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JUN 28 2007



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MEMORANDUM Downtown Redevelopment - Council Memo DT07-031

DATE: JUNE 18, 2007

TO: MAYOR AND CITY COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER 
RICHARD K. MULLIGAN, ECONOMIC DEVELOPMENT DIRECTOR 

FROM: TERI KILLGORE, DOWNTOWN REDEVELOPMENT MANAGER 

SUBJECT: APPROVAL OF CONTRACT WITH ERNST & YOUNG TO PROVIDE
EXTENDED FINANCIAL ANALYSIS SERVICES IN SUPPORT OF
THE SAN MARCOS COMMONS (PHASE II) DEVELOPMENT
AGREEMENT, IN AN AMOUNT NOT TO EXCEED \$16,000

RECOMMENDATION: Staff recommends approval of a contract with Ernst & Young to provide extended financial analysis services in support of the San Marcos Commons (Phase II) Development Agreement, in an amount not to exceed \$16,000.

BACKGROUND/DISCUSSION: In April 2007, the City retained Ernst and Young to conduct an analysis of the cost of construction, appropriate lease rates and purchase prices related to the San Marcos Commons (Phase II) Development Agreement currently being negotiated. The cost of this analysis was \$29,929. This original analysis provided the negotiating team with a strong understanding of future revenue flows, taxes generated, and developer cash flows. At this time, however, staff finds it necessary to have additional financial analysis performed on the value of developer incentives being contemplated for this redevelopment project. Since the additional cost of \$16,000 places the overall contract amount over \$30,000, staff is submitting the attached contract for Council approval. It is anticipated this work will be completed in a timely manner, allowing for the consultant's findings to be shared with Council in Executive Session during the week of July 23rd.

FINANCIAL IMPLICATIONS: The extension of the professional services contract with Ernst & Young is for an amount not to exceed \$16,000. This brings the total cost of professional services to \$45,929. Sufficient funds exist to pay for this work in Account #101-1290-6111-DT0405.101.101.

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PROPOSED MOTION: Approve a contract with Ernst & Young in the amount of \$16,000 to provide extended financial analysis services in support of the San Marcos Commons (Phase II) Development Agreement.



■ Ernst & Young LLP
Ernst & Young Tower
One Renaissance Square
2 North Central Avenue
Suite 2300
Phoenix, Arizona 85004

■ Phone: 602 322 3000
www.ey.com

June 19, 2007

Mr. Richard K. Mulligan, CEcD
Economic Development Director
Office of Economic Development
City of Chandler
P.O. Box 4008, MS 416
Chandler, AZ 85244

Dear Mr. Mulligan:

This letter, together with the attached Exhibits (collectively, this "Agreement"), sets forth the terms and conditions on which Ernst & Young LLP ("E&Y") will perform certain real estate advisory services as described in Exhibit A (collectively, the "Services") for City of Chandler (the "City") in connection with the City's proposed analysis of a proposed commercial redevelopment project in downtown Chandler known as San Marcos Commons II (the "Project").

The Services are advisory in nature. E&Y will perform the Services in accordance with applicable standards established by the American Institute of Certified Public Accountants ("AICPA").

The Services and the information, records, data, advice or recommendations contained in any reports, materials, presentations or other communications, written or otherwise, in draft or final form, provided by E&Y (collectively, "Reports") are intended solely for the information and use of the City's management. Except where compelled by legal process (of which the City shall promptly inform E&Y and tender to E&Y, if E&Y so elects, the defense), where incident to the evaluation and discussion of the Project, including discussions during City Council meetings, or where required by Arizona Public Disclosure laws, the City shall not disclose, orally or in writing, any Reports or any portion, abstract or summary thereof, to any third party without obtaining the prior written consent of E&Y, which approval will include receipt by E&Y of an access letter in a form acceptable to E&Y from such party

E&Y is not providing any services related to Tax Advice, with the exception of sales and use taxes to be generate by the proposed project. No Federal Income Tax Advice is provided in this assignment.

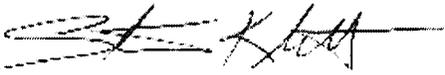
Mr. Richard Mulligan
City of Chandler

June 19, 2007
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This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona applicable to agreements made, and fully to be performed, therein by residents thereof.

E&Y appreciates the opportunity to be of assistance to the City. If this Agreement accurately reflects the terms on which the City has agreed to engage E&Y, please sign a copy on behalf of the City and return it to: Steven Klett, Executive Director, 2 North Central Avenue, Suite 2300, Phoenix, Arizona. You may also fax a copy of the signed authorization to 1-866-345-5158 to get the project started.

**Agreed and accepted:
Ernst & Young LLP**

By: 
Steven Klett

Date: June 19, 2007

Title: Executive Director

City of Chandler

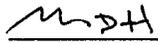
By: _____
Title: _____

Date:

Attest:

City Clerk

Approved as to form:


Chandler City Attorney

Exhibits:

A – Scope of Services, Limitations, Specific Additional Understandings

B – Project Advisory Services Terms & Conditions

C – Dispute Resolution Procedures

D – Insurance Requirements

EXHIBIT A
Scope of Services, Limitations, Specific Additional Understandings

E&Y will assist the City of Chandler with the analysis of a proposed redevelopment project known as San Marcos Commons II. EY has already completed a Phase I and Phase II analysis of the project and will utilize the information obtained in that engagement as a basis for the developer incentive projections. The mixed-use project is located at the southwest corner of Arizona Avenue and Chandler Boulevard in Chandler, Arizona. The approximate 150,000 square foot development will include office and retail uses.

In performing the Services, E&Y shall act under the authority and approval of Richard Mulligan or designee, (the Contract Administrator), who shall oversee the execution of this Agreement, assist E&Y with any necessary information, audit billings, and approve payments. E&Y shall channel reports and special request through the Contract Administrator.

The E&Y key professionals assigned to perform the services are: Steven Klett, Tomas Hammarstrom, Zach Pendley, Valentine Hernandez and Quinn Boortz. The City reserves the right to review and approve any/all changes to E&Y's key professionals assigned to perform the Services during the term of this Agreement.

Phase III- Developer Incentives Analysis

- Meet with you to get a current understanding of the project and the most recent developer's proposal
- Read the latest Memorandum of Understanding from Desert Viking Properties regarding the Subject project
- Estimate potential ad valorem property taxes and GPLET over 25 and 50-year periods for the Subject development
- Verify with City representatives, the incentives to be analyzed
- Prepare a net present value cash flow analysis over a 50-year period of the anticipated incentives provided to the Developer based on the Developer's initial offer and the City's initial response, which may include:
 - GPLET benefits (8 year abatement, remainder at GPLET rates)
 - Below market land lease payments, including any land purchase options
- Prepare a report summarizing our findings
- Present findings or attend a city council meeting or executive session to answer questions (2 hours)

EXHIBIT B
Project Advisory Services
Terms & Conditions

I. Independent Contractor; Certain Services.

A. E&Y will provide the Services to the City as an independent contractor. Nothing contained in this Agreement shall create an employment or principal-agent relationship or joint venture between E&Y and the City. Neither party shall have the right, power or authority to obligate or bind the other in any manner whatsoever. From time to time, non-CPA personnel, and contractors to E&Y or other E&Y Entities, may participate in the performance of the Services.

B. E&Y will not, in connection with the performance of the Services or otherwise, (i) act as a broker for the sale of any securities, (ii) solicit either the City or potential buyers to engage in any Project, or (iii) act as a negotiator of a Project. E&Y will not render any opinion as to the fairness or advisability of the Project or any other Project.

C. E&Y will not render an attestation or assurance report or opinion under this Agreement, nor will the Services constitute (i) an audit, review or examination of financial statements in accordance with generally accepted auditing standards, (ii) an examination of prospective financial statements in accordance with standards established by the AICPA or (iii) a review to detect fraud or illegal acts. The Services will not include preparation of Reports or Tax Advice addressing the effectiveness of internal controls over financial reporting under Section 404 of the Sarbanes-Oxley Act, nor will the Services include any procedures to test compliance with the laws or regulations of any jurisdiction. None of the Services or any Reports will constitute any legal opinion or advice.

II. Unexpected Events. If changes to the scope or timing of any Services are required because of a change in applicable law or professional requirements or events beyond a party's reasonable control, but not involving its fault or negligence (any of which, a "Change"), the parties agree to adjust the fees for, or the timing of, the Services appropriately and, if necessary, the City will obtain Audit Committee approval of such adjustments. Each party shall be excused from default or delay in the performance of its obligations under this Agreement (other than payment obligations) to the extent caused by a Change.

III. Information. E&Y will assume no responsibility for, and will make no representation or warranty with respect to, the accuracy or completeness of information provided by or on behalf of the City or the Target. The Reports and Tax Advice shall be based solely upon such data and information furnished by or on behalf of the City or the Target, on which E&Y may rely, notwithstanding any agreement to the contrary between the City and the Target. E&Y will not evaluate, nor will it have any responsibility to verify independently, the sufficiency of such data and information for the City's purposes and E&Y makes no representation or warranty with respect to the sufficiency for the City's purposes of any procedures performed by E&Y as part of the Services.

Agreement. E&Y retains all right to use its knowledge, experience and know-how, including the Technical Elements, in providing services to other clients.

B. To perform the Services, E&Y may (and may, subject to additional terms and conditions, including license agreements, permit authorized representatives of the City to) utilize, certain software and collaborative tools, including PM Toolkit and QuickPlace® (collectively, the "Engagement Tools"). The City shall not, and shall not permit third parties to, copy or modify any Engagement Tools, nor shall it decompile, reverse engineer, or in any way derive any source code from, or create any derivative work of, any Engagement Tools.

THE ENGAGEMENT TOOLS ARE PROVIDED "AS IS," AND NONE OF E&Y OR ANY OTHER PARTY INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF ANY ENGAGEMENT TOOL MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ENGAGEMENT TOOL OR TITLE THERETO, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, OR ANY WARRANTY THAT THE OPERATION OF ANY ENGAGEMENT TOOL WILL BE UNINTERRUPTED, ERROR FREE OR THAT IT WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE USED BY THE CITY. E&Y MAKES NO COMMITMENT TO SUPPORT, MAINTAIN OR UPGRADE ANY ENGAGEMENT TOOL. THE CITY ASSUMES SOLE RESPONSIBILITY FOR THE USE OF, AND RESULTS OBTAINED FROM, ANY ENGAGEMENT TOOL.

C. Any use of Engagement Tools by or on behalf of the City is not a substitute for any documentation or system of records created or maintained pursuant to law, including, without limitation, Internal Revenue Code Section 6001. The City shall be solely responsible for maintaining separate copies of any documentation it inputs into any Engagement Tool.

D. E&Y shall own all working papers prepared by it to document, in accordance with E&Y policy and professional requirements, performance of the Services. E&Y may retain, in confidence, copies of all Reports and Tax Advice and other documents prepared by it.

E. Subject to the restrictions on use and distribution of Reports contained in this Agreement, and to E&Y's rights to its Technical Elements and working papers as specified above, the final Report when delivered to the City shall be and remain the property of City.

VII. Confidentiality.

A. Except as otherwise provided in this Agreement, without the prior written consent of the other party, neither party shall disclose Confidential Information (as defined below) of the other received in connection with the performance of the Services. The recipient shall use the same degree of care that it uses to protect its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the disclosing party. Neither party shall have any obligations under this Section VII(A) with respect to any

information that (i) is, at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the recipient in violation of this Agreement, (ii) is subsequently learned from a third party that, to the knowledge of the recipient, is not under an obligation of confidentiality to the disclosing party, (iii) was known to the recipient at the time of disclosure, as can be demonstrated by contemporaneous written evidence, (iv) is generated independently by the recipient without reference to the Confidential Information of the disclosing party, as can be demonstrated by contemporaneous written evidence, or (v) is disclosed pursuant to applicable law, subpoena, other legal process or professional requirements, or in connection with the enforcement of the recipient's rights under this Agreement.

B. For purposes of this Agreement, Confidential Information shall mean proprietary information relating to the business, operations, methodologies, technologies, personnel, vendors, financial condition or procedures of a party that is not generally known to the public and that, under all of the circumstances, ought reasonably to be treated as confidential and/or proprietary.

C. To the extent that information obtained from the City is protected health information pursuant to the Health Insurance Portability and Accountability Act (as amended from time to time, "HIPAA"), this Agreement shall be deemed to incorporate all terms that HIPAA requires to be included in a business associate contract relating to such information.

D. Notwithstanding anything contained herein to the contrary, E&Y may disclose the City's Confidential Information, including tax return information, to E&Y Entities for the purpose of rendering the Services and any other services heretofore or hereafter requested by the City. Personnel working under E&Y's supervision are required to observe its policies concerning confidential client information, and E&Y employs security systems designed to protect against unauthorized access and use of confidential information.

E. Notwithstanding anything contained herein to the contrary, E&Y may transmit information to the City or its representatives by e-mail, over the Internet and any breach of confidentiality that occurs thereby shall not constitute a breach of E&Y's obligations under this Section VII.

F. The City will not, and will not permit others to, quote or refer to the Reports, any portion, summary or abstract thereof, or to E&Y, in any document filed or distributed in connection with (i) a purchase or sale of securities to which the United States or state securities laws ("Securities Laws") are applicable or (ii) periodic reporting obligations under Securities Laws. The City will not contend that any provisions of Securities Laws could invalidate any provision of this Agreement.

VIII. Term; Termination; Survival. This Agreement shall commence on the date hereof and shall terminate upon completion of the Services, unless earlier terminated as set forth below. Either party may terminate this Agreement upon written notice if the other party breaches any of its material obligations hereunder and such breach is not cured within 15 days following receipt of written notice thereof. E&Y may terminate this Agreement upon written notice to the City if (A) delays due to Changes aggregate more than 30 days or (B) E&Y reasonably determines that it can no longer

provide the Services in accordance with applicable professional obligations. The City shall pay for work-in-progress, completed Services and expenses incurred by E&Y through the effective date of any termination. The provisions of this Agreement that give the parties rights beyond its termination will survive any such termination, provided, that the parties' obligations under Section VII shall survive for a period of three years.

IX. Payment. The City's obligation to pay E&Y's fees and expenses is not contingent upon the results of the Services or the consummation of the Project. If E&Y is required by government regulation, subpoena, or other legal process to produce documents or personnel as witnesses with respect to the Services or this Agreement, the City shall, so long as E&Y is not a party to the proceeding in which the information is sought, reimburse E&Y for its professional time and expenses, as well as reasonable attorneys' fees and expenses, including the allocable cost of in-house counsel, incurred in responding to such requests.

X. Non-Solicitation of Personnel. The City shall not, during the term of this Agreement and for 12 months following its termination for any reason, solicit for employment, or hire, any E&Y personnel involved in the performance of the Services, except as otherwise agreed in writing by E&Y, provided, that the City shall not breach its obligation hereunder by generally advertising available positions or hiring E&Y personnel who either respond to such advertisements or who come to the City on their own initiative without direct or indirect encouragement from the City.

XI. Use of Names. Except as expressly permitted by this Agreement, neither party shall use publicly the other party's name, trademark, service mark or logo in connection with the Services or any of the Reports without the prior written consent of such other party. Notwithstanding anything contained herein to the contrary, after this Agreement has terminated for any reason, E&Y may disclose to present or prospective clients, or otherwise in its marketing materials, that it has performed the Services for the City, and may use the City's name and trademark solely for that purpose, in accordance with applicable professional obligations. E&Y may use the City's name, trademark, service mark and logo as reasonably necessary to perform the Services and in correspondence, including proposals, from E&Y to the City.

XII. 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 the City:
City of Chandler

Purchasing Division
P.O. Box 4008, Mail Stop 901
Chandler, AZ 85244-4408
480.782.2400

In the case of E&Y:

Ernst & Young Tower
One Renaissance Square
North Central Avenue
Suite 2300
Phoenix, Arizona 85004

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.

XIII. Insurance Requirements. E&Y shall provide and maintain the insurance as listed in Exhibit D attached hereto and made a part hereof by reference.

XII. Miscellaneous.

A. This Agreement constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

. If any portion of this Agreement is held to be void, invalid or otherwise unenforceable, in whole or part, the other provisions shall remain in full force and effect. This Agreement may be executed in counterparts, any one of which need not contain the signature of more than one party, but all of which, together, shall comprise one and the same agreement.

B. None of a party's rights, obligations or claims under or with respect to the Services or this Agreement may be assigned, in whole or in part, by such party without the prior written consent of the other party, provided, that E&Y may assign any of its rights or obligations under this Agreement to, and may perform the Services together with, an affiliate of E&Y or any other E&Y Entity. The provisions of this Agreement shall operate for the benefit of, and may be enforced by, any assignee or subcontractor that is providing any of the Services as permitted hereby.

C. Notwithstanding the parties' agreement to arbitrate as set forth in this Agreement, either party may bring a claim limited exclusively to injunctive relief to enforce its rights with respect to the use or protection of (i) its confidential or proprietary information or material, (ii) its names, trademarks, service marks or logos, or (iii) the Reports, as applicable, solely in the state or federal courts located in the State of New York, County of New York. The parties consent to the personal jurisdiction thereof and to sole venue therein only for such purposes.

D. The City represents and warrants to E&Y that the execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate or other applicable entity action and the person signing this Agreement is expressly authorized to execute it on behalf of, and to bind, the City.

XIII. Tax Services. E&Y has no obligation to keep the City apprised of any legal developments, including tax law developments, relating to the Services after they have been completed. The City is responsible for all decisions on all tax accounting matters and procedures, internal controls and the calculation of its tax provision and the effective tax rate.

XIV. Real Estate Services.

A. Any report will be based on facts as E&Y knows them, estimates, assumptions and other information developed from E&Y's research of the market, knowledge of the industry and meetings with the City or its advisors during which E&Y is provided with certain information. The sources of information and basis of the estimates and assumptions will be stated in the report. All direct and indirect information supplied by the City, its agents and assigns concerning the engagement and the underlying properties will be assumed to be true, accurate and complete. Information identified as supplied or prepared by others will be believed to be reliable; however, E&Y will perform no procedures to evaluate the reliability or completeness of the information obtained.

B. Any financial analyses to be contained in the workpapers or report are not considered to be forecasts or projections as these terms are defined by the American Institute of Certified Public Accountants. Rather, they are used in the sense contemplated by the Uniform Standards of Professional Appraisal Practice (USPAP). As used in any analysis in this engagement and any report that follows, terms such as "project", "projections", or "forecast" relate to broad and generally perceived expectations of future events or market conditions. All such estimates and assumptions are inherently subject to uncertainty and variation depending on the unfolding of future events, which cannot be accurately foreseen.

C. E&Y's estimates will be based on general economic conditions as they exist on the date of the analysis and recommendation and will not include an estimate of the potential of any sudden or sharp rise or decline in general economic conditions. Events or Projects that may occur subsequent to the effective date of any report will not be considered. Consequently, E&Y does not represent these estimates as results that will be achieved. Actual results achieved may vary materially from those presented. E&Y will not be responsible for updating or revising this report for the effects of such subsequent events.

D. No architectural or engineering study, soil or subsoil study, property survey, or environmental investigation will be made and no liability is assumed in connection with such matters. The scope of E&Y's work will not include property appraisal in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).

E. The workpapers and report may be subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

EXHIBIT C
Dispute Resolution Procedures

Mediation

A party shall submit a dispute to mediation by written notice to the other party or parties. The mediator shall be selected by the parties. If the parties cannot agree on a mediator, the International Institute for Conflict Prevention and Resolution (“CPR”) shall designate a mediator at the request of a party. Any mediator must be acceptable to all parties.

The mediator shall conduct the mediation as he/she determines, with the agreement of the parties. The parties shall discuss their differences in good faith and attempt, with the mediator’s assistance, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. The mediation proceedings shall not be recorded or transcribed.

Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator.

If the parties have not resolved a dispute within 90 days after written notice beginning mediation (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute shall be settled by arbitration. In addition, if a party initiates litigation, arbitration, or other binding dispute resolution process without initiating mediation, or before the mediation process has terminated, an opposing party may deem the mediation requirement to have been waived and may proceed with arbitration.

Arbitration

The arbitration will be conducted in accordance with the procedures in this document and the CPR Rules for Non-Administered Arbitration (“Rules”) as in effect on the date of the Agreement, or such other rules and procedures as the parties may agree. In the event of a conflict, the provisions of this document will control.

The arbitration will be conducted before a panel of three arbitrators, to be selected in accordance with the screened selection process provided in the Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of any of these procedures, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. No potential arbitrator may be appointed unless he or she has agreed in writing to these procedures.

The arbitration panel shall have no power to award non-monetary or equitable relief of any sort or to make an award or impose a remedy that (i) is inconsistent with the agreement to which these procedures are attached or any other agreement relevant to the dispute, or (ii) could not be made or imposed by a court deciding the matter in the same jurisdiction.

Discovery shall be permitted in connection with the arbitration only to the extent, if any, expressly authorized by the arbitration panel upon a showing of substantial need by the party seeking discovery.

All aspects of the arbitration shall be treated as confidential. The parties and the arbitration panel may disclose the existence, content or results of the arbitration only in accordance with the Rules or applicable professional standards. Before making any such disclosure, a party shall give written notice to all other parties and shall afford them a reasonable opportunity to protect their interests, except to the extent such disclosure is necessary to comply with applicable law, regulatory requirements or professional standards.

The result of the arbitration shall be binding on the parties, and judgment on the arbitration award may be entered in any court having jurisdiction.

EXHIBIT D
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 the 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 the CONSULTANT may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the 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, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
6. CONSULTANT'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
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 to the extent arising out of CONSULTANT'S sole negligence.
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 the CONSULTANT with reasonable promptness in accordance with the 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 the CONSULTANT until such time as the CONSULTANT shall furnish such additional security covering such claims as may be determined by the 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 the 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 the City of Chandler 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 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 the CONSULTANT or by a Sub-consultant or 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 the CONSULTANT'S employees;
4. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the 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 the 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 CONSULTANT'S, 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 the CONSULTANT'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

C.2.4 Worker's 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 DESIGN CONSULTANT, or any person employed by CONSULTANT, with a claims made policy limit of not less than \$1,000,000.