



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

1. Agenda Item Number:

**47**

2. Council Meeting Date:

June 14, 2007

**TO: MAYOR & COUNCIL**

**3. Date Prepared:** May 23, 2007

**THROUGH: CITY MANAGER**

**4. Requesting Department:** Management Services

**5. SUBJECT:** Award two-year agreements for System Development Fee Study Consulting services to Red Oak Consulting in an amount not to exceed \$71,795 for year one and \$12,000 for year two for utility fees and to Duncan Associates in an amount not to exceed \$54,360 for year one and \$15,240 for year two for non-utility fees.

**6. RECOMMENDATION:** Recommend awarding two-year agreements for System Development Fee Study Consulting services to Red Oak Consulting in an amount not to exceed \$71,795 for year one and \$12,000 for year two for utility fees and to Duncan Associates in an amount not to exceed \$54,360 for year one and \$15,240 for year two for non-utility fees.

**7. HISTORICAL 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. Since the 2006 update (effective in 2007) was performed internally, consultants should be hired to perform the 2007 update. In the City's ten-year 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).

**8. EVALUATION PROCESS:** The City issued a Request for Proposals for consultants experienced in providing system development fee studies. Twenty-six vendors downloaded the solicitation. Responses were received from BBC Research & Consulting, Duncan Associates, Ralph Andersen & Associates, Red Oak Consulting and TischlerBise. The selection process was conducted in accordance with established City policies and procedures. The evaluation committee included the following: Glenda Shackelford, Procurement Officer; Julie Buel, Senior Financial Analyst; Marian Stanley, Assistant to City Manager; Lexie Rosenfield, Senior Management Assistant; Tyrone Allen, Senior Management Assistant; Daryl Racz, Development Project Administrator; and Rob Barney, Citizen. Two-year contracts with the option to renew for two successive terms of two-year periods were negotiated with the recommended consultants due to their qualifications and experience.

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

<u>Account String</u>	<u>Fund</u>	<u>Fee Type</u>	<u>Year One Amount</u>	<u>Year Two Amount</u>
421.1290.0000.5219.000000	Community Parks	Non-Utility	\$10,872.00	\$3,048.00
422.1290.0000.5219.000000	Neighborhood Parks	Non-Utility	10,872.00	3,048.00
440.1290.0000.5219.000000	Public Buildings	Non-Utility	10,872.00	3,048.00
465.1290.0000.5219.000000	Police	Non-Utility	10,872.00	3,048.00
475.1290.0000.5219.000000	Fire	Non-Utility	10,872.00	3,048.00
603.1290.0000.5219.000000	Water	Utility	17,948.75	3,000.00
604.1290.0000.5219.000000	Water Resources	Utility	17,948.75	3,000.00
606.1290.0000.5219.000000	Reclaimed Water	Utility	17,948.75	3,000.00
614.1290.0000.5219.000000	Wastewater	Utility	17,948.75	3,000.00

**10. PROPOSED MOTION:** Move to award two-year agreements for System Development Fee Study Consulting services to Red Oak Consulting in an amount not to exceed \$71,795 for year one and \$12,000 for year two for utility fees and to Duncan Associates in an amount not to exceed \$54,360 for year one and \$15,240 for year two for non-utility fees; transfer appropriation in the amount of \$54,360 from the non-departmental contingency reserve in 421.1290.0000.5911.000000 in equal amounts to funds 421, 422, 440, 465 and 475; and transfer appropriation in the amount of \$71,795 from the non-departmental contingency reserve in 604.1290.0000.5911.000000 in equal amounts to funds 603, 604, 606 and 614.

**APPROVALS**

**11. Requesting Department**

  
\_\_\_\_\_

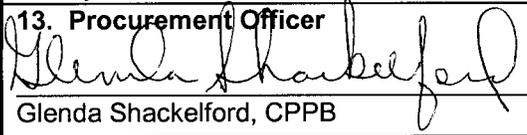
Julie Buelt, Senior Financial Analyst

**12. Department Head**

  
\_\_\_\_\_

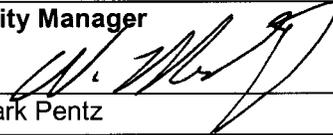
O.D. Burr, Acting Management Services Director

**13. Procurement Officer**

  
\_\_\_\_\_

Glenda Shackelford, CPPB

**14. City Manager**

  
\_\_\_\_\_

W. Mark Pentz

**CITY OF CHANDLER SERVICES AGREEMENT  
SYSTEM DEVELOPMENT FEE STUDY  
AGREEMENT NO. MS7-918-2462**

**THIS AGREEMENT is made and entered into this 14th day of June, 2007, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY," and Red Oak Consulting, a Division of Malcolm Pirnie, Inc. (a Corporation of the State of New York), 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. Key Staff.** This Contract has been awarded to CONSULTANT based partially on the key personnel proposed to perform the services required herein. CONSULTANT shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

**2. SCOPE OF WORK:** CONSULTANT shall provide those services as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference therein.

**2.1. Non-Discrimination.** The CONSULTANT shall comply with State Executive Order No. 99-4 and all other applicable CITY, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

**2.2. Advertising, Publishing and Promotion of Contract.** The CONSULTANT shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.

**2.3. Compliance With Applicable Laws.** CONSULTANT shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.

**2.4. Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONSULTANT in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONSULTANT, its agents, sub-consultants, officers or employees.

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

**3.1. Records.** The CONSULTANT shall retain and shall contractually require each SUBCONSULTANT to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

**3.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, the

CONSULTANT'S or any SUBCONSULTANT'S books and records shall be subject to audit by the CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONSULTANT shall produce a legible copy of any or all such records.

4. **PRICE:** CITY shall pay to CONSULTANT an amount not to exceed Seventy-One Thousand, Seven Hundred Ninety-Five Dollars (\$71,795) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONSULTANT, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.

4.1 **Payment.** A separate invoice shall be issued for each service performed, and no payment will be issued prior to receipt of completion of specified services and receipt of a correct invoice.

4.2 **IRS W9 Form.** In order to receive payment CONSULTANT shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.

5. **TERM:** The term of the Contract is TWO year (s), commencing on June 14, 2007 and terminating on May 31, 2009 unless sooner terminated in accordance with the provisions herein. CITY may extend the contract by mutual agreement of the parties for up to two (2) successive terms of two years each. Additionally, CITY may unilaterally extend the contract up to 31 days.

6. **USE OF THIS CONTRACT:**

6.1 **Right to Use Other Sources.** The Contract is for the sole convenience of the CITY. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONSULTANT.

6.2 **Cooperative Use of Contract.** In addition to the CITY and with approval of the contracted vendor, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. 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.

7. **CITY'S CONTRACTUAL REMEDIES:**

7.1. **Right to Assurance.** If the Contract Administrator, in good faith, has reason to believe that the CONSULTANT does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONSULTANT give a written assurance of intent to perform. Failure by the CONSULTANT to provide written assurance within the number of Days specified in the demand may, at the CITY'S option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

7.2. **Stop Work Order.** The Contract Administrator may, at any time, by written order to the CONSULTANT, require the CONSULTANT to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the CITY after the order is delivered to the CONSULTANT. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONSULTANT shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

7.2.1 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONSULTANT shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

7.3. **Non-exclusive Remedies.** The rights and the remedies of the CITY under this Contract are not

exclusive.

7.4. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.

7.5. **Right of Offset.** The CITY shall be entitled to offset against any sums due CONSULTANT, any expenses or costs incurred by the CITY, or damages assessed by the CITY concerning the CONSULTANT'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

## 8. TERMINATION:

8.1. **Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with 10 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 SUBCONSULTANTS 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 schedule included herein.

8.2. **Termination for Cause.** CITY may, upon written notice, terminate this Agreement for CONSULTANT'S failure to comply with the terms of this Agreement.

8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the CITY is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONSULTANT receives written notice of the cancellation unless the notice specifies a later time. 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.

8.4. **Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONSULTANT or a representative of CONSULTANT to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONSULTANT.

8.5. **Suspension or Debarment.** CITY may, by written notice to the CONSULTANT, immediately terminate this Contract if CITY determines that CONSULTANT has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONSULTANT of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONSULTANT is not currently suspended or debarred. If CONSULTANT becomes suspended or debarred, CONSULTANT shall immediately notify CITY.

- 8.6. **Continuation of Performance Through Termination.** The CONSULTANT shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process set forth in Exhibit D shall be the exclusive means for resolution of claims or disputes and other matters in question between the CITY and the CONSULTANT arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONSULTANT shall defend, indemnify and hold harmless the CITY, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONSULTANT'S work or services. CONSULTANT'S duty to defend, hold harmless and indemnify the CITY, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONSULTANT, anyone directly or indirectly employed by them or anyone for whose acts CONSULTANT may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the CITY. 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.
12. **INSURANCE:** CONSULTANT, at its own expense, shall purchase and maintain insurance of the types and amounts required as listed in Exhibit C attached hereto and incorporated herein by reference. Such insurance must be written by companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
13. **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:** Acting Management Services Director  
**Contact:** O.D. Burr  
**Mailing Address:** PO Box 4008 – MS 609  
**Physical Address:** 55 N Arizona Pl Ste 201  
**City, State, Zip:** Chandler, AZ 85244  
**Phone:** 480-782-2265  
**FAX:** 480-782-2253

**In the case of CONSULTANT**

**Firm Name:** Red Oak Consulting  
**Contact:** Rick Giardino  
**Address:** 4846 E Van Buren Ste 400  
**City, State, Zip:** Phoenix AZ 85008  
**Phone:** 602-241-1770  
**FAX:** 602-231-0131

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.

**14. CONFLICT OF INTEREST:**

- 14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this 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 CONTRACTOR'S proposal to the CITY.
- 14.2. **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 CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. **No Conflict:** CONTRACTOR 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.

**15. GENERAL TERMS:**

- 15.1 **Entire Agreement.** This Agreement, including Exhibits A, B, C and D attached hereto, 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 of each party.
- 15.2 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.3 **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.4 **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the CITY in writing or made unilaterally by the

**CONSULTANT** are violations of the Contract. Any such changes, including unauthorized written **Contract Amendments** shall be void and without effect, and the **CONSULTANT** shall not be entitled to any claim under this Contract based on such changes.

**15.5 Independent Consultant.** The **CONSULTANT** under this Contract is an independent **CONSULTANT**. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

**15.6 No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

**15.7 Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 14th day of June 2007.

CITY OF CHANDLER  
\_\_\_\_\_  
MAYOR

CONSULTANT  
By: \_\_\_\_\_  
Signature

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

SEAL  
ATTEST: If Corporation  
\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Attorney  


CONSULTANT are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONSULTANT shall not be entitled to any claim under this Contract based on such changes.

15.5 **Independent Consultant.** The CONSULTANT under this Contract is an Independent CONSULTANT. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

15.6 **No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

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IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 14th day of June 2007.

CITY OF CHANDLER

CONSULTANT

\_\_\_\_\_  
MAYOR

By: James A. Sully  
Signature

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

SEAL ATTEST: If Corporation  
Richard Q. Wind  
Assistant Secretary

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**SCOPE OF WORK – Year 1 of Contract, CONSULTANT Update**

**CONSULTANT shall prepare a comprehensive update of CITY'S utility system development fees including, but not limited to:**

1. **Reviewing the current methodology used to calculate fee credits, and documenting any recommendations for changes or revisions to this calculation prior to the initial kick-off meeting in case questions arise regarding fee credits. The fee credit calculation methodology should be included in the final written report.**
2. **Assessing for reasonableness the methodology used to determine the growth-related allocation of Capital Improvement Program projects for each of the fee categories included in the study.**
3. **Providing updated information/data to calculate any recommended fee differentials, including documenting the methodology to ensure long range plans adequately address projected future demands.**
4. **Conducting initial kick-off meetings with both internal and external stakeholders to understand the concerns raised during the last internal update. External stakeholders, at a minimum, should include the Home Builders Association of Central Arizona, Arizona Multi-housing Association and Valley Partnership.**
5. **Assisting CITY with preparing any documentation required by Arizona Revised Statutes in order to update system development fees.**
6. **Preparing a draft version of the final report at the same time as the recommended updates to the fees. The draft should be presented in its entirety to CITY to allow time for appropriate CITY review and revision.**
7. **Attending a Council Subcommittee Meeting to present the proposed fee recommendations and obtain feedback.**
8. **Providing twenty (20) copies of the final report to CITY, along with a .pdf version of the final report.**
9. **Attending the Council Study Session for which the Notice of Intent is included as an agenda item in order to conduct a briefing to the Council. Attending, if necessary, the Council Meeting in that same week.**
10. **Facilitating a public meeting with external stakeholders approximately half-way between the Notice of Intent and the Public Hearing.**
11. **Attending the Council Meeting where the Public Hearing is included as an agenda item in order to provide a brief presentation to the Council.**
12. **Attending, if necessary, the Council Study Sessions and Council Meetings required for the introduction and final approval of the ordinance with the updated fee structure.**
13. **Preparing written responses to address questions raised by external stakeholders.**

**EXHIBIT A**  
**SCOPE OF WORK – Year 2 of Contract, CITY Update**

**CONSULTANT shall review CITY'S update to the utility system development fees including, but not limited to:**

- 1. Reviewing draft version(s) of the CITY'S recommended updates to the fees, including performing recalculations of all computations to verify their accuracy.**
- 2. Upon request, attend a meeting with external stakeholders to address methodology questions.**
- 3. Preparing written responses to address methodology questions raised by external stakeholders.**
- 4. Upon request, attending a Council Subcommittee Meeting to explain the methodology used.**
- 5. Upon request, attending the Council Meeting where the Public Hearing is included as an agenda item in order to address methodology questions.**

**EXHIBIT B  
FEE SCHEDULE – Year 1 of CONSULTANT Update**

**Instructions:**

1. Insert additional columns as needed to cover all personnel assigned to the project. Replace "Title" with the title of the person assigned to the contract.
2. Replace "Hourly Rate" with the rate to be charged per hour for the personnel assigned to the project.
3. Indicate the number of hours estimated to be spent on each task. Add any additional tasks you feel are necessary for completion of the project.

	Project Manager	Deputy Project Manager	Quality Control	Financial Analyst	Technical Advisor	Admin	Total Hours	Total Fees
	\$250	\$145	\$180	\$145	\$180	\$80		
<b>Task</b> <i>(Include the number of anticipated trips to be charged to the contract for the task where you see the "#" symbol)</i>								
Project Management	8	12					20	\$3,740
Kick-off Meeting, Customer Data Collection and Analysis (Task 1) (2)	8	2	1	20		4	33	5,180
Identification of Demand Factors/Level of Service (LOS) (Task 2)	2		1	15			18	2,855
Identification of Facility Needs (Task 3)	2		1	20	5		28	4,480
Assess Current Impact Fee Schedule (Task 4)		2	1	15			18	2,645
Evaluate Alternative Fee Methodologies (Task 5)	8		1	20			27	4,580
Calculate Fee Levels (Task 6)	2		8	70			78	11,730
Funding, Cash Flow, Credit Management and Reporting Requirements (Task 7)	2	2	4	40			48	7,310
Prepare Draft and Final Reports (Task 8)	2	10	4	20		4	40	5,880
Meetings/Formal Presentations (Task 9A-E)						8	8	640
Kick-off Meeting with External Stakeholders (Task 9A) (2)	8	8		2			14	2,660
Meet with City Staff to Present Draft Report and Model (Task 9B) (1)	2	4		4			10	1,660
Meet with External Stakeholders to Present Draft Report (Task 9C) (2)	8	8		2			14	2,660
Council Sub-Committee Meeting (Task 9D) (1)	8	2		2			10	2,080
Two Council Study Sessions, Council Meeting for Public Hearing (Task 9E) (5)	18	10		2		4	34	6,560
Training on Model (Task 10)				2			2	280
<b>Total Hours</b>	<b>68</b>	<b>58</b>	<b>19</b>	<b>234</b>	<b>5</b>	<b>20</b>	<b>402</b>	
<b>Total Fees</b>	<b>\$17,000</b>	<b>\$8,120</b>	<b>\$3,420</b>	<b>\$33,930</b>	<b>\$900</b>	<b>\$1,600</b>		<b>\$64,970</b>
Other Expenses <sup>(a)</sup>								\$6,625
Travel Expenses <sup>(b)</sup>	\$3,675	\$3,150						\$6,825
<b>Total Expenses</b>	<b>\$3,675</b>	<b>\$3,150</b>						<b>\$6,825</b>
<b>Total Fees &amp; Expenses</b>	<b>\$20,675</b>	<b>\$11,270</b>	<b>\$3,420</b>	<b>\$33,930</b>	<b>\$900</b>	<b>\$1,600</b>		<b>\$71,795</b>

<sup>(a)</sup> If applicable, state the type of expenses to be included.

<sup>(b)</sup> Includes # trips as detailed in the description of tasks.

Prompt Payment Terms, if any: \_\_\_\_\_

**EXHIBIT B  
FEE SCHEDULE – Year 2 of Contract, CITY Update**

**Instructions:**

1. Insert additional columns as needed to cover all personnel assigned to the project. Replace "Title" with the title of the person assigned to the contract.
2. Replace "Hourly Rate" with the rate to be charged per hour for the personnel assigned to the project.
3. Indicate the number of hours estimated to be spent on each task. Add any additional tasks you feel are necessary for completion of the project.

	Financial Analyst	Quality Control	Title	Total Hours	Total Fees
	\$145	\$180	Hourly Rate		
<b>Task</b> <i>(Include the number of anticipated trips to be charged to the contract for the task where you see the "#" symbol)</i>					
Review Draft Fees prepared by CITY (1)	44	10		54	\$8,180
Review Final Fees prepared by CITY	8	2		10	1,520
External Stakeholder Meeting (1)		5		5	900
Council Meeting (1)		5		5	900
Total Hours	52	22		74	
Total Fees	\$7,540	\$3,960			\$11,500
Other Expenses <sup>(a)</sup>					
Travel Expenses <sup>(b)</sup>	\$500				\$500
Total Expenses	\$500				\$500
<b>Total Fees &amp; Expenses</b>	<b>\$8,040</b>	<b>\$3,960</b>			<b>\$12,000</b>

<sup>(a)</sup> If applicable, state the type of expenses to be included.

<sup>(b)</sup> Includes # trips as detailed in the description of tasks.

Prompt Payment Terms, if any: \_\_\_\_\_

**EXHIBIT C  
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 B++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 "I" "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 \$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, 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.

**EXHIBIT D  
ALTERNATE DISPUTE REQUIREMENTS**

- 1. ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the CITY and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
  - 1.1. Notice.** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as it occurs and not postponed until the end of the Contract nor lumped together with other pending claims.
  - 1.2. Forfeiture.** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.
  - 1.3. CITY Response.** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
  - 1.4. Appeal.** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
  - 1.5. Arbitration.** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
    - A. Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with the CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.

- B. Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
- C. Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
- D. Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.
- F. Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with the CITY.

- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

**CITY OF CHANDLER SERVICES AGREEMENT  
SYSTEM DEVELOPMENT FEE STUDY  
AGREEMENT NO. MS7-918-2482**

THIS AGREEMENT is made and entered into this 14th day of June, 2007, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY," and James Duncan and Associates, Inc. (a Corporation of the State of Texas), 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. **Key Staff.** This Contract has been awarded to CONSULTANT based partially on the key personnel proposed to perform the services required herein. CONSULTANT shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

**2. SCOPE OF WORK:** CONSULTANT shall provide those services as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference therein.

2.1. **Non-Discrimination.** The CONSULTANT shall comply with State Executive Order No. 99-4 and all other applicable CITY, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.2. **Advertising, Publishing and Promotion of Contract.** The CONSULTANT shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.

2.3. **Compliance With Applicable Laws.** CONSULTANT shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.

2.4. **Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONSULTANT in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONSULTANT, its agents, sub-consultants, officers or employees.

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

3.1. **Records.** The CONSULTANT shall retain and shall contractually require each SUBCONSULTANT to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the

CONSULTANT'S or any SUBCONSULTANT'S books and records shall be subject to audit by the CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONSULTANT shall produce a legible copy of any or all such records.

4. **PRICE:** CITY shall pay to CONSULTANT an amount not to exceed Fifty-Four Thousand, Three Hundred Sixty Dollars (\$53,360) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONSULTANT, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.
- 4.1 **Payment.** A separate invoice shall be issued for each service performed, and no payment will be issued prior to receipt of completion of specified services and receipt of a correct invoice.
- 4.2 **IRS W9 Form.** In order to receive payment CONSULTANT shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
5. **TERM:** The term of the Contract is **TWO** year (s), commencing on June 14, 2007 and terminating on May 31, 2009 unless sooner terminated in accordance with the provisions herein. CITY may extend the contract by mutual agreement of the parties for up to two (2) successive terms of two years each. Additionally, CITY may unilaterally extend the contract up to 31 days.
6. **USE OF THIS CONTRACT:**
  - 6.1 **Right to Use Other Sources.** The Contract is for the sole convenience of the CITY. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONSULTANT.
  - 6.2 **Cooperative Use of Contract.** In addition to the CITY and with approval of the contracted vendor, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. 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.
7. **CITY'S CONTRACTUAL REMEDIES:**
  - 7.1. **Right to Assurance.** If the Contract Administrator, in good faith, has reason to believe that the CONSULTANT does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONSULTANT give a written assurance of intent to perform. Failure by the CONSULTANT to provide written assurance within the number of Days specified in the demand may, at the CITY'S option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
  - 7.2. **Stop Work Order.** The Contract Administrator may, at any time, by written order to the CONSULTANT, require the CONSULTANT to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the CITY after the order is delivered to the CONSULTANT. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONSULTANT shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
    - 7.2.1 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONSULTANT shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
  - 7.3. **Non-exclusive Remedies.** The rights and the remedies of the CITY under this Contract are not

exclusive.

7.4. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.

7.5. **Right of Offset.** The CITY shall be entitled to offset against any sums due CONSULTANT, any expenses or costs incurred by the CITY, or damages assessed by the CITY concerning the CONSULTANT'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

**8. TERMINATION:**

8.1. **Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with 10 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 SUBCONSULTANTS 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 schedule included herein.

8.2. **Termination for Cause.** CITY may, upon written notice, terminate this Agreement for CONSULTANT'S failure to comply with the terms of this Agreement.

8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the CITY is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONSULTANT receives written notice of the cancellation unless the notice specifies a later time. 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.

8.4. **Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONSULTANT or a representative of CONSULTANT to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONSULTANT.

8.5. **Suspension or Debarment.** CITY may, by written notice to the CONSULTANT, immediately terminate this Contract if CITY determines that CONSULTANT has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONSULTANT of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONSULTANT is not currently suspended or debarred. If CONSULTANT becomes suspended or debarred, CONSULTANT shall immediately notify CITY.

- 8.6. **Continuation of Performance Through Termination.** The CONSULTANT shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process set forth in Exhibit D shall be the exclusive means for resolution of claims or disputes and other matters in question between the CITY and the CONSULTANT arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONSULTANT shall defend, indemnify and hold harmless the CITY, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONSULTANT'S work or services. CONSULTANT'S duty to defend, hold harmless and indemnify the CITY, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONSULTANT, anyone directly or indirectly employed by them or anyone for whose acts CONSULTANT may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the CITY. 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.
12. **INSURANCE:** CONSULTANT, at its own expense, shall purchase and maintain insurance of the types and amounts required as listed in Exhibit C attached hereto and incorporated herein by reference. Such insurance must be written by companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
13. **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:** Acting Management Services Director  
**Contact:** O.D. Burr  
**Mailing Address:** PO Box 4008 – MS 609  
**Physical Address:** 55 N Arizona Pl Ste 201  
**City, State, Zip:** Chandler, AZ 85244  
**Phone:** 480-782-2265  
**FAX:** 480-782-2253

**In the case of CONSULTANT**

**Firm Name:** Duncan Associates  
**Contact:** James Duncan  
**Address:** 13276 Research Blvd #208  
**City, State, Zip:** Austin, TX 78750  
**Phone:** 512-258-7347  
**FAX:** 512-258-9994

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.

**14. CONFLICT OF INTEREST:**

- 14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this 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 CONTRACTOR'S proposal to the CITY.
- 14.2. **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 CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. **No Conflict:** CONTRACTOR 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.

**15. GENERAL TERMS:**

- 15.1 **Entire Agreement.** This Agreement, including Exhibits A, B, C and D attached hereto, 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.
- 15.2 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.3 **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.4 **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the CITY in writing or made unilaterally by the

CONSULTANT are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONSULTANT shall not be entitled to any claim under this Contract based on such changes.

15.5 Independent Consultant. The CONSULTANT under this Contract is an independent CONSULTANT. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

15.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.7 Authority: Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 14th day of June 2007.

CITY OF CHANDLER

CONSULTANT

\_\_\_\_\_

MAYOR

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

ATTEST:

ATTEST: If Corporation

SEAL

\_\_\_\_\_

City Clerk

\_\_\_\_\_

Secretary

\_\_\_\_\_

City Attorney



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IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 14th day of June 2007.

CITY OF CHANDLER

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

CONSULTANT

By:   
Signature

ATTEST: If Corporation

SEAL

\_\_\_\_\_  
Secretary

**EXHIBIT A**  
**SCOPE OF WORK – Year 1 of Contract, CONSULTANT Update**

**CONSULTANT shall prepare a comprehensive update of CITY'S non-utility system development fees including, but not limited to:**

- 1. Reviewing the current methodology used to calculate fee credits, and documenting any recommendations for changes or revisions to this calculation prior to the initial kick-off meeting in case questions arise regarding fee credits. The fee credit calculation methodology should be included in the final written report.**
- 2. Assessing for reasonableness the methodology used to determine the growth-related allocation of Capital Improvement Program projects for each of the fee categories included in the study.**
- 3. Providing updated information/data to calculate any recommended fee differentials, including documenting the methodology to ensure long range plans adequately address projected future demands.**
- 4. Conducting initial kick-off meetings with both internal and external stakeholders to understand the concerns raised during the last internal update. External stakeholders, at a minimum, should include the Home Builders Association of Central Arizona, Arizona Multi-housing Association and Valley Partnership.**
- 5. Assisting CITY with preparing any documentation required by Arizona Revised Statutes in order to update system development fees.**
- 6. Preparing a draft version of the final report at the same time as the recommended updates to the fees. The draft should be presented in its entirety to CITY to allow time for appropriate CITY review and revision.**
- 7. Attending a Council Subcommittee Meeting to present the proposed fee recommendations and obtain feedback.**
- 8. Providing twenty (20) copies of the final report to CITY, along with a .pdf version of the final report.**
- 9. Attending the Council Study Session for which the Notice of Intent is included as an agenda item in order to conduct a briefing to the Council. Attending, if necessary, the Council Meeting in that same week.**
- 10. Facilitating a public meeting with external stakeholders approximately half-way between the Notice of Intent and the Public Hearing.**
- 11. Attending the Council Meeting where the Public Hearing is included as an agenda item in order to provide a brief presentation to the Council.**
- 12. Attending, if necessary, the Council Study Sessions and Council Meetings required for the introduction and final approval of the ordinance with the updated fee structure.**
- 13. Preparing written responses to address questions raised by external stakeholders.**

**EXHIBIT A**  
**SCOPE OF WORK – Year 2 of Contract, CITY Update**

**CONSULTANT shall review CITY'S update to the non-utility system development fees including, but not limited to:**

1. **Reviewing draft version(s) of the CITY'S recommended updates to the fees, including performing recalculations of all computations to verify their accuracy.**
2. **Upon request, attend a meeting with external stakeholders to address methodology questions.**
3. **Preparing written responses to address methodology questions raised by external stakeholders.**
4. **Upon request, attending a Council Subcommittee Meeting to explain the methodology used.**
5. **Upon request, attending the Council Meeting where the Public Hearing is included as an agenda item in order to address methodology questions.**

**EXHIBIT B  
FEE SCHEDULE – Year 1 of CONSULTANT Update**

**Instructions:**

1. Insert additional columns as needed to cover all personnel assigned to the project. Replace "Title" with the title of the person assigned to the contract.
2. Replace "Hourly Rate" with the rate to be charged per hour for the personnel assigned to the project.
3. Indicate the number of hours estimated to be spent on each task. Add any additional tasks you feel are necessary for completion of the project.

	<b>Principal / Project Manager</b>	<b>Planner</b>	<b>Attorney</b>	<b>Engineer</b>	<b>Total Hours</b>	<b>Total Fees</b>
	\$160	\$120	\$225	\$120		
<b>Task</b> <i>(Include the number of anticipated trips to be charged to the contract for the task where you see the "#" symbol)</i>						
Kick-off Meeting/Data Collection (2)	12	16		8	36	\$4,800
Draft Report	48	120	8	34	210	27,960
Final Report	24	12			36	5,280
Public Participation (6)	72				72	11,520
<b>Total Hours</b>	156	148	8	42	354	
<b>Total Fees</b>	\$24,960	\$17,760	\$1,800	\$5,040		\$49,560
<b>Other Expenses <sup>(a)</sup></b>						
<b>Travel Expenses <sup>(b)</sup></b>	\$4,200	\$600				\$4,800
<b>Total Expenses</b>	\$4,200	\$600				\$4,800
<b>Total Fees &amp; Expenses</b>	\$29,160	\$18,360	\$1,800	\$5,040		\$54,360

<sup>(a)</sup> If applicable, state the type of expenses to be included.

<sup>(b)</sup> Includes # trips as detailed in the description of tasks.

Prompt Payment Terms, if any: \_\_\_\_\_

**EXHIBIT B  
FEE SCHEDULE – Year 2 of Contract, CITY Update**

**Instructions:**

1. Insert additional columns as needed to cover all personnel assigned to the project. Replace "Title" with the title of the person assigned to the contract.
2. Replace "Hourly Rate" with the rate to be charged per hour for the personnel assigned to the project.
3. Indicate the number of hours estimated to be spent on each task. Add any additional tasks you feel are necessary for completion of the project.

	<b>Principal / Project Manager</b>	<b>Planner</b>	<b>Attorney</b>	<b>Engineer</b>	<b>Total Hours</b>	<b>Total Fees</b>
	\$160	\$120	\$225	\$120		
<b>Task</b> <i>(Include the number of anticipated trips to be charged to the contract for the task where you see the "#" symbol)</i>						
Review Draft Fees prepared by CITY	36				36	
Review Final Fees prepared by CITY	12				12	
Community and Council Meetings (3)	36				36	
<b>Total Hours</b>	<b>84</b>				<b>84</b>	
<b>Total Fees</b>	<b>\$13,440</b>					<b>\$13,440</b>
<b>Other Expenses <sup>(a)</sup></b>						
<b>Travel Expenses <sup>(b)</sup></b>	<b>\$1,800</b>					<b>\$1,800</b>
<b>Total Expenses</b>	<b>\$1,800</b>					<b>\$1,800</b>
<b>Total Fees &amp; Expenses</b>	<b>\$15,240</b>					<b>\$15,240</b>

<sup>(a)</sup> If applicable, state the type of expenses to be included.

<sup>(b)</sup> Includes # trips as detailed in the description of tasks.

Prompt Payment Terms, if any: \_\_\_\_\_

**EXHIBIT C  
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 B++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 "I" "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.

**EXHIBIT D**  
**ALTERNATE DISPUTE REQUIREMENTS**

1. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the CITY and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
  - 1.1. **Notice.** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as it occurs and not postponed until the end of the Contract nor lumped together with other pending claims.
  - 1.2. **Forfeiture.** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.
  - 1.3. **CITY Response.** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
  - 1.4. **Appeal.** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
  - 1.5. **Arbitration.** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
    - A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with the CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.

- B. Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
- C. Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
- D. Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.
- F. Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with the CITY.

- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.