



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

24

2. Council Meeting Date:

April 23, 2009

TO: MAYOR & COUNCIL

3. Date Prepared: March 30, 2009

THROUGH: CITY MANAGER

4. Requesting Department: Management Services

5. SUBJECT: Award Agreement for Rate Structure Design Analysis to Red Oak Consulting in an amount not to exceed \$49,759.

6. RECOMMENDATION: Recommend award of Agreement for Rate Structure Design Analysis to Red Oak Consulting in an amount not to exceed \$49,759.

7. HISTORICAL BACKGROUND/DISCUSSION: The Management Services and Municipal Utilities Council Subcommittees met on December 15, 2008 to review the resulting revenues and customer impacts one year after implementing new water rates and rate structures on October 1, 2007. Staff then started working with Red Oak Consulting on water rate design options for the increase needed for the 2009/10 fiscal year, and has met with the Management Services and Municipal Utilities Council Subcommittees and will meet with the Council as a whole to present information and obtain feedback.

8. EVALUATION PROCESS: Red Oak Consulting was direct selected to perform the Rate Structure Design Analysis because they designed the rate structures implemented October 1, 2007.

9. FINANCIAL IMPLICATIONS: Funds for the requested Agreement will come from 605.3840.0000.5818.000000, Water Operating Fund, Environmental Resources Cost Center, Other Expenses.

10. PROPOSED MOTION: Move to award Agreement for Rate Structure Design Analysis to Red Oak Consulting in an amount not to exceed \$49,759.

APPROVALS

11. Requesting Department

Julie Buelt

12. Department Head

Dennis Strachota

13. Procurement Officer

Mike Mandt

14. City Manager

W. Mark Pentz

**CITY OF CHANDLER
PROFESSIONAL SERVICES AGREEMENT**

Project No. 2736

Project Name: Rate Structure Design Analysis

THIS AGREEMENT is made and entered into this _____ day of _____, 200____, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY," and Red Oak Consulting, hereinafter referred to as "CONSULTANT."

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

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR

1.1. To provide the professional services required by this Agreement CONSULTANT shall act under the authority and approval of the Management Services Director or designee, (the Contract Administrator), who shall oversee the execution of this Agreement, assist the CONSULTANT with any necessary information, audit billings, and approve payments. The CONSULTANT shall channel reports and special requests through the Contract Administrator.

1.2. CITY reserves the right to review and approve any/all changes to CONSULTANT's key staff assigned to the CITY project by the firm during the term of this Agreement.

2. **SCOPE OF WORK:** CONSULTANT shall provide those services described in Exhibit B attached hereto and made a part hereof by reference.

3. **ACCEPTANCE AND DOCUMENTATION:** 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 this Agreement, shall be and remain the property of CITY and shall be delivered to CITY before final payment is made to CONSULTANT.

4. **FEE SCHEDULE:** For the services described in paragraph 2 of this Agreement, CITY shall pay CONSULTANT a fee not to exceed the sum of forty-nine thousand, seven hundred fifty-nine dollars (\$49,759) in accordance with the fee schedule attached hereto as Exhibit C and incorporated herein by reference.

5. **TERM:** Following execution of this Agreement by CITY, CONSULTANT shall immediately commence work and shall complete all services described herein within one hundred eighty (180) calendar days from the date hereof.

6. TERMINATION:

6.1. **Termination for Convenience:** CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONSULTANT shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the CONSULTANT shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONSULTANT and

CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed for each task detailed in the Scope of Work and the CONSULTANT's compensation shall be based upon such determination and CONSULTANT's fee scheduled included herein.

6.2 Termination for Cause: City may terminate this Contract for Cause upon the occurrence of any one or more of the following events:

- 1) If CONSULTANT fails to perform pursuant to the terms of this Agreement
- 2) If CONSULTANT is adjudged a bankrupt or insolvent;
- 3) If CONSULTANT makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONSULTANT or for any of CONSULTANT'S property;
- 5) If CONSULTANT files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONSULTANT disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONSULTANT then existing or which may thereafter accrue.

6.3. Availability of Funds for the next Fiscal Year. Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

7. INDEMNIFICATION: The Consultant agrees to indemnify, defend, and save harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively; from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs, or actions of any kind and nature resulting from personal injury to any person, including employees of the Consultant or of any Sub Consultant employed by the Consultant (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the negligent performance of the Consultant for the work to be performed hereunder, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

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.

8. INSURANCE REQUIREMENTS: CONSULTANT shall provide and maintain the insurance as listed in Exhibit D attached hereto and made a part hereof by reference.

9. **ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
10. **ARIZONA LAW:** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.1 Pursuant to the provisions of A.R.S. § 41-4401, the CONSULTANT hereby warrants to the CITY that the CONSULTANT and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").
- 10.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 10.3 The CITY retains the legal right to inspect the papers of any CONSULTANT or Subcontractor employee who works on this Contract to ensure that the CONSULTANT or Subcontractor is complying with the Contractor Immigration Warranty. The CONSULTANT agrees to assist the CITY in the conduct of any such inspections.
- 10.4 The CITY may, at its sole discretion, conduct random verifications of the employment records of the CONSULTANT and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The CONSULTANT agrees to assist the CITY in performing any such random verifications.
- 10.5 The provisions of this Article must be included in any contract the CONSULTANT enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 10.6 In accordance with A.R.S. §35-393.06, the CONSULTANT hereby certifies that the offeror does not have scrutinized business operations in Iran.
- 10.7 In accordance with A.R.S. §35-391.06 the CONSULTANT hereby certifies that the offeror does not have scrutinized business operations in Sudan.
11. **CONFLICT OF INTEREST:**
- 11.1 **No Kickback.** CONSULTANT warrants that no person has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. section 38-501. Any such interests were disclosed in CONSULTANT's proposal to the CITY.
- 11.2 **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONSULTANT to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when

written notice for CITY is received by all other parties, unless the notice specifies a later time (A.R.S. 38-511).

- 11.3 No Conflict.** CONSULTANT stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
- 11.4 Alternate Dispute Resolution.** REQUIREMENT FOR ALTERNATIVE DISPUTE RESOLUTION: Notwithstanding anything to the contrary provided elsewhere in the Agreement documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive initial means for resolution of claims or disputes and other matters in question between CITY and CONSULTANT arising out of, or relating to the Agreement documents, interpretation of the Agreement, or the performance or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to Agreements containing this ADR provision.

A. INTERNAL RESOLUTION PROCESS

- 1. Notice:** CONSULTANT shall submit written notice of any claim or dispute to the Purchasing Manager within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as they occur and not postponed until the end of the Agreement nor lumped together with other pending claims.
- 2. Forfeiture:** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONSULTANT's forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONSULTANT's agreement and acceptance of CITY's position.
- 3. CITY Response:** The Agreement Administrator will provide to CONSULTANT a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONSULTANT's written claim.
- 4. Appeal:** If CONSULTANT disagrees with the response of the Purchasing Manager, within fifteen days of the date of the response by the Agreement Administrator, CONSULTANT shall file with the Assistant Director for Finance, written notice of appeal. The Purchasing Manager shall provide copies of all relevant information concerning the Agreement and claim or dispute to the Assistant Director for Finance who will determine the appeal. The Assistant Director for Finance may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Director for Finance shall make a final determination of the appeal and provide written notice to CONSULTANT within sixty (60) days from the date of CONSULTANT's written notice of appeal.

B. ARBITRATION

- 1. Arbitration:** If CONSULTANT is not satisfied with the determination of the Assistant Director for Finance, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes in which the claims are for \$500,000 or less except for errors of law which may be appealed if an award

exceeds \$100,000 and is based on an error of law . If CONSULTANT chooses not to accept the decision of the Assistant Director for Finance, CONSULTANT shall notify the Agreement Administrator in writing within ten (10) business days of receipt of the Assistant Director for Finance's decision of a request for arbitration. The CONSULTANT shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph E, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.

2. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONSULTANT will select one arbitrator, and any other CONSULTANT who has a Agreement with CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
3. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
4. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
5. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
6. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Agreement and the laws of the State of Arizona.

- 7. Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
 - 8. Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
 - 9. Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
 - 10. Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other Agreements containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with CITY.
- C. APPEAL TO MARICOPA COURTS:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Agreement; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
 - D. UNIFORM ARBITRATION ACT:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
 - E. FEES AND COSTS:** Each party shall bear its own fees and costs in connection with any internal dispute resolution procedure. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party, except as provided for herein. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
 - F. EQUITABLE LITIGATION:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in pursuant to the Alternative Dispute Resolution provisional of this Agreement.

12. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

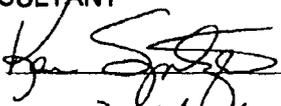
In the case of City:
City of Chandler
Purchasing Division
P.O. Box 4008, Mail Stop 901
Chandler, AZ 85244-4008
480.782. 2400

In the case of CONSULTANT:
Richard Giardina
Red Oak Consulting
100 Fillmore Street Suite 200
Denver, CO 80206
303-316-6500 F303-316-6599

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

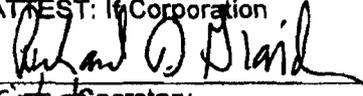
IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this
day of _____ 200____
CITY OF CHANDLER

Date
Department Head/Designee

CONSULTANT
By: 
Title: Vice President

APPROVE AS TO FORM

City Attorney 

ATTEST: If Corporation

Assistant Secretary

ATTEST:

City Clerk

SEAL

EXHIBIT A

**Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:		
Name (as listed in the contract):		
Street Name and Number:		
City:	State:	Zip Code:

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:



Printed Name: Richard D. Giardina

Title: Vice President

Date (month/day/year): 4/8/09

EXHIBIT B SCOPE OF WORK

- Task 1 Project Management and Data Request. CONSULTANT will prepare a data request that will identify data to be collected by the CITY in order to conduct the analysis.
- Task 2 Bill Frequency Analysis. CONSULTANT will conduct a bill frequency analysis for FY2007-08 water data for the single family and multi-family classes. Results of the bill frequency analysis will be used in the development of three alternative rates.
- Task 3 Rate Structure Model and Analysis. CONSULTANT will develop a computer model that will allow for manipulations to block thresholds and unit prices. This task also includes the analysis of the rate options and development of rates. Rate options for the non-residential classes are not included in this scope of work (other than options regarding the Base Charge and volume rates).
- Task 4 Customer Impacts. CONSULTANT will summarize impacts to the single family class under the developed rate alternatives and resulting impacts to other customer types.
- Task 5 Additional Rate Design Options. Based upon feedback received at previous Management Services Council Subcommittee and Municipal Utilities Council Subcommittee Meetings, CONSULTANT will prepare additional rate design options.
- Task 6 Draft and Final Memorandums. CONSULTANT will summarize analysis findings in a draft memorandum to the CITY. Once the CITY's comments have been received CONSULTANT will deliver a final memorandum summarizing study findings. Additional rate alternatives will be summarized in a spreadsheet form and presentations for required Council and Subcommittee meetings.
- Task 7 Conference Calls. CONSULTANT will participate in up to two conference calls with CITY representatives to discuss analysis findings. These calls will be in addition to the conference call to discuss the Council presentation in task 8.
- Task 8 Council Subcommittee Meetings. CONSULTANT's Project Manager will participate in one Management Services Council Subcommittee Meeting and one Municipal Utilities Council Subcommittee Meeting to present the findings and analysis undertaken in Tasks 2 through 4. This task includes the preparation of materials (in draft and final form) for the Subcommittee Meetings. It is assumed that the meetings will occur on the same day. CONSULTANT's Project Manager will participate in two sets of additional Management Services Council Subcommittee and Municipal Utilities Council Subcommittee Meetings to present the findings and analysis undertaken in Task 5. This task includes the preparation of materials (in draft and final form) for the Subcommittee Meetings.
- Task 9 City Council Meetings. CONSULTANT's Project Manager will attend one City Council Meeting to present the findings and analysis undertaken in Tasks 2 through 4. This task includes one conference call with CITY staff to review the presentation prior to meeting with Council. CONSULTANT's Project Manager will present an additional briefing at a City Council Study Session and conduct the public hearing at a City Council Meeting.

**EXHIBIT C
FEE SCHEDULE**

	Project	Deputy Project		Staff	Trips	Total	Total
	Manager	Trips	Manager	Trips			
	\$290		\$153	\$133			
Task <i>(Include the Number of Anticipated Trips to be Charged to the Contract for the Task)</i>							
Task 1: Project Management and Data Collection			6			6	\$918
Task 2: Bill Frequency Analysis	1		2	14		17	\$2,458
Task 3: Rate Structure Model Development and Analysis	2		24			26	\$4,252
Task 4: Customer Impacts	1		4	2		7	\$1,168
Task 5: Additional Rate Design Options	10.5		49	40.35		99.85	\$15,909
Task 6: Draft and Final Memos	2		2	4		8	\$1,418
Task 7: Conference Calls	2		2			4	\$886
Task 8: Council Subcommittee Meetings	23	3	26			49	\$10,648
Task 9: City Council Meetings	24	3	14			38	\$9,102
Total Hours	65.5	6	129	60.35		254.85	
Total Fees	\$18,995		\$19,737	\$8,027			\$46,759
Other Expenses ^(a)							
Travel Expenses ^(b)	\$3,000						\$3,000
Total Expenses	\$3,000					\$0	\$3,000
Total Fees & Expenses	\$21,995		\$19,737	\$8,027		\$0	\$49,759

^(a) If applicable, state the type of expenses to be included.

^(b) Includes # of trips as detailed in the description of tasks.

Prompt Payment Terms, if any:

**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, 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 arising out of CONSULTANT's acts, errors, mistakes, omissions, work or service.
8. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONSULTANT. CONSULTANT shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONSULTANT to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/designee.
9. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
10. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by 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 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 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.
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. 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 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.

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).

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 Subcontractor 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.