



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

21

2. Council Meeting Date:

December 12, 2013

TO: MAYOR & COUNCIL

THROUGH: CITY MANAGER

3. Date Prepared: November 20, 2013

4. Requesting Department:
City Manager – Neighborhood Resources

5. SUBJECT: Professional Services Agreement with COMSENSE, Inc. to conduct environmental reviews on projects funded by the U.S. Department of Housing and Urban Development (HUD) in an amount not to exceed \$41,000 with provisions to extend for three additional one-year periods.

6. RECOMMENDATION: Approval of Professional Services Agreement with COMSENSE, Inc., to conduct environmental reviews on projects funded by HUD in an amount not to exceed \$41,000 with provisions to extend for three additional one-year periods.

7. HISTORICAL BACKGROUND/DISCUSSION: City staff in the Community Development Section is charged with implementing programs and projects funded by HUD. HUD requires an environmental review for all projects funded with their dollars. An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The amount requested is based on a 12-month contract period beginning January 1, 2014 with provisions to extend for three additional one-year periods.

8. EVALUATION PROCESS: The City received proposals for the scope of work for this activity from two consultants. Neighborhood Resources staff evaluated the responses received in accordance with HUD and City requirements. COMSENSE was the lowest and responsible bidder and staff is recommending award to COMSENSE, Inc. due to their experience in conducting HUD environmental reviews in the public sector.

9. FINANCIAL IMPLICATIONS: Funding for costs associated with this action will be derived from various projects in Community Development budgets which comprise cost center 4700. All costs associated with the expenditure of funds for these services will be funded by HUD.

10. PROPOSED MOTION: Move to award Professional Services Agreement with COMSENSE, Inc. to conduct environmental reviews on projects funded by HUD in an amount not to exceed \$41,000 with provisions to extend for three additional one-year periods.

APPROVALS

11. Requesting Department

Barbara Bellamy
Barbara Bellamy, CDBG Supervisor

12. Department Head

Jennifer Morrison
Jennifer Morrison, Neighborhood Resources Director

13. Procurement Officer

Raquel McMahon
Raquel McMahon, Purchasing Officer

14. City Manager

Rich Dlugas
Rich Dlugas

**CITY OF CHANDLER
PROFESSIONAL SERVICES AGREEMENT**

Project No. HO4-918-3334

Project Name: Consultant Services for HUD Required Environmental Reviews

THIS AGREEMENT is made and entered into this ____ day of _____, 2013, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and _____, hereinafter referred to as "CONSULTANT".

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

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.** To provide the professional services required by this Agreement. CONSULTANT shall act under the authority and approval of the Neighborhood Resources Director or designee, (the Contract Administrator), who shall oversee the execution of this Agreement, assist the CONSULTANT with any necessary information, audit billings, and approve payments. The CONSULTANT shall channel reports and special requests through the Contract Administrator.
- 1.2. **Key Staff.** This Agreement has been awarded to the CONTRACTOR based on the qualified personnel to perform the services required herein. CONTRACTOR shall, at all times, ensure qualified staff are available for work on this Agreement and provide information on staff assigned to the CITY'S Agreement.
- 1.3. **Scope of Work:** CONTRACTOR shall perform Environmental Assessments and/or Site-Specific Environmental Reviews under federal Department of Housing and Urban Development (HUD) guidelines all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference.

2. GENERAL REQUIREMENTS.

- 2.1 **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the American's with Disabilities Act.
- 2.2 **Licenses.** The CONTRACTOR shall maintain in current status of all Federal, State and local licenses required for the operation of the business conducted by the CONTRACTOR as applicable to this Agreement. .
- 2.3 **Compliance with Applicable Regulations and Laws.** The CONTRACTOR shall comply will all applicable Federal, state and local regulation and laws.

- 2.4 Suspension and/or Debarment.** The CITY may by written notice terminate this Agreement if it determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully been prohibited from participating in any Federal procurement activity, including but limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a Agreement shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify the City.
- 3. Acceptance and Documentation:** Each task shall be reviewed and approved by CITY to determine acceptable completion. All source documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Agreement, shall be and remain the property of CITY and shall be delivered to CITY before final payment is made to CONSULTANT.
- 4. Fee Schedule:** For the services described in paragraph 2 of this Agreement, CITY shall pay CONSULTANT a fee not to exceed the sum of Forty One Thousand dollars (\$41,000) in accordance with the fee schedule attached hereto as Exhibit C and incorporated herein by reference.
- 5. Term:** The base term of the Agreement is 12-months beginning January 1, 2014 with provisions to extend by mutual agreement of the parties for up to three (3) additional successive terms of one year each.
- 6. COOPERATIVE USE OF CONTRACT.** In addition to the City of Chandler and with approval of the CONTRACTOR, 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 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.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

7. TERMINATION:

- 7.1. Termination for Convenience:** CITY reserves the right to terminate this Contract 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.

7.2 Termination for Cause: City may terminate this Contract 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.

7.3. 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 the 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.

8. INSURANCE REQUIREMENTS: CONSULTANT shall provide and maintain the insurance as listed in **Exhibit D** 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 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").

- 10.2. A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 10.3. 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.
- 10.4. 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 verification.
- 10.5. 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.
- 10.6. In accordance with A.R.S. §35-393.06, the Contractor 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 Contractor hereby certifies that the offeror does not have scrutinized business operations in Iran or Sudan.

11. CONFLICT OF INTEREST:

- 11.1. **No Kickback.** CONSULTANT 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. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 11.5. **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.

11.6. 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:
City of Chandler
Neighborhood Resources
P.O. Box 4008, Mail Stop 600
Chandler, AZ 85244-4008
480.782. 4353

In the case of CONSULTANT:
COM SENSE, INC.
Mark Appleby
3863 East Forge Avenue
Mesa, AZ 85206
480-649-8080

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 _____ 2013.

CITY OF CHANDLER

CONSULTANT

Date

By: *Mark C. Appleby*
Title: *President*

APPROVE AS TO FORM

ATTEST: If Corporation

City Attorney *GAB*

Lorita Appleby
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:	HO4-918-3334	
Name (as listed in the contract):	COM SENSE, INC.	
Street Name and Number:	3863 East Forge Avenue	
City: Mesa	State: AZ	Zip Code: 85206

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: Mark Appleby

Title: President

Date (month/day/year): 11/20/13

EXHIBIT B SCOPE OF WORK

CONTRACTOR will perform **Environmental Assessments and/or Site-Specific Environmental Reviews** under federal Department of Housing and Urban Development (HUD) guidelines. The consultants would review projects/document compliance under the National Environmental Policy Act (NEPA), National Historic Preservation Act, Clean Air Act, Clean Water Act, and various other Statutes, Executive Orders and technical/regulatory HUD requirements HUD (e.g. 24 CFR 58, 24 CFR 51, 24 CFR 55).

Contractor Skills and Knowledge

CONTRACTOR shall interpret and apply more than 20 major statutes, Executive Orders and technical/regulatory regulations to the up to 52 environmental criteria as part of the HUD NEPA environmental review process. This includes HUD Environmental Review Regulations, the National Environmental Policy Act, the National Historic Preservation Act, Executive Orders on Floodplain Management, Protection of Wetlands, Airport Clear Zones, Noise Control Act, Clean Air Act, Clean Water Act and regulations on minimizing environmental hazards for HUD-assisted projects.

CONTRACTOR will research and prepare detailed, technical, complex reports and documents; communicate research, findings and conclusions; explaining complex technical environmental information; provide supporting material and documentation; and, produce documents that can withstand public scrutiny.

As assigned, the CONTRACTOR will conduct environmental assessments (EAs) and/or site-specific environmental reviews of City administered HUD-funded projects to determine their impact on the environment and to document compliance with NEPA, HUD environmental review requirements, and related federal laws and authorities. Related HUD NEPA laws include, but are not limited to, those dealing with historic properties, archaeological resources, environmental justice, air quality, endangered species, floodplain impact, noise mitigation, and above-ground explosion/flammability hazards.

Types of environmental services to be performed will include the following:

- Preparation of a HUD Environmental Assessment (EA) document.
- Preparation of a HUD site-specific environmental review document package.

Work to be Performed as Part of an EA

Work will include evaluation of and documentation of compliance and/or identification of mitigation measures in consultation with City of Chandler Community Development staff on the following environmental criteria:

- Historic Preservation (including archaeology)
- Floodplain Management
- Wetlands Protection
- Coastal Zone Management Act
- Sole Source Aquifers
- Endangered Species Act
- Wild and Scenic Rivers Act
- Air Quality
- Farmland Protection Policy Act
- Environmental Justice
- Noise Abatement and Control
- Toxic/Hazardous/Radioactive Materials, Contamination, Chemicals or Gases
- Siting of HUD-Assisted Projects near Hazardous Operations

- Airport Clear Zones and Accident Potential Zones
- Conformance with Comprehensive Plans and Zoning
- Compatibility and Urban Impact
- Slope
- Erosion
- Soil Suitability
- Hazards and Nuisances including Site Safety
- Energy Consumption
- Noise - Contribution to community noise levels
- Air Quality - Effects of ambient air quality on project and contribution to community pollution levels
- Environmental Design - Visual Quality — coherence, diversity, compatible use and scale
- Demographic character changes
- Displacement
- Employment and Income Patterns
- Educational Facilities
- Commercial Facilities
- Health Care
- Social Services
- Solid Waste
- Waste Water
- Storm Water
- Water Supply
- Public Safety (Police, Fire)
- Emergency Medical
- Open Space and Recreation (Open Space, Recreation, Cultural Facilities)
- Transportation
- Water Resources
- Surface Water
- Unique Natural Features and Agricultural Lands
- Vegetation and Wildlife
- Flood Disaster Protection Act
- Coastal Barrier Resources Act/Coastal Barrier Improvement Act
- Airport Runway Clear Zone or Clear Zone Disclosure
- Other environmental criterion per City/project requirements

Work to be performed as part of the EA process may also include the following:

- Project specific calculations to determine noise levels on-site, per HUD standards (ref: <http://portal.hud.gov/hudportal/HUD>)
- On-site assessments, calculations and research of historical and current documents and maps to determine presence and impact of toxic or hazardous substances and operations in proximity to the site. Reliance upon the Environmental Protection Agency's Online Tracking Information System/Enforcement Compliance History Online (OTIS/ECHO) (ref: <http://www.epa-echo.gov/echo/>) is expected.
- Completion of the Federal Emergency Management Agency (FEMA) 24CFR Part 55 8-Step Floodplain assessment document, per HUD standards. The 8-Step public consultation process would be coordinated by the City.
- Consultation with appropriate City staff/specialists.
- Development of project mitigation documents involving archaeological compliance, and possible archaeological monitoring/testing/data recovery
- Document project findings/outcomes in the Environmental Review Record (ERR).

- Development of EAs on an area-wide basis, as defined by the City.
- Review of comments made during public comment periods, review of environmental assessment document relevant to comments, and development of project documents to address comments, if necessary.
- Preparation of summary reports and detailed, documented files.

Please note: Work requested as part of the EA process will not include the following:

- Coordination of NEPA/HUD-required advertising and public consultation process, with the exception of the aforementioned public comments work.

All determinations must be supported by reliable sources/resources and these must be referenced in the appendix to the EA including emails, internet website reference, telephone summaries and other documents. A Finding of No Significant Impact (FONSI) is the desired outcome for all EA-level efforts. Project mitigations to achieve the FONSI outcome are acceptable, and the type of mitigation must be outlined as needed. The Environmental Assessment document is expected to be provided to the City between 45 – 60 calendar days after the initial E.A. assignment to the CONTRACTOR

Work to be Performed as a part of a Site-Specific Environmental Review

CONTRACTOR will complete site-specific environmental reviews (Statutory Worksheet or Appendix A Worksheet), pursuant to HUD's 24CFR Part 58 environmental review regulation and a variety of environmental Statutes, Executive Orders, and regulatory citations, for projects undertaken throughout the city of Chandler. The projects reflect a variety of activities undertaken using HUD funds, including but not limited to: single- and multi-family housing acquisition; public infrastructure improvement; non-residential building acquisition; residential and commercial rehabilitation; residential and commercial demolition; vacant lot acquisition; and, other allowable potentially physically-impacting activities. Work to be performed as part of the site-specific environmental review process will include:

- On-site/in-field windshield survey of proposed site-specific project location, including driving through nearby streets to document surroundings. Digital pictures of project location and surrounding area are expected.
- Through windshield survey of site-specific project location, identification /documentation of nearby visible explosive or flammable substance facilities/containers.
- Using online tracking systems, databases, and maps, including the EPA OTIS/ECHO database, identify visible toxic substances, chemical waste dumps, landfills, industrial sites or any other facilities capable of or currently documented as releasing toxic chemicals, hazardous wastes or radioactive materials at or within a one mile radius of the site-specific project location.
- Identify the project site in relation to FEMA designated Special Flood Hazard Areas.
- Complete an Appendix A site-specific review process worksheet
- When undertaking a Statutory Worksheet site-specific review process, complete the Statutory Worksheet, Level of Review, and Air Quality document package
- When undertaking EA-related site-specific reviews, complete site-specific environmental document

**EXHIBIT C
FEE SCHEDULE**

Environmental Review Type	Fee (includes all hourly fees)
Statutory Worksheet – Site Specific Review	\$580
Appendix A – Site Specific Review	\$310
Full Environmental Assessment (EA) includes FONSI and ROF	\$980
<p>COM SENSE Inc.</p> <p>Hourly Rate:</p> <p>Rate Per Hour (hourly rates would be used when circumstances exist beyond the typical specific review. Field reviewers are available on an as-needed basis but are not typical used on every project.</p>	
Mark Appleby – Primary Owner/Principal	\$55
Robert Kropp – Field Reviewer	\$35
Julie Barrett – Field Reviewer	\$35

**EXHIBIT D
INSURANCE REQUIREMENTS**

Indemnification:

1. **Indemnification.** To the fullest extent permitted by law, CONSULTANT, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONSULTANT, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of CONSULTANT's and subcontractor's employees.

Insurance:

1. General.
 - A. At the same time as execution of this Agreement, the CONSULTANT shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
 - B. The CONSULTANT and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
 - C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
 - D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect CONSULTANT from liabilities that might arise out of the performance of the Agreement services under this Agreement by CONSULTANT, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and the CONSULTANT is free to purchase any additional insurance as may be determined necessary.
 - E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the CONSULTANT from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
 - F. Use of SubContractors: If any work is subcontracted in any way, the CONSULTANT shall execute a written agreement with Subcontractor containing the same

Indemnification Clause and Insurance Requirements as the City requires of the CONSULTANT in this Agreement. The CONSULTANT is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope And Limits Of Insurance. The CONSULTANT shall provide coverage with limits of liability not less than those stated below.
 - A. *Commercial General Liability-Occurrence Form.* CONSULTANT must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
 - B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability.* CONSULTANT must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on CONSULTANT owned, hired, and non-owned vehicles assigned to or used in the performance of the CONSULTANT's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
 - C. *Workers Compensation and Employers Liability Insurance:* CONSULTANT must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONSULTANT employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.
 - D. *Professional Liability.* If the Agreement is the subject of any professional services or work performed by the CONSULTANT, or if the CONSULTANT engages in any professional services or work adjunct or residual to performing the work under this Agreement, the CONSULTANT must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the CONSULTANT, or anyone employed by the CONSULTANT, or anyone whose acts, mistakes, errors and omissions the CONSULTANT is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and the CONSULTANT, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.
3. Additional Policy Provisions Required.
 - A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
 - B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CONSULTANT including the City's general supervision of the CONSULTANT; Products and Completed operations of the CONSULTANT; and automobiles owned, leased, hired, or borrowed by the CONSULTANT.
2. The CONSULTANT's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CONSULTANT even if those limits of liability are in excess of those required by this Agreement.
4. The CONSULTANT's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CONSULTANT and must not contribute to it.
5. The CONSULTANT's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Coverage provided by the CONSULTANT must not be limited to the liability assumed under the indemnification provisions of this Agreement.
7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CONSULTANT for the City.
8. The CONSULTANT, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The CONSULTANT must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the CONSULTANT must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.