



**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. CA08-055**

1. Agenda Item Number:
16

2. Council Meeting Date:
November 8, 2007

TO: MAYOR & COUNCIL

3. Date Prepared: October 19, 2007

THROUGH: CITY MANAGER

4. Requesting Department: Community Services

5. SUBJECT: Award an annual contract for engineering services to J2 Engineering and Environmental Design, LLC for park design services, Project No. EN0716-101, and award a project agreement for the design of Mesquite Groves Park, Project No. PR0804-201.

6. RECOMMENDATION: Staff recommends that Council award an annual contract for engineering services to J2 Engineering and Environmental Design, LLC for park design services, Project No. EN0716-101, in an amount not to exceed \$2,000,000 for the first year with the option for the City to extend the agreement for four additional terms of one-year each and award a project agreement for the design of Mesquite Groves Park, Project No. PR0804-201, in an amount not to exceed \$1,211,205.70 under the annual agreement.

7. BACKGROUND/DISCUSSION: The 2007-2012 Capital Improvement Program approved by the City Council for development of parks and recreational facilities will require contracts for design services for multiple projects including community parks, neighborhood parks, and regional park improvements. In 2002, the City of Chandler purchased 100 acres on the northwest corner of Val Vista Drive and Riggs Road for the development of a future community park. With the population and development in southeast Chandler steadily increasing, additional recreational facilities are needed. Funding is included in the current fiscal year for design of approximately 94 acres of the Mesquite Groves Park site. The development of that acreage is scheduled for FY 2008/09. The other six acres of the Mesquite Groves Park site is currently being developed as an aquatic complex.

Community parks provide more specialized and elaborate facilities such as lighted sports fields, group picnic pavilions, restrooms, play areas and fishing lakes. The Community Services Department has established a series of community park service zones as a means of assuring equitable distribution of community parks throughout the City.

8. EVALUATION: The consultant selection process was conducted in accordance with established City policies and procedures. On July 24, 2007, staff received statements of qualifications from twenty firms to provide park and park facility design services. The selection committee reviewed the qualifications and selected three firms for recommendation of contract award. The selection committee consisted of the following members:

Chris Lamm, Project Manager
Don Tolle, Park Planning Superintendent
Mickey Ohland, Park Development & Operations Manager
Jason Marie, P.E.
John Irvine, Resident

Staff recommends the award of this contract and project agreement to J2 Engineering and Environmental Design, LLC for the design of Mesquite Groves Park, Project No. PR0804-201 based on suitability for the specific project, expertise and experience on similar projects, and availability. Also included in the ranking of the first five firms were Gavan and Barker, Inc., LLC, Olsson Associates, Logan Simpson Design Inc. and EPG, Inc.

9. FINANCIAL IMPLICATIONS:

Cost: \$1,211,205.70

Savings: N/A

Long Term Costs: N/A

Fund Source:

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
421.4580.0000.6611.8PR396	Community Park Impact Fees	Mesquite Groves Park	FY 07/08	\$1,211,205.70

10. PROPOSED MOTION: Move that Council award an annual contract to J2 Engineering and Environmental Design, LLC for and design services for parks and park facilities, Project No. EN0716-101, in an amount not to exceed \$2,000,000 for the first year with the option for the City to extend the agreement for four additional terms of one-year each and award a project agreement for the design of Mesquite Groves Park, Project No. PR0804-201, in an amount not to exceed \$1,211,205.70 under the annual agreement, and authorize the Mayor to sign the contract documents.

ATTACHMENTS: Location Map

APPROVALS

11. Requesting Department



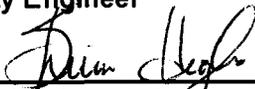
Mickey Ohland, Park Development and Operations Manager

13. Department Head



Mark M. Eynatten, Community Services Director

12. City Engineer



Sheina Hughes, Acting/Assistant Public Works Director/City Engineer

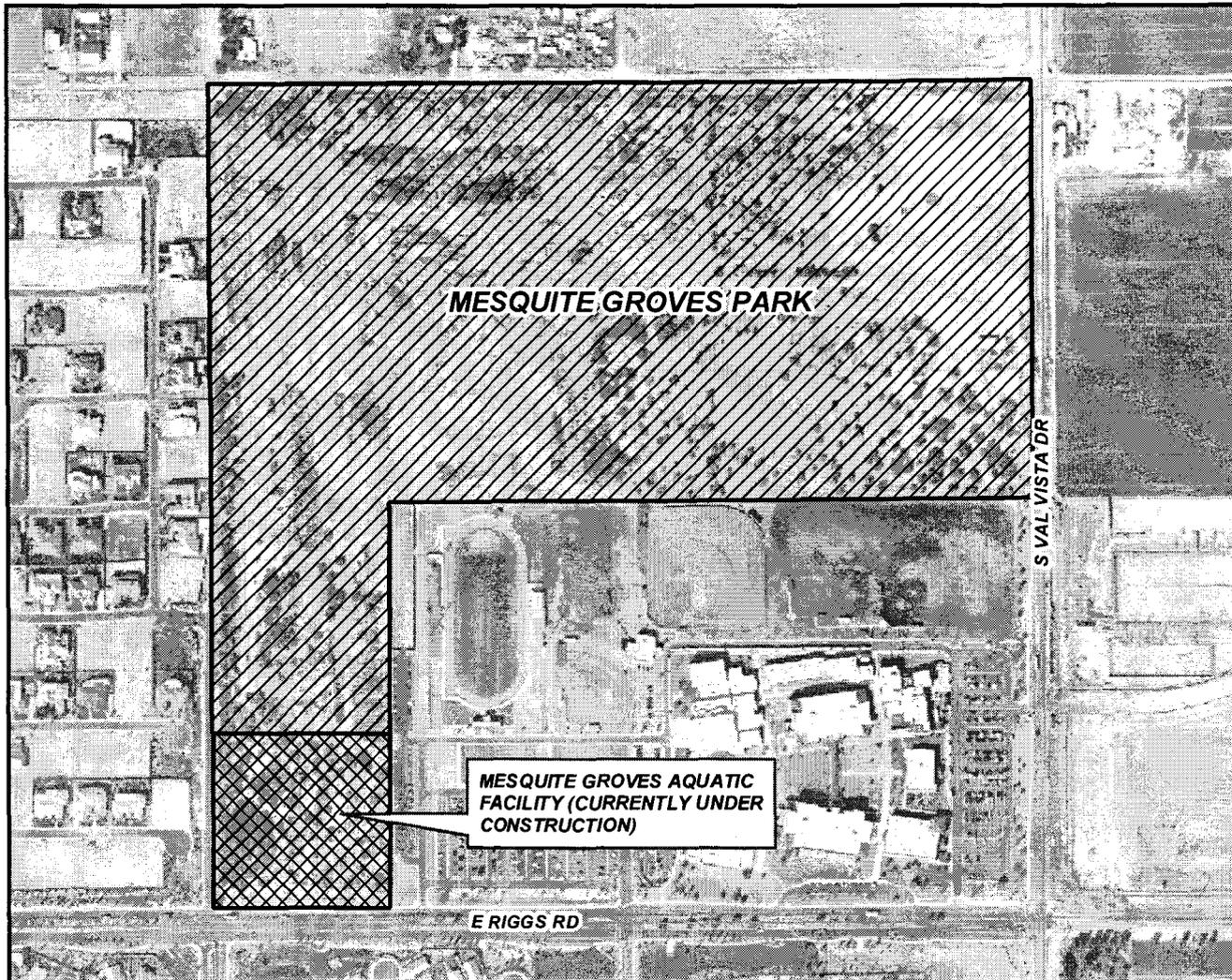
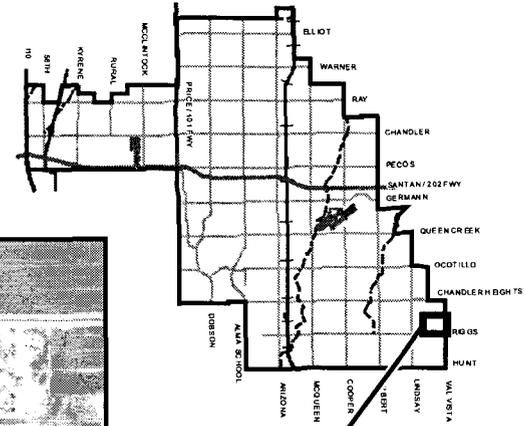
14. City Manager



W. Mark Pentz



MESQUITE GROVES PARK PROJECT NO. PR0804-201



MEMO NO. CA08-055

-  MESQUITE GROVES PARK
-  MESQUITE GROVES AQUATIC FACILITY



ANNUAL CONTRACT FOR ENGINEERING SERVICES

PROJECT NO: EN0716-101
PROJECT NAME: Annual Park Design

This AGREEMENT is made this _____ day of _____, 2007, by and between the City of Chandler, a municipal corporation (hereinafter referred to as "CITY"), and **J2 Engineering & Environmental Design, LLC, a limited liability company licensed to do business in Arizona** (hereinafter referred to as "ENGINEER").

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

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

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

1 DESCRIPTION OF WORK

- 1.1 This is an indefinite quantity and indefinite delivery Annual Contract to provide professional services including, but not limited to civil site improvements, landscape and irrigation, hardscape features such as armadas, walks and trails, playgrounds, and sports courts. As well, other park amenities, as appropriate, for parks ranging from 5-100 acres in size. Utility coordination and relocation assistance, surveying and real estate acquisition support, to the City of Chandler. For any project determined by CITY to be appropriate for this Annual Contract, CITY will issue a delivery order to ENGINEER, at which time the parties will execute a Project Agreement specifying the cost and completion schedule for that project. **Although CITY anticipates that ENGINEER will be issued a substantial amount of work, the total cost of work issued to the ENGINEER by the City of Chandler in any one-year contract term will not exceed Two Million Dollars (\$2,000,000). ENGINEER is not guaranteed any minimum amount of work nor any jobs at all. ENGINEER is aware that there is more than one Engineer who has been awarded an Annual Contract for this type of work. CITY reserves the right and will issue delivery orders based on ability of the contractor to meet CITY's work schedule and the availability of trades and expertise in relation to each project.**
- 1.2 Each task shall be reviewed and approved by CITY to determine acceptable completion. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of each Project Agreement, shall be and remain the property of CITY and shall be delivered to CITY before payment is made to ENGINEER.
- 1.3 The ENGINEER shall not accept any change of scope, or change in contract provisions, unless issued in writing, as a contract amendment and signed by the Contract Administrator.

2 CITY REPRESENTATIVE

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

3 ENGINEER'S KEY PERSONNEL

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

4 FEE SCHEDULE

- 4.1 CITY shall pay ENGINEER for each Project an amount not to exceed that specified in each Project Agreement based on the rates shown on the Fee Schedule attached hereto as Exhibit A and incorporated herein by reference.
- 4.2 The cumulative total amount of fees paid to ENGINEER for all Project Agreements under this Contract shall not exceed the sum of **Two Million Dollars (\$2,000,000)**.
- 4.3 An Application and Certification for Payment form must be submitted to CITY which shall include the following: a clear, detailed invoice reflecting hours being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within a project; any/all backup documentation supporting the above items. Work schedule updates must also be included in the monthly progress payment requests

5 CONTRACT TERM AND DELIVERY

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

6 TAXES

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

7 PATENT FEES AND ROYALTIES

ENGINEER shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the work or the incorporation in the work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of CITY, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the contract documents. ENGINEER shall defend, indemnify and hold harmless CITY and anyone directly or indirectly employed by CITY from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work, or resulting from the incorporation in the work of any invention, design, process, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

8. STANDARDS OF PERFORMANCE:

A. This design contract has been awarded to ENGINEER based on their proposal that those personnel and consultants listed in Exhibit A attached hereto will perform the portions of the work listed on said Exhibit A. ENGINEER shall not deviate nor substitute any of these team members without prior written approval by CITY.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CITY shall not be responsible for discovering deficiencies therein. ENGINEER shall correct any such deficiencies without additional compensation or cost to CITY, except to the extent any such deficiency is directly attributable to deficiencies in CITY-furnished information.

C. ENGINEER shall be familiar with CITY's Standard Details and Specifications and other relevant CITY regulations. ENGINEER shall insure there are no conflicts among the Contract Documents including, but not limited to, the CITY's General and Supplementary Conditions for Construction Contracts, the plans and specifications prepared by ENGINEER, any standard details or specifications incorporated therein by reference, and the Construction Contract.

D. Correction of Mistakes: ENGINEER shall be responsible for the completeness and accuracy of the work prepared or compiled under ENGINEER's obligation for this project and shall correct, at ENGINEER's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by ENGINEER. The cost of the design necessary to correct those errors attributable to ENGINEER and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to ENGINEER and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved ENGINEER's work shall in no way relieve ENGINEER of any of its responsibilities.

9 INDEMNIFICATION

A. For Professional Liability:

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

For all Other Liabilities, Hazards and Exposures:

To the fullest extent permitted by law, ENGINEER shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Contract and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from the actions of ENGINEER and alleged to have been caused in whole or in part by any act or omission of ENGINEER, anyone directly or indirectly employed by them or anyone for whose acts ENGINEER may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of ENGINEER, its agents, employees or representatives to fulfill ENGINEER's obligations under this Contract. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the

extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC, (other than ENGINEER, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

B. Consequential Damages:

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

C. Insurance does not limit liability:

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

10 INSURANCE REQUIREMENTS

10.1 General Requirements

- 10.1.1 ENGINEER, 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.
- 10.1.2 Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- 10.1.3 All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- 10.1.4 If any of the insurance policies are not renewed prior to expiration, payments to the ENGINEER 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 ENGINEER.
- 10.1.5 All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- 10.1.6 ENGINEER's insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- 10.1.7 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of ENGINEER's acts, errors, mistakes, omissions, work or service.
- 10.1.8 The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of ENGINEER. ENGINEER 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 ENGINEER to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/designee.

- 10.1.9 All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- 10.1.10 Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the ENGINEER with reasonable promptness in accordance with the ENGINEER's information and belief.
- 10.1.11 In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the ENGINEER until such time as the ENGINEER shall furnish such additional security covering such claims as may be determined by the CITY.

10.2 Proof of Insurance – Certificates of Insurance

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

10.3 Required Coverage

Such insurance shall protect ENGINEER from claims set forth below which may arise out of or result from the operations of ENGINEER under this Contract and for which ENGINEER may be legally liable, whether such operations be by the ENGINEER or by a Sub-ENGINEER or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- 10.3.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- 10.3.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the ENGINEER's employees;
- 10.3.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the ENGINEER's employees;
- 10.3.4 Claims for damages insured by usual personal injury liability coverage;
- 10.3.5 Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

- 10.3.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- 10.3.7 Claims for bodily injury or property damage arising out of completed operations;
- 10.3.8 Claims involving contractual liability insurance applicable to the ENGINEER's obligations under the Indemnification Agreement;
- 10.3.9 Claims for injury or damages in connection with one's professional services;
- 10.3.10 Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

10.4 Commercial General Liability - Minimum Coverage Limits:

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

10.5 General Liability - Minimum Coverage Limits

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

10.6 Automobile Liability

ENGINEER 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 ENGINEER's work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

10.7 Worker's Compensation and Employer's Liability

ENGINEER shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over ENGINEER'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, ENGINEER will require the SubConsultant to provide Workers' Compensation and Employer's Liability to at least the same extent as required of ENGINEER.

10.8 Professional Liability

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

11 TERMINATION WITHOUT CAUSE

CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with fifteen- (15) days written notice. In the event of such termination, ENGINEER 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 ENGINEER shall receive a fee in accordance with the Fee Schedule attached as Exhibit A.

12 TERMINATION WITH CAUSE

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

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

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

13 DISPUTE RESOLUTION

All claims, disputes and other matters in question between CITY and ENGINEER arising out of, or relating to this Agreement or any of the Project Agreement, or the breach thereof shall be decided by binding, unappealable arbitration, if the claim for compensation, costs or expenses or damages is equal or less than Fifty Thousand dollars (\$50,000).

Nothing herein contained shall be so construed as to preclude the ENGINEER from commencing a legal action in relation to claims in excess of Fifty Thousand dollars (\$50,000), but the ENGINEER'S sole legal remedy in relation to claims of Fifty Thousand dollars (\$50,000) or less shall be binding, unappealable arbitration as prescribed.

14 ARBITRATION OF CLAIMS AND DISPUTES

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

15 MISCELLANEOUS

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

16 Ownership of Documents

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

17 Re-Use of Documents

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

18 No-Kick-Back Certification

- 18.1 ENGINEER warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the CONSULTING firm.
- 18.2 For breach or violation of this warranty, the CITY shall have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

19 Conflict of Interest

- 19.1 ENGINEER stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.
- 19.2 Pursuant to A.R.S. Section 38-511, the City may cancel this contract within three (3) years after its execution, without penalty or further obligation by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Chandler is, at any time while the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

20 Controlling Law

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

21 Cooperative Purchasing

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

22 Notices

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

IN WITNESS WHEREOF, the parties have hereto have executed this contract on:
CITY OF CHANDLER: ENGINEER:

MAYOR Date

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

APPROVE AS TO FORM:

City Attorney by: _____
ATTEST: _____
City Clerk

SEAL

By: _____
Signature

Print Name: JEFFREY M. ENGELMANN
Title: VICE PRESIDENT

ADDRESS FOR NOTICE:
Mr. Jeff Engelmann
J2 Engineering & Environmental Design, LLC
4649 E. Cotton Gin Loop, Ste. B2
Phoenix, AZ 85020
Phone: 602-438-2221 602-438-2225

ATTEST: If Corporation _____
Secretary

**EXHIBIT A
FEE SCHEDULE**

Classification	Hourly Rates
Project Principal	\$65.00
Project Manager	\$46.65
Project Engineer/Landscape Architect	\$41.29
Civil Engineer/Landscape Designer	\$31.40
CADD Tec.	\$27.00
Clerical	\$14.50
Overhead	139.85%

EXHIBIT A SCOPE OF WORK

Annual Consultant shall provide all services as described in Article I, all as more particularly set forth below:

Task: Preliminary Research

1. Document Search for Utility As-builts. *
2. Document Search for rights-of-way. *
3. Document Search for survey ties and benchmarks. *
4. Document Search for City Policies, regulations, standards, design manuals, and requirements relevant to the project. *
5. Research and Obtain geotech reports and investigations, master plans, computer model data, and field surveys
6. Research all utility companies/agencies and acquire all available as-built and utility records.
Investigate existing conditions, make measured drawings, and verify accuracy of drawings or other information furnished by Owner.
- 7.
8. Survey with City of Chandler Benchmarks.

Task: Utility-Agency Coordination

9. Coordination with Utility Companies and Agencies shall be in accordance with the latest version of the "Public Improvement Project Guide" (PIPG).
10. Identify Utility Conflicts
11. Coordinate the design and installation of the utilities
12. Easements shall be identified for acquisition. *
Consultant Engineers shall provide legal descriptions for natural gas and electrical service easements. NOT PART OF CONTRACT: SEE ALLOWANCES, ASSUMPTIONS, EXCLUSIONS.
13. Consultant shall submit prelim plans, specs, and design calcs to utilities/agencies for review and use during their design for their service improvements or any necessary relocations.
- 14.
15. Consultant shall conduct utility meetings to coordinate relocations with utility/agency and establish relocation schedules.
16. Consultant shall follow-up with the final design submittal for utility construction and coordination with the bid documents
17. Consultant shall incorporate the utility/agency private developer construction requirements into the bid documents.

Task: Geotechnical Investigation

18. Consultant shall perform all soil and pavement borings necessary to complete their work.
Sub-surface soil conditions, established by the geotechnical investigations, shall be incorporated into the bid documents
19. in a manner usable to the excavation and foundation bidding and construction.

Task: Programming

20. Consultant shall meet with City staff/constructability team to ascertain the requirements of the project and shall arrive at a mutual understanding of such requirements. The CM @Risk shall be a team member.
Consultant shall revise the master plan to update and, if required, shall perform a total of one (1) Public Information meeting. This will include preparing exhibits, and delivering a presentation, facilitating discussions and documenting meeting information exchange. The exhibits will include Design drawings as required for the meeting. City will advertise and promote the meetings. *
21. Design consultant shall facilitate three (3) "sub-committee" meetings to gather pertinent information from: CITY staff and CM@RISK staff. *
22. Design consultant shall prepare a Program which will include: Establishing construction budget in coordination with CM@Risk; Complete documentation of site survey from preliminary work; Define new building space needs; Define new building space requirements and amenities necessary to accommodate planned activities in each space; Define site requirements; Create matrix of spaces, sizes, and amenities.
Based on the mutually agreed-upon program, schedule, and construction budget requirements, Consultant shall prepare, for approval by City, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of the project components.
- 24.

- * Tasks denoted with an asterisk (*) will be scheduled and coordinated by the City's Project Manager with assistance from the designer's Project Manager.

Additional Meetings:

- Site visit w/ City Staff
- Public Input Meeting
- Site Master Plan Refinement Meeting #1 w/ City Staff
- Site Master Plan Refinement Meeting #2 w/ City Staff

Task: Schematic Design (30% Review)

25. Attend a CITY "pre-site" meeting with the CITY plans review and development staff.
Present initial schemes to CITY and its representatives (to potentially include a DESIGN CONSULTANT contractor). Staff will collaborate with designers to manipulate the plans and mutually decide on the best scheme. *
26. The final scheme shall incorporate City's comments (and potentially a contractor's comments) and be cleaned up for reference and presentation to the City Council if requested.
27. Attend a City Council meeting and brief the City Council, which will include preparing exhibits, rendering(s), computer graphic "fly-around", displaying and explaining such exhibits etc., to the City Council and public while documenting meeting information exchange. *
28. Attend any other City Board meeting and brief the Board, which will include preparing exhibits, renderings, computer graphic "fly-around", displaying and explaining such exhibits, etc., to Board members while documenting meeting information exchange. *
29. Develop a site plan. Design shall utilize established City of Chandler benchmarks and reference locations of benchmarks on the plans.
30. Collaborate with Owner to define their requirements for building systems. *
31. Create an outline specification.
32. Prepare plans, schedules and notes as required for existing landscape inventory & salvage plans.
33. Prepare plans, elevations, sections, schedules and notes as required to fix and describe the project as to civil, architectural, structural, mechanical, electrical, and special systems.
34. Perform code reviews and implement requirements into the design documents.
Value Engineer the design cooperatively with the entire design team including CM@R and CITY'S representatives. This effort will occur as early as effectively possible and consist of a focused meeting addressing: relationships of components, construction materials, and building systems. *
35. Prepare vertical sections across the site and through the building.
36. Prepare elevation drawing(s) and, as required, perspective sketch of the exterior.
37. Complete a drainage analysis and provide solutions to mitigate the runoff.
Identify all necessary offsite improvements such as: streets, utilities, irrigation, etc., and depict the scope in a schematic design plan.
38. Submit the project to the CITY for a Development Standards review. *
39. Prepare a construction cost estimate for verification with the budget and re-design as necessary to re-align the design with the construction budget.
40. Submit to City's Project Manager for comment two complete drawing sets with drainage calculations, one of which shall be reproducible. *
41. Until a GMP is accepted by all parties, the DESIGN CONSULTANT is responsible for calling all meetings, preparing the minutes, and distribution of the minutes.

Additional Meetings:

- Schematic Design Meeting w/ City Parks Staff

Subtotal, Schematic Design:

Task: Design Development(60% Document Review)

- Allow and invite the Owner's Representative and CM@R to attend the regular weekly design coordination meetings.
44. Attend a CITY "pre-site" meeting with the CITY plans review and development staff.
Review the current construction cost estimate for verification with the budget. Re-design as necessary to re-align the design with the construction budget. Coordinate with CM@Risk.
 45. Review and advise CITY with regard to the Guaranteed Maximum Price if submitted by CM@Risk at completion of schematics.
 46. Present a second briefing to Board that shall include preparing exhibits, renderings, computer graphic "fly-around", briefing Board members while documenting meeting information exchange. *
 47. Prepare plans, elevations, sections, schedules, notes and specifications as required for 60% Review. Conduct a full document set (plans & specs) review in the presence of all consultants, CM@R and CITY'S representatives and any other stakeholders. *
 48. Continuous involvement with design team, CITY, CITY's Project Management, and CM@Risk. Submit for review of completed 60% design, to the CM@Risk and CITY'S Project Manager for comment three complete drawing sets, specifications, drainage & structural calcs, one of which will be reproducible. Include original redline drawings and comments received from previous review along with a review summary indicating action taken.
 - 49.

50. Schedule review meeting with plan check staff to discuss review comments. Clarify with the plan check staff what the design challenges are and decide the method in which they will be resolved. *

Additional Meetings:

Design Development Meeting w/ City Parks Staff.

Subtotal: Design Development

Task: Construction Documents(90% Document Review)

51. Coordinate, meet, and team with CM@R on all design and constructability review.
Prepare plans, elevations, sections, schedules, notes and specifications as required to be able to bid (if necessary) and
52. to construct the project in its entirety.
53. Cover sheet to be provided by CITY on diskette (AutoCAD release 14). *
Provide the City of Chandler with a copy of the AutoCAD files. Each building system shall be "layered" so as to be able to
54. isolate trades or engineering from architectural components or vice versa.
Conduct a full document set (plans & Specs) review in the presence of all consultants, CMi@R and CITY'S
55. representatives. *
56. Provide document coordination of work performed by separate contractors or by the CITY'S own forces (i.e.: systems furniture or exercise equipment provisions & installation, etc.). *
Review/coordinate construction cost estimate for verification with the budget. Re-design as necessary to re-align the design with the construction budget. Review and advise CITY with regard to the Guaranteed Maximum Price submitted
57. by CM@ Risk.
Submit to CITY'S Project Manager and CM@R for comment three complete drawing sets, specifications, drainage & structural calcs, one of which will be reproducible. Include original redline drawings and comments received from
58. previous review along with a review summary indicating action taken. *

Additional Meetings:

Construction Documents Design Meeting w/ City Parks Staff.

Subtotal: Design Development

Task: Award of Construction Contract (100% Documents)

- Submit completed documents to Development Services for building permit. All plans, calculations and specifications will be stamped. The specifications will be 8-1/2" x 11" and in electronic format on diskette in Microsoft Word 98. Plans will be black line prints as well as on diskette Auto CAD release 14 or R2000. Include redline reviewed drawings and comments
59. received from previous review along with a review summary indicating action taken. *
60. Pick-up plan review final comments and prepare stamped Mylar documents for reproduction. CITY will have the bid sets reproduced from these Mylar's. *
61. Assist CITY in the evaluation of "substitutions and or-equals" and make a recommendation to accept or decline. *
62. Prepare addenda, for CITY'S Project Manager, for review and approval by CITY. CITY will distribute. *
- * Tasks denoted with an asterisk (*) will be scheduled and coordinated by the City's Project Manager with assistance from the designer's Project Manager.

Subtotal: 100% Documents

Grand Total, Base Design:

Task: Construction Administration

63. During the Construction phase of the Project DESIGN CONSULTANT shall do the following:
Note: A City staff member will be designated as the Project Manager and as CITY'S REPRESENTATIVE and will perform those functions listed in the City's General Conditions for Construction Contracts as duties of the CITY REP. The DESIGN CONSULTANT will be designated the Project Designer and shall perform those functions listed in the City's General Conditions for Construction Contracts as duties of the Project Designer, but shall also perform the following
64. functions: (Designers Construction Administrator role is defined below.)
Attend and participate in the pre-construction conference for the purposes of establishing lines of communication, project
65. protocol as well as answering design questions.
66. Assist CITY with the review of contractor's schedules, and then make a recommendation regarding approval.
Assist Owner in the review of the Contractor's "value engineering" suggestions and then make a recommendation. (Most of this will already have occurred during the Design phase with the CM@R, however, there may be value engineering
67. suggestions due to conditions found in the field.
Evaluate contractor claims and disputes between CITY and contractor and provide a written determination to CITY within
68. seven (7) days of the date such matter is submitted to DESIGN CONSULTANT.

- In the event of a claim or dispute by contractor, interpret the requirements of the Contract Documents and judge the acceptability of the Work thereunder. Make written recommendations to the City on all claims of the Contractor related to; the acceptability of the work, or the interpretation of the requirements of the Contract Documents pertaining to the
69. execution and progress of the work, or additional work as deemed necessary by the City (within 7 days).
 70. Respond to RFI's and issue necessary interpretations and clarifications of the contract documents (within 36 hours).
Receive, log, review and approve/disapprove Shop Drawings, calculations, samples, and test results (within 10 days), as requested in coordination with the CM@R contractor.
 71. Construct a color/sample board of approved finishes submittals.
 72. Perform site visits at a rate of 4-8 hours per week, depending on work in progress, during construction. During these visits, produce "field reports" documenting progress and issues. This effort does not include and is independent of
 73. special inspections.
 74. Participate in scheduled field management meetings.
Perform "UBC Special Inspections" as required. Allowance will need to be utilized for design team to be involved in
 75. special inspections: See allowances.
Evaluate and verify payment applications, with the Owner, based on designer's on-site observations, data and schedule.
 76. Make a recommendation regarding approval.
Conduct with City an inspection to determine if project is substantially complete. Substantial completion inspection is to determine if the work is completed to the standard required by the contract documents. Prepare a preliminary punch list
 77. and provide to City.
 78. Conduct with City a final inspection to assist City to develop the final punch list and assist in final re-inspection.
DESIGN CONSULTANT shall determine when the Project is complete and recommend, in writing, to CITY, acceptance of the Project but only after DESIGN CONSULTANT has performed a final inspection which confirms that the contractor has fulfilled all obligations under their contract and is entitled to final payment. Such a recommendation is DESIGN
 79. CONSULTANT's written notice to City and Contractor that the work is complete and the Project is acceptable.
 80. Receive, review and approve/disapprove Operations & Maintenance manuals (within 2 weeks). *

Subtotal: Construction Administration

Task: Post Construction

- Design Consultant shall prepare and deliver to CITY, record drawings of the constructed work on 4 mil Mylar, together with complete electronic files for the Project in AutoCAD release 14 or R2000. As-built information will be obtained from redlined drawings prepared by the contractor. Design Consultant shall provide to CITY six (6) electronic copies (CD-ROM) of the drawings in AutoCAD-14 format or R2000 for CITY and for distribution to affected utilities.
81. Tasks denoted with an asterisk (*) will be scheduled and coordinated by the City's Project Manager with assistance from the designer's Project Manager.

Subtotal: Post Construction

Grand Total: Construction Admin. & Post Construction

**EXHIBIT B
FEE SCHEDULE**

Pre-Design Services:

J2 Pre-Design Services	\$ 132,955.46
Survey (Merestone)	\$ 9,290.00
Tree Inventory (Desierto Verde)	\$ 7,200.00
Geotechnical Engineering (RAMM)	\$ 6,575.00
Subtotal:	<u>\$ 156,020.46</u>

Pre-Design Services Total: \$ 156,020.46

Base Design Services:

J2 Base Design Services	\$ 670,612.63
Architecture (Roberts Jones Architects)	\$ 15,950.00
Lake Design (Aqua Engineering)	\$ 36,500.00
Irrigation Design (Carl Kominsky)	\$ 52,000.00
Electrical Engineering (Wright Engineering)	\$ 41,590.00
Lake Water Quality & Vector Control (Aquatic Consulting & Testing)	\$ 12,600.00
Subtotal:	<u>\$ 829,252.63</u>

Design Service Allowances:

Structural Engineering for any Necessary Site Walls, Maintenance Enclosure Walls, and/or Custom Structures	\$ 10,000.00
Structural Special Inspections and Structural Testing during Construction Phase	\$ 10,000.00
Permitting/Review Fees for any Necessary County Plan Reviews and/or County Splash Pad Reviews and Variances	\$ 12,000.00
Electrical Engineering Fee for Traffic Signal Design Services (this will cover up to two traffic signals for project)	\$ 12,300.00
Water Feature Mechanical System Design for Possible Aesthetic Water Features at Lake	\$ 10,000.00
Architectural Design Fee for Restroom-Concession Building	\$ 23,050.00
Subtotal:	<u>\$ 77,350.00</u>

Base Design Services Total: \$ 906,602.63

(with Design Service Allowances)

Post-Design / Construction Observation Services: *

J2 Post-Design Services	\$ 148,582.61
Subtotal:	<u>\$ 148,582.61</u>

Post-Design / Construction Observation Services Total: \$ 148,582.61

Total Fee All Services: *

\$ 1,211,205.70

(Pre-Design + Base Design + Design Service Allowances + Post Design / Construction Observation)

* Fees do not include full-time construction management services.

DERIVATION OF COST PROPOSAL: PRE-DESIGN SERVICES

Mesquite Groves Park

Direct labor and rates

Classification	Man Hours	Current Rates	Total
Project Principal	16	\$65.00	\$1,040
Project Manager	183	\$46.65	\$8,537
Project Engineer or Landscape Architect	517	\$41.29	\$21,347
Civil Engineer or Landscape Designer	467	\$31.40	\$14,664
CADD Tech.	130	\$27.00	\$3,510
Clerical	16	\$14.50	\$232
Total Hours	1329	Total Direct Labor	\$49,330
			Total Labor: \$49,329.68
			Overhead @ 139.85% of Direct Labor \$68,987.56
			Total Labor and Overhead: \$118,317.24
Estimated Direct Expenses	Expenses	Total	
Printing, Reproduction, Reprographics for Master Plan Revisions and Programming Exhibits.			\$500.00
Total Direct Expenses			\$500.00
Subconsultants: Pre-Design			
Merestone: Survey			\$9,290.00
RAMM: Geotechnical Engineering			\$6,575.00
Desierto Verde: Tree Inventory			\$7,200.00
Total Outside Services:			\$23,065.00
Total Cost J2 and Subconsultant			\$141,882.24
Fixed Fee at 10%			\$14,138.22
Total Cost:			\$156,020.46
(Pre-Design Services)			

DERIVATION OF COST PROPOSAL: BASE DESIGN SERVICES
Mesquite Groves Park

Direct labor and rates

Classification	Man Hours	Current Rates	Total
Project Principal	64	\$65.00	\$4,160
Project Manager	731	\$46.65	\$34,101
Project Engineer or Landscape Architect	1992	\$41.29	\$82,250
Civil Engineer or Landscape Designer	2190	\$31.40	\$68,766
CADD Tech.	1984	\$27.00	\$53,568
Clerical	78	\$14.50	\$1,131
Total Hours	7039	Total Direct Labor	\$243,976
		Total Labor:	\$243,975.83
		Overhead @ 139.85% of Direct Labor	\$341,200.20
		Total Labor and Overhead:	\$535,176.03

Direct Expenses

Expenses

Total

Printing, Reproduction, & Reprographics for All Full-size and Half-size Bond Submittal Sets.	\$4,520.00
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Total Direct Expenses

\$4,520.00

Subconsultants: Base Design

Roberts Jones Associates: Architecture	\$15,950.00
Aqua Engineering: Lake & Booster Pump Design	\$36,500.00
Carl Kominsky: Irrigation Design	\$52,000.00
Wright Engineering: Electrical Engineering	\$41,590.00
Aquatic Consulting & Testing: Lake Water Quality & Vector Control	\$ 2,600.00

Design Service Allowances

Structural Engineering for any necessary site walls, maintenance enclosure walls, and/or custom structures	\$10,000.00
Structural Special Inspections and Structural Testing during Construction Phase	\$10,000.00
Permitting/Review Fees for any Necessary County Plan Reviews and/or County Splash Pad Reviews and Variances	\$12,000.00
Electrical Engineering Fee for Traffic Signal Design Services (this will cover up to two traffic signals for project)	\$12,300.00
Water Feature Mechanical System Design for Possible Aesthetic Water Features at Lake	\$10,000.00
Architectural Design Fee for Restroom-Concession Building	\$23,050.00

Total Outside Services:	\$235,990.00
Total Cost J2 and Subconsultant	\$825,686.03
Fixed Fee at 10%	\$80,916.60

Total Cost: \$906,602.63

(Base Design Services with Allowances)

DERIVATION OF COST PROPOSAL: POST-DESIGN / CONSTRUCTION OBSERVATION SERVICES				
Mesquite Groves Park				
Direct labor and rates				
Classification	Man Hours	Current Rates		Total
Project Principal	10	\$65.00		\$650
Project Manager	414	\$46.65		\$19,313
Project Engineer or Landscape Architect	364	\$41.29		\$15,030
Civil Engineer or Landscape Designer	520	\$31.40		\$16,328
CADD Tech.	96	\$27.00		\$2,592
Clerical	24	\$14.50		\$348
Total Hours	1428		Total Direct Labor	\$54,261
			Total Labor:	\$54,260.66
			Overhead @ 139.85% of Direct Labor	\$75,883.53
			Total Labor and Overhead:	\$130,144.19
Direct Expenses	Expenses			Total
Final Mylar Plotting: Full-size As-built Sheets				\$5,424.00
			Total Direct Expenses	\$5,424.00
Subconsultants: Post-Design				
(All subconsultant post design services have been included in Base Design Services)				\$0.00
			Total Outside Services:	\$0.00
			Total Cost J2 and Subconsultant	\$135,568.19
			Fixed Fee at 10%	\$13,014.42
			Total Cost:	\$148,582.61
(Post-Design / Construction Observation Services)				