering into a contract for the Project and, for convenience, are using Customer's standard contract forms ("Customer's Base Contract") for the purchase of Supplier's goods and/or services ("Goods" and/or "Services"). This Addendum is intended to provide reasonable revisions to Customer's Base Contract for the purpose of enabling the parties to enter into a contract for the Project without prolonged or complex negotiations over terms and conditions. Accordingly, the parties incorporate this Addendum into the Customer's Base Contract and make it an integral part thereof, taking precedence over any contrary terms or conditions that may be contained therein, in any purchase orders, or in any other writings, addenda or exhibits constituting part of the agreement between the parties (collectively, the "Agreement").

**Revisions:** Notwithstanding anything to the contrary contained in the Agreement, the following provisions and rules of construction apply:

- 1. Indemnification.** Any and all indemnification obligations imposed upon Supplier are limited to the proportionate extent of those damages caused by Supplier's breach of the Agreement, negligence, wrongful conduct, or violations of law, and expressly exclude damages caused by negligence, misuse or misapplication of goods by others. For non-government customers, Supplier's indemnification obligations are provided on the condition that Customer defends, indemnifies and holds harmless Supplier against those damages to the proportionate extent caused by misuse or misapplication of goods, negligence, wrongful conduct, or violations of law by the Customer, its affiliates, or those in privity with them.
  
- 2. Limitation on Liability.** THE TOTAL LIABILITY OF SUPPLIER AND ITS SUBSIDIARIES, AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS ARISING OUT OF PERFORMANCE, NONPERFORMANCE, OR OBLIGATIONS IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, DELIVERY, AND/OR USE OF GOODS AND/OR SERVICES IN NO CIRCUMSTANCE INCLUDES ANY LIQUIDATED, PENALTY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, NOR EXCEED AN AMOUNT THAT IS UNREASONABLY DISPROPORTIONATE TO THE TOTAL AMOUNT OF COMPENSATION ACTUALLY PAID TO SUPPLIER UNDER THE AGREEMENT, EXCEPT ONLY IN THE CASE OF DAMAGES ARISING DUE TO SUPPLIER'S WILLFUL MISCONDUCT.
  
- 3. Warranty.** Supplier warrants to Customer that each of the Goods conforms to its written warranty set forth in its user manual in effect on the date of purchase, or, if there is no express warranty therein, that each of the Goods will be free from defects in material and workmanship and will conform to the manufacturer's quoted specifications for twelve (12) months from delivery. Warranties do not extend to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. Supplier warrants that it will perform all Services in accordance with its standard practices and that the Services will be free from defects in workmanship for a period of ninety (90) days from their date of performance. If Supplier breaches this warranty and the Customer notifies Supplier of such breach within 30 days of the end of the applicable warranty period, Supplier will, at its option, either replace or repair the nonconforming Goods, or re-perform any nonconforming Services, or refund the amounts paid by Customer to Supplier for the nonconforming Goods and/or Services. THIS IS THE EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY. SUPPLIER EXPRESSLY DISCLAIMS ANY REMEDIES OF "COVER" AND ANY WARRANTIES IMPLIED BY LAW, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
  
- 4. Intellectual Property.** Supplier retains all rights in and to any intellectual property and confidential information created or procured by it or its representatives at any time, and Customer receives licenses to use

such intellectual property and information only to the extent provided by implied license under applicable law.

5. **Affiliates.** Except to the extent signed by a duly authorized representative of an affiliate of Supplier, the Agreement does not bind any affiliates of Supplier.
6. **Acceptance and Set-off.** Except to the extent agreed upon in writing by Supplier's CFO, all Goods and Services are deemed accepted upon delivery and early payment discounts do not apply. Any set-off rights in the Agreement notwithstanding, Customer bears the customary burden of proof with respect to any amounts invoiced by Supplier but not paid by the invoice due date. This revision does not adversely impact any of Customer's rights under Supplier's warranties.
7. **Audit Rights.** Supplier is not subject to any audit rights in favor of the Customer, except for audit rights (under reasonable conditions) directly related to Supplier's compliance with laws and regulations (e.g., safety) which are directly applicable to Supplier's Goods and/or Services purchased under this Agreement.
8. **Insurance.** Supplier is not obligated to purchase or carry Professional Liability or E&O Insurance coverage, provide copies of Supplier's policies, or provide waivers of subrogation. Supplier may include Customer and their Affiliates as an Additional Insured party. Notice of Cancellation to be provided by Danaher.
9. **Compensation.** Supplier agrees to invoice only once in advance of the start of the service partnership and/or yearly thereafter unless Customer issues a corresponding change order for additional services during the active term outside of the predetermined invoicing/billing schedule. Product purchases are invoiced per quotation and at time of shipment. Supplier does not agree to monthly invoicing. Supplier does not agree to submitting any Payment Applications to the Customer. Customer will not retain payment of any kind, nor will the Supplier submit any waivers of lien in any format. All payments are due within 30 days of the invoice date, and/or on the activation date or activation anniversary date of any service partnership as per the predetermined invoicing/billing schedule.
10. **Revisions to the Agreement.** Nothing in the Agreement supersedes or nullifies this Addendum. Supplier's obligations under the Agreement will only be modified by written agreement of Supplier through the same duly authorized representative who signed this Addendum, or such person's duly authorized successor.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their duly authorized representatives, intending thereby to be legally bound.

**Customer**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Hach Company:**

By: Robbin Crane

Name: Robbin Crane

Title: Service Product Line Manager

Date: 9/16/16

**EXHIBIT B**  
**Professional Services Agreement**

**SCOPE OF WORK**

The City of Gledale Water Services Department will continue to purchase reagents, equipment and maintenance of HACH equipment that is used at Water Plants, Wastewater Plants and at City Well Sites for federal and state regulatory requirements for water quality.

**EXHIBIT B**  
**Professional Services Agreement**

**SCOPE OF WORK**

The City of Gledale Water Services Department will continue to purchase reagents, equipment and maintenance of HACH equipment that is used at Water Plants, Wastewater Plants and at City Well Sites for federal and state regulatory requirements for water quality.

**EXHIBIT C**  
**Professional Services Agreement**

**SCHEDULE**

Not applicable. Commodities and service are requested on an as-needed basis.

**EXHIBIT D**  
**Professional Services Agreement**

**COMPENSATION**

**METHOD AND AMOUNT OF COMPENSATION**

This is a sole source procurement of commodities and services from HACH Company, the sole source provider and distributor of HACH reagents and equipment.

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$250,000 annually for a maximum of \$1,250,000 for the term of the agreement.

**DETAILED PROJECT COMPENSATION**

Price list available upon request.