



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA  
Memo No. CA12-209**

**1. Agenda Item Number:**

**23**

**2. Council Meeting Date:**  
June 14, 2012

**TO: MAYOR & COUNCIL**

**3. Date Prepared:** May 25, 2012

**THROUGH: CITY MANAGER**

**4. Requesting Department:** Transportation & Development

**5. SUBJECT:** Award an annual contract for development on-call inspection services to Consultant Engineering Inc., Project No. EN1202-101, for an amount not to exceed \$195,000.

**6. RECOMMENDATION:** Staff recommends that Council award an annual contract for development on-call inspection services to Consultant Engineering Inc., Project No. EN1202-101, for an amount not to exceed \$195,000.

**7. BACKGROUND/DISCUSSION:** Recently, private development and utility permit issuance has increased to the point that warrants additional City inspection services. There is a 15% year-to-date increase in encroachment permits issued when compared to this time last year. Some of these permits involve large projects that require extra attention and inspection. Both SRP and Air Products have major upgrade projects related to Intel's expansion. CenturyLink also has approached City staff to discuss a City-wide major upgrade project involving hundreds of pedestal replacements. The number of Capital Improvement Projects has also increased thus requiring more inspection time from the same group of inspectors. The services provided will be specifically for development and utility inspections, not CIP projects. This is a one-year contract with a notice to proceed being issued July 1, 2012 and ending June 30, 2013.

**8. EVALUATION:** On March 27, 2012 the City publicly advertised a Request For Qualifications. A pre-submittal meeting was held April 11, 2012 to discuss the project and answer questions from interested consultants. On April 25, 2012 seven (7) Statements of Qualifications were received and reviewed by the following panel:

- Ray Buglion, P.E. – Project Manager
- Bob Fortier, Capital Projects Manager
- Leann Johnson, Construction Project Coordinator
- Rob Lemke, P.E. Chandler Resident

The following firms submitted Statements of Qualification:

- Vanir Construction Management, Inc.
- NCS Engineers
- Entellus
- Ritoch-Powell & Associates
- Consultant Engineering, Inc.
- Stormwater Plans, LLC
- Oridian Construction Services, LLC

After independent reviews and ranking by the panel members, the panel convened and discussed the rankings. The panel unanimously chose Consultant Engineering, Inc.

**9. FINANCIAL IMPLICATIONS:**

Fund Source:

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
101.1510.5239.0	General Fund	N/A	No	\$50,000
101.3020.5219.0	General Fund	N/A	No	\$145,000

**10. PROPOSED MOTION:** Move that Council award an annual contract for development on-call inspection services to Consultant Engineering Inc., Project No. EN1202-101, for an amount not to exceed \$195,000.

**ATTACHMENTS:** Contract

APPROVALS

11. Requesting Department



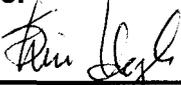
Bob Fortier, Capital Projects Manager

13. Department Head



R. J. Zeder, Transportation & Development Director

12. City Engineer



Sheina Hughes, City Engineer

14. City Manager



Rich Dlugas, City Manager

## ANNUAL CONTRACT FOR ENGINEERING SERVICES

**PROJECT NO:** Annual On-Call Offsite/Onsite Inspection  
**PROJECT NAME:** EN1202-101

This AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Chandler, a municipal corporation (hereinafter referred to as "CITY"), and **Consultant Engineering, Incorporated in the state of Arizona**, (hereinafter referred to as "ANNUAL CONSULTANT").

WHEREAS, the Mayor and City Council of the City of Chandler are authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

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

NOW THEREFORE, CITY and ANNUAL CONSULTANT, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### 1. DESCRIPTION OF WORK

1.1 This is an indefinite quantity and indefinite delivery Annual Contract to provide professional services including **Annual On-Call Offsite/Onsite Inspection**, to the City of Chandler. For any project determined by CITY to be appropriate for this Annual Contract, CITY will issue a delivery order to ANNUAL CONSULTANT, at which time the parties will execute a Project Agreement specifying the cost and completion schedule for that project. **Although CITY anticipates that ANNUAL CONSULTANT will be issued a substantial amount of work, the total cost of work issued to the ANNUAL CONSULTANT by the City of Chandler in any one-year contract term will not exceed One Hundred Ninety Five Thousand Dollars (\$195,000). ANNUAL CONSULTANT is not guaranteed any minimum amount of work nor any jobs at all. ANNUAL CONSULTANT is aware that there is more than one Annual Consultant who has been awarded an Annual Contract for this type of work. CITY reserves the right and will issue delivery orders based on ability of the contractor to meet CITY's work schedule and the availability of trades and expertise in relation to each project.**

1.2 Each task shall be reviewed and approved by CITY to determine acceptable completion. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of each Project Agreement, shall be and remain the property of CITY and shall be delivered to CITY before payment is made to ANNUAL CONSULTANT.

1.3 The ANNUAL CONSULTANT shall not accept any change of scope, or change in contract provisions, unless issued in writing, as a contract amendment and signed by the Contract Administrator.

### 2. CITY REPRESENTATIVE

To provide the professional services required by this Agreement, ANNUAL CONSULTANT shall act under the authority and approval of City Engineer or designee. For each Project a City Representative will be appointed who shall oversee the Project Agreement, assist the ANNUAL CONSULTANT with any necessary information, audit billings, and approve payments. The ANNUAL CONSULTANT shall channel reports and special requests through the City Representative.

### 3. ENGINEER'S KEY PERSONNEL

CITY reserves the right to review and approve ANNUAL CONSULTANT'S staff to be assigned to any project by ANNUAL CONSULTANT during the term of this Agreement.

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4. **FEE SCHEDULE**

- 4.1 CITY shall pay ANNUAL CONSULTANT for each Project an amount not to exceed that specified in each Project Agreement based on the rates shown on the Fee Schedule attached hereto as Exhibit A and incorporated herein by reference.
- 4.2 The cumulative total amount of fees paid to ANNUAL CONSULTANT for all Project Agreements under this Contract shall not exceed the sum of **One Hundred Ninety Five Thousand Dollars (\$195,000)**.
- 4.3 An Application and Certification for Payment form must be submitted to CITY which shall include the following: a clear, detailed invoice reflecting hours being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within a project; any/all backup documentation supporting the above items. Work schedule updates must also be included in the monthly progress payment requests

5. **CONTRACT TERM AND DELIVERY**

- 5.1 The term of this Agreement is one year commencing on the date the agreement is executed by the last party to sign, with CITY reserving the option to extend the agreement for **Four (4)** additional terms of one year each.
- 5.2 Within ten (10) days of the date CITY issues a delivery order or Project Agreement, ANNUAL CONSULTANT shall submit to CITY a schedule indicating the times for starting and completing the various stages of the work, including any Milestones specified in the Project Agreement and as more fully described therein. The schedule shall be satisfactory in form and substance to CITY. Upon acceptance of these schedules by CITY, they shall be incorporated into the Project Agreement.
- 5.3 Time is of the essence. All of the time limits for Milestones, if any, and completion and readiness for final payment as stated in the Project Agreement, are of the essence of both the Project Agreement and this Annual Contract.
- 5.4 Failure of ANNUAL CONSULTANT to perform any covenant or condition contained herein and in the Project Agreement within the time periods specified therein, shall constitute a material breach of both the Project Agreement and this Annual Contract, entitling CITY to terminate either or both the Project Agreement and this Annual Contract, unless ANNUAL CONSULTANT applies for and receives an extension of time in accordance with the procedures set forth herein.

6. **TAXES**

- 6.1 ANNUAL CONSULTANT shall pay all sales, consumer, use, and other similar taxes required to be paid by ANNUAL CONSULTANT in accordance with state and local laws.
- 6.2 ANNUAL CONSULTANT shall be required to obtain a current City of Chandler privilege tax license before the first Project Agreement is issued.

7. **PATENT FEES AND ROYALTIES**

ANNUAL CONSULTANT shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the work or the incorporation in the work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of CITY, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the contract documents. ANNUAL CONSULTANT shall defend, indemnify and hold harmless CITY and anyone directly or indirectly employed by CITY from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work, or resulting from the incorporation in the work of any invention,

design, process, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

**8. STANDARDS OF PERFORMANCE:**

- A. This design contract has been awarded to ANNUAL CONSULTANT based on their proposal that those personnel and consultants listed in Exhibit A attached hereto will perform the portions of the work listed on said Exhibit A. ANNUAL CONSULTANT shall not deviate nor substitute any of these team members without prior written approval by CITY.
- B. ANNUAL CONSULTANT shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CITY shall not be responsible for discovering deficiencies therein. ANNUAL CONSULTANT shall correct any such deficiencies without additional compensation or cost to CITY, except to the extent any such deficiency is directly attributable to deficiencies in CITY-furnished information.
- C. ANNUAL CONSULTANT shall be familiar with CITY's Standard Details and Specifications and other relevant CITY regulations. ANNUAL CONSULTANT shall ensure there are no conflicts among the Contract Documents including, but not limited to, the CITY's General and Supplementary Conditions for Construction Contracts, the plans and specifications prepared by ANNUAL CONSULTANT, any standard details or specifications incorporated therein by reference, and the Construction Contract.
- D. Correction of Mistakes: ANNUAL CONSULTANT shall be responsible for the completeness and accuracy of the work prepared or compiled under ANNUAL CONSULTANT's obligation for this project and shall correct, at ANNUAL CONSULTANT's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by ANNUAL CONSULTANT. The cost of the design necessary to correct those errors attributable to ANNUAL CONSULTANT and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to ANNUAL CONSULTANT and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved ANNUAL CONSULTANT's work shall in no way relieve ANNUAL CONSULTANT of any of its responsibilities.

**9. INDEMNIFICATION**

A. For Professional Liability:

To the fullest extent permitted by law, ANNUAL CONSULTANT shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature related to, arising out of, or alleged to have resulted from the errors, mistakes or omissions relating to professional services by ANNUAL CONSULTANT, its employees, agents, or any tier of subcontractors in the performance of this Contract or of any other person for whose errors, mistakes or omissions ANNUAL CONSULTANT may be legally liable. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC (other than ANNUAL CONSULTANT, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

For all Other Liabilities, Hazards and Exposures:

To the fullest extent permitted by law, ANNUAL CONSULTANT shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or

actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Contract and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from the actions of ANNUAL CONSULTANT and alleged to have been caused in whole or in part by any act or omission of ANNUAL CONSULTANT, anyone directly or indirectly employed by them or anyone for whose acts ANNUAL CONSULTANT may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of ANNUAL CONSULTANT, its agents, employees or representatives to fulfill ANNUAL CONSULTANT's obligations under this Contract. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC, (other than ANNUAL CONSULTANT, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

**B. Consequential Damages:**

The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages and loss of productivity limited to the total value of this contract in dollars as payable by the City of Chandler or twice the amount of aggregate insurance required by this Contract, whichever is greater.

**C. Insurance does not limit liability:**

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.

**10. INSURANCE REQUIREMENTS**

**10.1 General Requirements**

10.1.1 ANNUAL 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.

10.1.2 With the exception of professional liability policies, policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.

10.1.3 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.

10.1.4 If any of the insurance policies are not renewed prior to expiration, payments to the ANNUAL CONSULTANT may be withheld until these requirements have been met, or at the option of the CITY, the CITY may pay the Renewal Premium and withhold such payments from any monies due the ANNUAL CONSULTANT.

10.1.5 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, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

10.1.6 ANNUAL CONSULTANT's insurance shall be primary insurance over any insurance available to the 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.

10.1.7 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 ANNUAL CONSULTANT's acts, errors, mistakes, omissions, work or service.

- 10.1.8 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 ANNUAL CONSULTANT. ANNUAL 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 ANNUAL 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.
- 10.1.9 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.
- 10.1.10 Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the ANNUAL CONSULTANT with reasonable promptness in accordance with the ANNUAL CONSULTANT's information and belief.
- 10.1.11 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 the ANNUAL CONSULTANT until such time as the ANNUAL CONSULTANT shall furnish such additional security covering such claims as may be determined by the CITY.

## 10.2 Proof of Insurance – Certificates of Insurance

- 10.2.1 Prior to commencing work or services under this Agreement, ANNUAL CONSULTANT shall furnish to CITY Certificates of Insurance, issued by ANNUAL 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 the City's Risk Management Division approval of such Certificates.
- 10.2.2 If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- 10.2.3 All Certificates of Insurance shall identify the policies in effect on behalf of ANNUAL 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.
- 10.2.4 CITY reserves the right to request and to receive, within 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 ANNUAL CONSULTANT of any deficiencies in such policies and endorsements, and such receipt shall not relieve ANNUAL CONSULTANT from, or be deemed a waiver of CITY's right to insist on, strict fulfillment of ANNUAL CONSULTANT's obligations under this Agreement.

## 10.3 Required Coverage

Such insurance shall protect ANNUAL CONSULTANT from claims set forth below which may arise out of or result from the operations of ANNUAL CONSULTANT under this Contract and for which ANNUAL CONSULTANT may be legally liable, whether such operations be by the ANNUAL CONSULTANT or by a Sub-ANNUAL CONSULTANT or subcontractor 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.

- 10.3.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- 10.3.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the ANNUAL CONSULTANT's employees;
- 10.3.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the ANNUAL CONSULTANT's employees;
- 10.3.4 Claims for damages insured by usual personal injury liability coverage;
- 10.3.5 Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- 10.3.6 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.
- 10.3.7 Claims for bodily injury or property damage arising out of completed operations;
- 10.3.8 Claims involving contractual liability insurance applicable to the ANNUAL CONSULTANT's obligations under the Indemnification Agreement;
- 10.3.9 Claims for injury or damages in connection with one's professional services;
- 10.3.10 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.

**10.4 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 ENGINEER's operations and products, and completed operations.

**10.5 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 Contractors, 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.

**10.6 Automobile Liability**

ANNUAL 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 the ANNUAL 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 hazards 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.

#### 10.7 **Worker's Compensation and Employer's Liability**

ANNUAL CONSULTANT shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over ANNUAL CONSULTANT's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit. In case any work is subcontracted, ANNUAL CONSULTANT will require the SubConsultant to provide Workers' Compensation and Employer's Liability to at least the same extent as required of ANNUAL CONSULTANT.

If CONTRACTOR is a sole proprietor and has no employees, CITY will accept a "Sole Proprietor Waiver" in lieu of Workers' Compensation insurance.

#### 10.8 **Professional Liability**

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

### 11. **TERMINATION WITHOUT CAUSE**

CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with fifteen- (15) days written notice. In the event of such termination, ANNUAL CONSULTANT shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subconsultants to cease such work. As compensation in full for services performed to the date of such termination, the ANNUAL CONSULTANT shall receive a fee in accordance with the Fee Schedule attached as Exhibit A.

### 12. **TERMINATION WITH CAUSE**

"This Agreement may be terminated by CITY for cause should the ANNUAL CONSULTANT fail to perform any provision of this Agreement, including without limitation, for any of the following reasons:

- (a) ANNUAL CONSULTANT abandons Work;
- (b) ANNUAL CONSULTANT assigns or attempts to assign its rights or obligations under this Agreement or any part thereof to any third-party (without the prior written consent of CITY);
- (c) ANNUAL CONSULTANT is adjudged bankrupt or insolvent, makes a general assignment for the benefit of creditors, has a trustee or receiver appointed for its property, or files a petition to take advantage of any debtor's act;
- (d) ANNUAL CONSULTANT fails or refuses to perform any obligation under the Agreement, or fails to remedy such nonperformance within seven (7) days after its occurrence;
- (e) ANNUAL CONSULTANT fails to comply with any applicable Laws and fails to remedy such nonperformance within seven (7) days after its occurrence;
- (f) ANNUAL CONSULTANT fails to achieve the required dates for performance required pursuant to the Agreement.

The CITY'S right of termination for cause as set forth herein shall be in addition to, and not a limitation of, any and all other remedies available to CITY at law, in equity, or under the terms and provisions of this Agreement."

### 13. **ALTERNATE DISPUTE RESOLUTION**

- 13.1 **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 CONTRACTOR 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.

- 13.2 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 13.3 **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.
- 13.4 **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.

#### 14. **ARBITRATION OF CLAIMS AND DISPUTES**

All arbitration of claims shall be conducted in Chandler, Arizona, in accordance with the Uniform Rules of Procedure for Arbitration adopted by the Arizona Supreme Court (Uniform Rules), except for any rules therein allowing or concerning appeal. Where necessary to allow arbitration to proceed, CITY and ANNUAL CONSULTANT shall execute an Agreement of Reference consistent with the provisions of this Agreement.

#### 15. **MISCELLANEOUS**

- 15.1 No assignment by a party hereto of any rights under or interests in the contract documents will be binding on another party hereto, without the written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Annual Contract or any Project Agreement.
- 15.2 The failure of any party to enforce against another party any provision of this agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this agreement.

#### 16. **OWNERSHIP OF DOCUMENTS**

All documents, including, but not limited to, tracings, drawings, original mylars, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of this Contract are to be, and remain the property of, the CITY. ANNUAL CONSULTANT shall furnish the CITY, upon its request, originals or reproducible of technical specifications and copies of all other documents listed above. ANNUAL CONSULTANT shall endorse, by his professional seal, all plans and Consulting data furnished by him.

#### 17. **RE-USE OF DOCUMENTS**

The parties agree the documents, drawings, specifications and designs, although the property of CITY, are prepared for this specific project and are not intended nor represented by ANNUAL CONSULTANT to be suitable for re-use for any other project. Any reuse without written verification or adaptation by ANNUAL CONSULTANT for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to ANNUAL CONSULTANT.

#### 18. **NO-KICK-BACK CERTIFICATION**

- 18.1 ANNUAL CONSULTANT warrants that no person has been employed or retained to solicit or secure this Contract 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 CONSULTING firm.

18.2 For breach or violation of this warranty, the CITY shall have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

#### 19. CONFLICT OF INTEREST

19.1 ANNUAL 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 Contract.

19.2 Pursuant to A.R.S. Section 38-511, the City may cancel this contract within three (3) years after its execution, without penalty or further obligation by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Chandler is, at any time while the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

#### 20. CONTROLLING LAW

The law of the state of Arizona shall govern this Contract.

#### REQUIRED COMPLIANCE WITH ARIZONA PROCUREMENT LAW

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty (Exhibit B) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "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.

In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Sudan.

21. Cooperative Purchasing

Cooperative Use of Contract. In addition to the City of Chandler and with approval of the ANNUAL CONSULTANT, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at [www.maricopa.gov/materials](http://www.maricopa.gov/materials) and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

22. Notices

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

IN WITNESS WHEREOF, the parties have hereto have executed this contract on \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF CHANDLER:

ANNUAL CONSULTANT:

\_\_\_\_\_  
MAYOR Date

By: [Signature]  
Signature

ADDRESS FOR NOTICE:  
City of Chandler;  
P.O. Box 4008, Mail Stop 407  
Chandler, AZ 85244-4008  
480-782-3307

Print Name: JOHN PATTERSON  
Title: CEO/PRESIDENT - CEI  
ADDRESS FOR NOTICE:  
Mr. John Patterson  
CEI  
10825 N. 25<sup>th</sup> Ave., Ste. 200  
Phoenix, AZ 85029  
Phone: 602-868-5090

APPROVE AS TO FORM:  
\_\_\_\_\_  
City Attorney by: [Signature]

ATTEST: If Corporation

ATTEST:  
\_\_\_\_\_  
City Clerk

SEAL \_\_\_\_\_  
Secretary

**EXHIBIT A  
FEE SCHEDULE**

<b><u>Construction Positions*</u></b>	<b><u>Rate</u></b>	<b><u>OT Rate</u></b>
Project Principal	\$170.16	\$170.16
Construction Tech III	\$84.32	\$126.47
Construction Tech IV - Development Inspector	\$97.81	\$146.71
Construction Tech V - Chief Development Inspector	\$123.56	\$185.35
Resident Engineer	\$156.68	\$156.68

<b><u>Survey Positions</u></b>	
Registered Land Surveyor	\$128.77
Survey Office Technician	\$91.98
Conventional 2-Man Crew	\$141.04
GPS - 1-Man Crew	\$122.64
GPS - 2-Man Crew (Safety Issues)	\$183.96
GPS - 2-Man, 2-Rover Crew	\$233.02
GPS - 3-Man, 3-Rover Crew (larger projects)	\$306.60
Robotic - 1-Man Crew	\$116.51
Robotic - 2-Man Crew (Safety Issues)	\$178.11
Clerical	\$65.49

**\*A 5% annual COLA rate increase will be applicable for future yearly extensions**

**Direct Expenses (Unit Rates)**

Phones	\$80.00	per month
Vehicles: CEI Vehicle Lease	\$1,000.00	per month
Personal Vehicle Allowance	\$20.00	per day
Personal Vehicle Mileage	\$0.485	per mile
Nuclear Gauge	At Cost	Per Invoice

**Subconsultants**

Quality Testing, LLC	Laboratory testing and related services (billed rates same as above)
Tristar Engineering & Management, Inc.	Utilities, CADD support and Construction services (billed rates same as above)

**EXHIBIT B**  
**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.

<b>Project Number/Division:</b>	EN1202-101
<b>Name (as listed in the contract):</b>	CONSULTANT ENGINEERING INC
<b>Street Name and Number:</b>	10625 N. 25TH AVE STE. #200
<b>City:</b> <del>DAY</del>	<b>State:</b> AZ <b>Zip Code:</b> 85029

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; and
3. The contractor has identified all contractor and subcontractor employees who perform work under the contract and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214.

**Signature of Contractor (Employer) or Authorized Designee:**



**Printed Name:** JOHN C. PATTERSON

**Title:** PRESIDENT/CEO-CEI

**Date (month/day/year):** 5/31/12