



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

26

2. Council Meeting Date:
December 15, 2011

TO: MAYOR & COUNCIL

3. Date Prepared: November 21, 2011

THROUGH: CITY MANAGER

4. Requesting Department:
Management Services

5. SUBJECT: Approve Professional Services Agreement with Duncan Associates, Inc. for Impact Fee Planning Project Phase 2 in an amount not to exceed \$150,000.

6. RECOMMENDATION: Recommend approval of Professional Services Agreement with Duncan Associates, Inc. for Impact Fee Planning Project Phase 2 in an amount not to exceed \$150,000.

7. BACKGROUND/DISCUSSION: According to provisions of the Chandler City Code, system development fees are to be updated annually. It has been the City's practice to have consultants review the fees every other year, and make an internal adjustment in the interim years. The last update to the City's fees was a 2009 update which was performed by City staff. Due to the requirements passed by the State legislature in SB1525, staff updates will no longer be allowed. In the City's history of the current system development fee program, the City has hired one firm to calculate the utility system development fees (Rick Giardina & Associates, which is now part of Red Oak Consulting) and another firm to calculate the non-utility system development fees (BBC Research & Consulting, who was replaced by Duncan Associates, Inc. in 2007). The City is now proposing to hire Duncan Associates, Inc. to calculate both the utility and non-utility system development fees. Duncan Associates, Inc. performed Phase I of the work required to implement changes required by SB1525 by January 1, 2012.

8. EVALUATION PROCESS: Duncan Associates, Inc. restructured the City's non-utility fees in 2008 that will lay the groundwork for the upcoming update. They also advised the City in meeting January 1, 2012 fee revisions required under the new State impact fee law. Because of their familiarity with the City's current impact fees and work they will do to assist the City in modifying its impact fee ordinance to meet State requirements, staff recommends award of a direct select contract to Duncan Associates, Inc. to update the City's utility and non-utility impact fees.

9. FINANCIAL IMPLICATIONS: Funds for the study will be equally prorated by fee type among the ten system development fee funds for which the fees will be calculated.

Account String	Fund	Fee Type	Contingency 5911 Appropriation Trans. Needed	Amount
415.1290.5219	Arterial Streets	Non-Utility	\$4,000	\$15,000.00
424.1290.5219	Parks	Non-Utility	9,352	15,000.00
431.1290.5219	Library	Non-Utility	9,352	15,000.00
440.1290.5219	Public Buildings	Non-Utility	9,352	15,000.00
465.1290.5219	Police	Non-Utility	9,352	15,000.00
475.1290.5219	Fire	Non-Utility	9,352	15,000.00
603.1290.5219	Water	Utility	4,000	15,000.00
604.1290.5219	Water Resources	Utility	4,000	15,000.00
610.1290.5219	Reclaimed Water	Utility	4,000	15,000.00
614.1290.5219	Wastewater	Utility	4,000	15,000.00
Totals			\$66,760	\$150,000

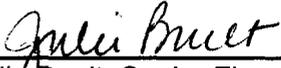
Note: Approval of this professional services agreement will require appropriation transfers from all the Impact Funds Contingency accounts as listed above for a total of \$66,760 needed to complete the 2nd phase of the Impact Fee Study.

10. PROPOSED MOTION: Move to approve Professional Services Agreement with Duncan Associates, Inc. for Impact Fee Planning Project Phase 2 in an amount not to exceed \$150,000, and approve transfer of contingency appropriation for a total of \$66,760 from all Utility and Non-Utility Impact Funds to fund the amount needed to complete the 2nd phase of the Impact Fee study.

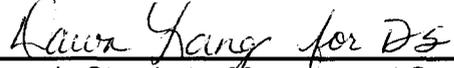
ATTACHMENT: Professional Services Agreement

APPROVALS

11. Requesting Department


Julie Buelt, Senior Financial Analyst

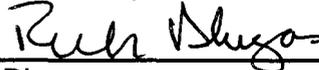
13. Department Head


Dennis Strachota, Management Services Director

12. Procurement Officer


Kristy Garcia, CPPB

14. City Manager


Rich Dlugas

**CITY OF CHANDLER
PROFESSIONAL SERVICES AGREEMENT**

Project Name: Impact Fee Planning Project; Phase 2

THIS AGREEMENT is made and entered into this ___ day of _____, 2011, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY," and Duncan Associates, Inc., hereinafter referred to as "CONSULTANT."

WHEREAS, CONSULTANT represents that CONSULTANT has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

1.1. Contract Administrator. CONSULTANT shall act under the authority and approval of the Management Services Director /designee (Contract Administrator), to provide the services required by this Agreement. The Contract Administrator shall oversee the execution of this Agreement, assist CONSULTANT with any necessary information, audit billings, and approve payments. CONSULTANT shall channel reports and special requests through the Contract Administrator.

1.2 CITY reserves the right to review and approve any/all changes to CONSULTANT'S key staff assigned to the CITY project by the firm during the term of this Agreement.

2. SCOPE OF WORK: CONSULTANT shall provide those services all as more specifically set forth in Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference. Time Table (Exhibit C) is attached hereto and incorporated herein by reference.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

4. FEE SCHEDULE: CITY shall pay CONSULTANT a fee not to exceed the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) as described in Exhibit D, attached hereto and made a part hereof by reference, upon the completion of the services described in Exhibit B of this Agreement.

5. TERM: The term of the Contract is **twenty months**, commencing on August 1, 2012 and terminating on March 31, 2014 unless terminated sooner in accordance with the provisions herein. CITY may extend the contract by mutual agreement of the parties for up to five (5) months. Additionally, CITY may unilaterally extend the contract up to 31 days.

6. TERMINATION:

6.1. Termination for Convenience: CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONSULTANT 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 CONSULTANT shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONSULTANT and

CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed for each task detailed in the Scope of Work and the CONSULTANT's compensation shall be based upon such determination and CONSULTANT's fee scheduled included herein.

6.2 Termination for Cause: City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If CONSULTANT fails to perform pursuant to the terms of this Agreement
- 2) If CONSULTANT is adjudged a bankrupt or insolvent;
- 3) If CONSULTANT makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONSULTANT or for any of CONSULTANT'S property;
- 5) If CONSULTANT files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONSULTANT disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONSULTANT then existing or which may thereafter accrue.

6.3. Availability of Funds for the next Fiscal Year. Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

7. INDEMNIFICATION: The CONSULTANT agrees to indemnify, defend, and save harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively; from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs, or actions of any kind and nature resulting from personal injury to any person, including employees of the CONSULTANT or of any Sub Consultant employed by the CONSULTANT (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the negligent performance of the CONSULTANT for the work to be performed hereunder, except any such injury or damages arising out of the sole negligence of CITY, its officers, agents or employees. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

8. INSURANCE REQUIREMENTS: CONSULTANT shall provide and maintain the insurance as listed in Exhibit E attached hereto and made a part hereof by reference.

9. **ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
10. **ARIZONA LAW:** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.1 Pursuant to the provisions of A.R.S. § 41-4401, the CONSULTANT hereby warrants to CITY that the CONSULTANT and each of its sub consultants ("Sub consultants") 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(A) (hereinafter "Contractor Immigration Warranty").
- 10.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the Agreement.
- 10.3 The CITY retains the legal right to inspect the papers of any CONSULTANT or Sub consultant employee who works on this Agreement to ensure that the CONSULTANT or Sub consultant is complying with the Contractor Immigration Warranty. The CONSULTANT agrees to assist CITY in the conduct of any such inspections.
- 10.4 The CITY may, at its sole discretion, conduct random verifications of the employment records of the CONSULTANT and any Sub consultant to ensure compliance with Contractors Immigration Warranty. The CONSULTANT agrees to assist CITY in performing any such random verification.
- 10.5 The provisions of this Article must be included in any contract the CONSULTANT enters into with any and all of its sub consultants who provide services under this Agreement or any sub agreement. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 10.6 In accordance with A.R.S. §35-393.06, the CONSULTANT hereby certifies that the offeror does not have scrutinized business operations in Iran.
- 10.7 In accordance with A.R.S. §35-391.06 the CONSULTANT hereby certifies that the offeror does not have scrutinized business operations in Sudan.
11. **CONFLICT OF INTEREST:**
- 11.1 **No Kickback.** CONSUSLTANT warrants that no person has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. section 38-501. Any such interests were disclosed in CONSULTANT'S proposal to the CITY.
- 11.2 **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONSULTANT to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when

written notice for CITY is received by all other parties, unless the notice specifies a later time (A.R.S. 38-511).

- 11.3 **No Conflict.** CONSULTANT stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
- 11.4 **Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONSULTANT pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 11.5 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 11.6 **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 11.7 **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
12. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph

In the case of CITY

Contract Administrator: Senior Financial Analyst
Contact: Julie Buelt
Mailing Address: PO Box 4008 – MS 609
Physical Address: 175 S. Arizona Ave, 3 Fl
City, State, Zip Chandler, AZ 85225
Phone: 480-782-2259
FAX: 480-782-2253

In the case of CONSULTANT

Firm Name: Duncan Associates
Contact: Clancy Mullen
Address: 360 Nueces St., #2701
City, State, Zip Austin, TX 78701
Phone: 512-423-0480
FAX: _____

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this ____ day of _____ 2011.

CITY OF CHANDLER

James Duncan and Associates, Inc.,
CONSULTANT dba Duncan Associates

Mayor Date

By: Clancy Mullen
Title: Clancy Mullen, Vice President

APPROVE AS TO FORM

ATTEST: If Corporation

City Attorney *[Signature]*

Secretary

ATTEST:

City Clerk

SEAL

EXHIBIT A

**Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

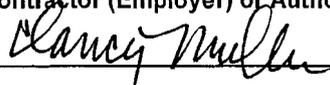
By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: Impact Fee Planning Project		
Name (as listed in the contract): Duncan Associates		
Street Name and Number: 360 Nueces St., #2701		
City: Austin	State: TX	Zip Code: 78701

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:



Printed Name: Clancy Mullen

Title: Vice-President

Date (month/day/year): 11/18/2011

EXHIBIT B SCOPE OF WORK

PHASE 2: COMPLETE SYSTEM DEVELOPMENT FEE UPDATE

This phase of the project would update all of the City's system development fees to be consistent with the requirements of SB 1525 that must be met by August 1, 2014.

Task 2.1: Project Organization/Data Collection

This task will involve data collection and project organization for the preparation of land use assumptions, infrastructure improvement plans and system development fee studies for arterial streets, water, wastewater, parks, library, fire, police and public building facilities. The consultant will work with the City's project manager to schedule one day of meetings with key members of City staff. The consultant could also meet with a stakeholder group during this trip if desired. Prior to the organizational meeting, the consultant will gather and review as much information as possible about the City's existing capital facilities, facility master plans and planned improvements.

At these initial organizational meetings, the consultant will gather available information related to the project, identify major policy issues involved in updating the City's system development fee program, coordinate staff and consultant responsibilities and establish the project schedule. The City should provide the consultant team, without charge, copies of all relevant plans, studies and documents needed to perform the scope of work. These may include, but are not limited to:

- Existing land use data and growth projections,
- Facility master plans,
- Capital improvements programs,
- Recent land acquisition and facility cost data,
- Inventories of existing facilities by facility type and service area,
- Annual budgets and comprehensive financial reports, and
- Debt payment schedules for outstanding bond issues.

In addition to data collection, the meetings will address policy and methodological issues. An important issue to be discussed is the definition of appropriate service areas for the various types of facilities. Other issues include sources of information for growth projections, the relative advantages of having an advisory committee or a biennial audit, etc.

At the conclusion of the task, the consultant will prepare a memorandum summarizing the organizational framework for the project and listing additional data to be provided by the City. The Project Organization Memorandum will be delivered to the project manager within two weeks of the organizational meetings.

*Deliverables: Project Organization Meeting
Project Organization Memorandum*

Task 2.2: Service Areas

This task entails the identification of service areas that will be the basis for the land use assumptions and the infrastructure improvements plan. Service areas will be defined in coordination with City staff. The number of service areas should be kept to a minimum, but service areas should reflect actual significant differences in the benefit derived from facilities and the costs to serve different areas. A memorandum describing the proposed service areas will be prepared and will be made available to stakeholders for input. An initial draft of the service area memorandum will be provided to City staff, and staff comments will be addressed prior to preparing the final document.

Deliverable: Service Area Memorandum

Task 2.3: Growth Projections

Following final determination of the service areas, existing and projected land uses will be developed for each service area. It is anticipated that the base year will be 2012, and that the 10-year growth projections will cover the 2013-2023 period. Base year land use and growth projections will be derived from available sources, including the City's General Plan, the Maricopa Association of Governments, the Maricopa County Assessor, the U.S. Census Bureau and the Arizona Department of Economic Security. The recommended growth projections will either be based on the current General Plan or be coordinated with an update to the General Plan. An initial draft of the growth projections will be provided to City staff, and staff comments will be addressed prior to preparing the final document.

Deliverable: Growth Projections Memorandum

Task 2.4: Staff Draft Study

SB 1525 implies that the infrastructure improvements plan (IIP) and system development fee study are two separate documents, but there is considerable overlap between the two. The IIP is not just a list of planned projects and cost estimates, but must include most of the elements required to calculate system development fees. According to SB 1525, the IIP must include a description of existing facilities in the service area, including existing capacity and demand, any costs related to existing deficiencies or service upgrades to serve existing development, the portion of any planned or existing improvement costs that are attributable to new development, a demand schedule, total projected service units over the planning period, and a forecast of revenues anticipated to be generated by new development over the planning period and available to fund those improvements, along with a plan for providing an offset against the fee for those revenues. In other words, the IIP is virtually the entire system development fees study, but it could exclude the fee schedule itself. This scope proposes to prepare a consolidated document that meets the requirements for both the IIP and the system development fee study. It is also anticipated that the land use assumptions based on the growth projections from the previous task would also be incorporated into the same document.

This task entails the preparation of an initial draft of the consolidated land use assumptions, IIP and system development fee study for staff review. Revisions to the growth projections could take place during the drafting process to reflect input received or to incorporate updated data. The IIP will cover the same 10-year period as the land use assumption, and will be based on current facility master plans, to the extent that they are available, the City's capital improvements program and staff-identified projects, as appropriate. The consolidated land use assumptions, IIP and system development fee study will include all of the elements required by SB 1525 to calculate system development fees for each service area for arterial streets, water, wastewater, parks, library, fire, police and public building facilities.

Deliverable: Staff Review Draft System Development Fee Study

Task 2.5: Public Draft Study

Following receipt of staff comments on the staff review draft, the consultant will make appropriate modifications to the consolidated land use assumptions, IIP and system development fee study.

Deliverable: Public Review Draft System Development Fee Study

Task 2.6: Final Study

Following receipt of public input and any Council direction, a final draft of the consolidated land use assumptions, IIP and system development fee study will be provided. It is anticipated that only minor adjustments will need to be made to study inputs, such as modified cost estimates or modest adjustments to growth projections or planned projects. More substantial modifications to the documents requiring significant additional work, such as changes to service area boundaries, changes in methodology, or wholesale revisions to the growth projections or list of planned projects, would be provided on a time-and-expense or negotiated fixed-fee basis. Once the project is complete, the consultant will provide the City with electronic copies of all documents in Word format and all spreadsheets in Excel format.

*Deliverables: Final System Development Fee Study (minor changes only)
Electronic files for all final documents and spreadsheets*

Task 2.7: Meetings and Public Participation

This task covers consultant attendance at meetings in Chandler. Aside from the organizational meeting, it is anticipated that staff meetings would be held via teleconference. Meetings could be held with the advisory committee if the City chooses that option, stakeholder groups, and the City Council. The potential timing of these meetings is suggested in the next section, but this could change as the process unfolds. This task budgets eight days of consultant meeting attendance. Multiple meetings held on the same day would count as one person-day. The City will be billed only for trips actually made. Additional consultant trips for meeting attendance would be provided for additional compensation.

Deliverables: Eight (8) Person-Days of Meeting Attendance

**EXHIBIT D
FEE SCHEDULE**

The total fixed-fee price to provide the services outlined in the scope of services, including all travel and direct expenses, is \$136,280, as broken down by task below. The City will be billed monthly based on percent completion by task. Meetings in Task 7 will be provided for a fixed fee of \$2,200 per trip, and the City will be billed only for trips taken.

Task	Cost
2.1: Project Organization	\$4,440
2.2: Service Areas	\$8,000
2.3: Growth Projections	\$9,600
2.4: Staff Draft Study	\$86,400
2.5: Public Draft Study	\$6,400
2.6: Final Study	\$3,840
2.7: Meetings (8)	\$17,600
Total	\$136,280

Additional trips will be provided for a fixed fee of \$2,200 per trip. Other additional services will be provided on a negotiated fixed-fee basis or on a time and expense basis, using the following hourly rates: James B. Duncan, FAICP, \$175; Clancy Mullen, \$160; planner \$120; Eric Kelly, FAICP, land use lawyer, \$225. Hourly rates include all direct and indirect expenses other than travel expenses. Expert witness or litigation support services will be billed at one and one-half times the above rates.

EXHIBIT E
INSURANCE REQUIREMENTS

1. CONSULTANT, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of A-6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
2. Policies written on a "claims made" basis are not acceptable without written permission from CITY'S Risk Manager.
3. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
4. If any of the insurance policies are not renewed prior to expiration, payments to CONSULTANT may be withheld until these requirements have been met, or at the option of CITY, CITY may pay the Renewal Premium and withhold such payments from any monies due CONSULTANT.
5. All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, CITY, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
6. CONSULTANT'S insurance shall be primary insurance over any insurance available to CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
7. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONSULTANT'S acts, errors, mistakes, omissions, work or service.
8. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONSULTANT. CONSULTANT shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONSULTANT to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
9. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
10. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by CONSULTANT with reasonable promptness in accordance with CONSULTANT'S information and belief.
11. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be

withheld from payment due or to become due CONSULTANT until such time as CONSULTANT shall furnish such additional security covering such claims as may be determined by CITY.

C.1. PROOF OF INSURANCE – CERTIFICATES OF INSURANCE

1. Prior to commencing work or services under this Agreement, CONSULTANT shall furnish to CITY Certificates of Insurance, issued by CONSULTANT'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from CITY'S Risk Management Division approval of such Certificates.
2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to CITY five (5) days prior to the expiration date.
3. All Certificates of Insurance shall identify the policies in effect on behalf of CONSULTANT, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
4. CITY reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONSULTANT of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONSULTANT from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONSULTANT'S obligations under this Agreement.

C.2. REQUIRED COVERAGE

1. Such insurance shall protect CONSULTANT from claims set forth below which may arise out of or result from the operations of CONSULTANT under this Contract and for which CONSULTANT may be legally liable, whether such operations be by CONSULTANT or by a SUBCONSULTANT or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
2. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
3. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONSULTANT'S employees;
4. Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONSULTANT'S employees;
5. Claims for damages insured by usual personal injury liability coverage;
6. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
7. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "1" "any auto" policy form CA00011293 or equivalent thereof;
8. Claims for bodily injury or property damage arising out of completed operations;

9. Claims involving contractual liability insurance applicable to CONSULTANT'S obligations under the Indemnification Agreement;
10. Claims for injury or damages in connection with one's professional services;
11. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

C.2.1 Commercial General Liability - Minimum Coverage Limits

The Commercial General Liability insurance required herein shall be written for not less than \$1,000,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20%, whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONSULTANT'S operations and products, and completed operations.

C.2.2 General Liability - Minimum Coverage Limits

The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent Consultants, and Personal Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than \$1,000,000 or 10% of the contract cost and with a \$2,000,000 aggregate.

C.2.3 Automobile Liability

CONSULTANT shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of CONSULTANT'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

C.2.4 Workers' Compensation and Employer's Liability

CONSULTANT shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONSULTANT'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$500,000 for each accident, \$500,000 disease coverage for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, CONSULTANT will require the SUBCONSULTANT to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONSULTANT.

C.2.5 Professional Liability

CONSULTANT shall maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by CONSULTANT, or any person employed by CONSULTANT, with a claims made policy limit of not less than \$1,000,000.