



**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. CA10-039**

1. Agenda Item Number:
29
2. Council Meeting Date:
August 27, 2009

TO: MAYOR & COUNCIL
THROUGH: CITY MANAGER

3. Date Prepared: August 12, 2009
4. Requesting Department: City Manager

5. SUBJECT: Award a conceptual design contract to SmithGroup, Inc. for the Chandler Museum and downtown parking garage, Project No. GG00803-202, in an amount not to exceed \$83,300

6. RECOMMENDATION: Staff recommends that Council award a conceptual design contract to SmithGroup, Inc. for the Chandler Museum and downtown parking garage, Project No. GG00803-202, in an amount not to exceed \$83,300.

7.BACKGROUND/DISCUSSION: The Chandler Museum project is planned to commence construction in FY 11-12. To meet that timeframe it is important to begin the facility's design process this fiscal year. There has been much discussion regarding what the Museum should look like, what its content and focus should be and what the total scope of its public purpose will be. To address and clarify those issues it is prudent to begin the overall design process with a conceptual design element based on stakeholder input. In that way, the final design can be accomplished with a guarantee of meeting community needs.

In July 2008 SmithGroup, Inc. was selected as the architect for the Museum project through a standard consultant selection process. The overall design contract has not been negotiated nor approved as of this date. However, as the selected architect, SmithGroup was asked to submit a proposal that would include:

- Coordination of a visioning process that addressed the public and stakeholder groups in a Museum building.
- Development of space relationship diagrams that address needs determined from previous strategic plans dealing with the Museum.
- Creation of up to three concepts to depict the exterior appearance and shape of the Museum.
- Presentation of those concepts to the City and Museum staff, with a final presentation to City Council.

In addition, the proposal would include design concepts for a parking garage capable of holding approximately 240 cars and housing 7,500 square feet of artist/commercial space. That structure would be located on the southeast corner of Boston and Washington streets.

Work on the conceptual design of the Museum and parking garage would begin during the month of September. Focus groups and stakeholder meetings would take place toward the end of September. Presentation of the conceptual designs would occur in January 2010.

8. EVALUATION: The consultant selection process was conducted in accordance with established City policies and procedures. Staff solicited and received statements of qualifications from thirteen interested architectural firms for design of the City Hall Complex, on July 24, 2008. Discussions with three qualified firms were held, and SmithGroup, Inc. was selected for recommendation of contract award.

The selection committee included the following members:

- Rich Dlugas, Assistant City Manager
- Marian Norris, Assistant to the City Manager
- Jody Crago, Museum Administrator
- Jim Ryan, Museum Advisory Board Vice Chairman & Historical Society
- Jay Tibshraeny, Museum Advisory Board Chairman
- Joshua Plumb, Project Manager
- Dennis Troggio, Registered Contractor

The selection committee made the following ranking:

1. SmithGroup, Inc.
2. Douglas Architecture and Planning
3. Westlake Reed Leskosky

9. FINANCIAL IMPLICATIONS:

Cost: \$83,300
 Savings: N/A
 Long Term Costs: N/A

Fund Source:

Acct. No.:	Fund Name:	Program Name:	CIP Funded:	Amount:
435.4580.000.6210.10C384	Museum Bond	Museum	09-10	\$65,275
101.1290.0000.6111.8DT001	General Fund	Miscellaneous Downtown Improvements	N/A	\$18,025

10. PROPOSED MOTION: Move that Council award a design contract to SmithGroup, Inc. for the Chandler Museum and downtown parking garage, Project No. GG00803-202, in an amount not to exceed \$83,300, and authorize the Mayor to sign the contract documents.

ATTACHMENTS: Location Map, Contract

APPROVALS

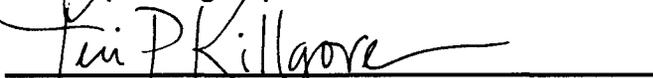
11. Requesting Department


 Jody Crago, Museum Administrator

14. Department Head


 Mark M. Eynatten, Community Services Director

12. Requesting Department


 Teri Killgore, Downtown Redevelopment Manager

15. Department Head


 Rich Dlugas, Assistant City Manager

13. City Engineer


 Sheina Hughes, Assistant Public Works Director/City Engineer
Comm. Sues.

16. City Manager


 W. Mark Pentz

**CONSTRUCTION MANAGER AT RISK
DESIGN CONSULTANT CONTRACT**

PROJECT TITLE: **CHANDLER MUSEUM**

PROJECT NO: **GG0803-202**

This Agreement is made and entered into by and between the City of Chandler, Arizona, a municipal Corporation, hereinafter called the CITY, and **SmithGroup, Inc.**, a Michigan corporation licensed to do business in Arizona hereinafter called DESIGN CONSULTANT.

WHEREAS, DESIGN CONSULTANT represents DESIGN CONSULTANT has the expertise and is qualified to perform the services described in this Agreement; and

WHEREAS, the Mayor and City Council/City Manager of the City of Chandler are authorized and empowered by the provisions of the City Charter to execute Agreements for Professional Services; and

WHEREAS, the Parties intend to have this Project designed and constructed using a Construction Manager at Risk method with DESIGN CONSULTANT being a part of a Design Team; and

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter contained, it is agreed by and between the CITY and DESIGN CONSULTANT, as follows:

1. DESCRIPTION OF PROJECT: The Project known as the **CHANDLER MUSEUM** will be an approximately **25,000 sq. ft. multi-story building and separate parking garage**. With site improvements it will occupy **approximately 35,000 square feet** located on **Washington Street**, Chandler, Arizona. The Project is more specifically described in Exhibit A attached hereto and incorporated herein by reference.
2. DEFINITIONS: The CITY's General Conditions for Construction apply to this contract and take priority over any conflicting provisions between the Contract and the General Conditions. Words used in this Agreement which are defined in CITY's General Conditions for Construction Contracts shall have the meaning stated therein. DESIGN CONSULTANT is the Project Designer as defined in said General Conditions.
3. SCOPE OF WORK: DESIGN CONSULTANT shall complete conceptual design of the Project all as more specifically described in Exhibit A-1 (Scope of Work), A-2 (Design Team and Their Assignments), A-3 (Production Schedule), and A-4 (Design Quality Control Plan), attached hereto and incorporated herein by reference.
4. DESIGN TEAM: DESIGN CONSULTANT shall be a part of and participate together with the Design Team as set forth in Exhibit A-2 and shall attend meetings with, provide information to and cooperate with the person retained by CITY to be the Construction Manager at Risk (CM@RISK). The identity and duties of each member of the Design Team is set forth in Exhibit A-2 and no changes to identity or duty can be changed without written authorization of the City. THE DESIGN CONSULTANT is responsible for the performance and duties of all of the members of the Design Team as set forth in this Contract, and the City will not participate in any formal or informal dispute or disagreement that may arise during the performance of the Contract or thereafter in any formal or informal legal or non-legal disagreement or dispute between or among any of the members of the Design Team.
5. FEE FOR SERVICES: For services described in paragraph 3 of this Agreement, the CITY shall pay DESIGN CONSULTANT a fee not to exceed the sum of **Eighty Three Thousand Three Hundred** dollars (\$83,300) at the rates shown in and in accordance with the fee schedule attached hereto as Exhibit B, Exhibit B-1, and Exhibit B-2 and made a part hereof by reference. Payment will be made monthly on the basis of progress reports corresponding with the rates and charges listed on the fee schedule and showing the number of hours or other basis to determine the fee earned to that date. An Application and Certification for Payment Sheet must be provided. In addition, the following must also be included with each application for payment: a clear, detailed invoice reflecting items being billed for, reimbursables; a summary sheet showing percentage of work completed to date; amount/percent billed to date; current status of all tasks within a project; and any/all backup documentation supporting the above items. Work schedule updates shall also be included in the monthly

progress payment requests. City will make all payments to DESIGN CONSULTANT who shall be responsible for payment to all Design Team Members.

6. PERIOD OF SERVICE:

- A. Following receipt of a "Notice to Proceed" with the design work, DESIGN CONSULTANT shall complete the conceptual design and have all documents ready for presentation within **120** calendar days of the date indicated on the Notice to Proceed.

- D. DESIGN CONSULTANT shall complete all services specified herein in accordance with the Production Schedule (Exhibit A-3) and progress milestones included in Exhibit A and as discussed with the CM@Risk for meeting schedule attached herein. In the event delays are experienced beyond the control of DESIGN CONSULTANT, the completion date may be extended as mutually agreed upon in writing by CITY and DESIGN CONSULTANT.

7. OPINIONS OF PROBABLE COSTS (ESTIMATES): Any opinions of probable project cost or probable construction cost provided by DESIGN CONSULTANT are made on the basis of information available to DESIGN CONSULTANT and on the basis of DESIGN CONSULTANT's experience and qualifications, and represents its best judgement as an experienced, licensed and qualified professional. However, since DESIGN CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, DESIGN CONSULTANT does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost DESIGN CONSULTANT prepares. The DESIGN CONSULTANT is responsible for advising and consulting with the City on cost. DESIGN CONSULTANT is not responsible for providing for formal estimates, this is the CM@Risk responsibility.

8. REPORTS & APPROVALS: All work shall be subject to the approval by CITY and each phase of the work will be submitted to CITY in accordance with schedule included in Exhibit A and in the format prescribed by CITY. When requested by CITY, DESIGN CONSULTANT will attend Council meetings and provide finished documents including correspondence for Council action, supporting charts, graphs, drawings and colored slides of same.

9. STANDARDS OF PERFORMANCE:

- A. This design contract has been awarded to DESIGN CONSULTANT 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. DESIGN CONSULTANT shall not deviate nor substitute any of these team members without prior written approval by CITY.

- B. DESIGN CONSULTANT shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CITY shall not be responsible for discovering deficiencies therein. DESIGN CONSULTANT 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. DESIGN CONSULTANT shall be familiar with CITY's Standard Details and Specifications and other relevant CITY regulations. DESIGN CONSULTANT shall ensure 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 DESIGN CONSULTANT, any standard details or specifications incorporated therein by reference, and the Construction Contract. The DESIGN CONSULTANT is responsible, along with his designers, for the design correctness and scaling the design documents.

- D. DESIGN CONSULTANT shall be responsible for the completeness and accuracy of his/her work prepared or compiled under obligation for this project and shall correct, at his/her 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 the DESIGN CONSULTANT. The cost of the design necessary to correct those errors attributable to the DESIGN CONSULTANT and any damage incurred by the CITY as a result of additional construction costs caused by such architectural and/or engineering errors shall be chargeable to the DESIGN CONSULTANT. The fact that the City has reviewed or approved the DESIGN CONSULTANT's work shall in no way relieve the DESIGN

CONSULTANT of any of DESIGN CONSULTANT's responsibilities. The foregoing provision shall be subject to Arizona Revised Statutes 12, Chapter 17.

10. INDEMNIFICATION

The DESIGN CONSULTANT hereby agrees to defend, indemnify and hold harmless the CITY, any of its departments, agencies, officers, or employees from all damages, claims or liabilities and expenses (including reasonable attorney's fees) arising out of or resulting in any way from the performance of professional services for the City in the DESIGN CONSULTANT's capacity as an architect, and caused by any willful or negligent error, omission, or act of the DESIGN CONSULTANT or any person employed by it or anyone for whose acts the DESIGN CONSULTANT is legally liable. In consideration of the award of this contract, the DESIGN CONSULTANT agrees to waive all rights of subrogation against the CITY, its officers, officials, agents and employees for losses arising from the work performed by the DESIGN CONSULTANT for the CITY.

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

11. INSURANCE REQUIREMENTS:

11.1 General Requirements:

- A. DESIGN 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.
- B. Except for DESIGN CONSULTANT's professional liability insurance required under this agreement, policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager
- C. 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.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the DESIGN 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 DESIGN CONSULTANT.
- E. 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.
- F. DESIGN 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.
- G. The insurance policies, except Workers' Compensation and Professional Liability, 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 DESIGN CONSULTANT's acts, errors, mistakes, omissions, work or service.
- H. 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 DESIGN CONSULTANT. DESIGN 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 DESIGN 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 not be accepted except with permission of the Management Services Director/designee.

- I. 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.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the DESIGN CONSULTANT with reasonable promptness in accordance with the DESIGN CONSULTANT's information and belief.
- K. 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 DESIGN CONSULTANT until such time as the DESIGN CONSULTANT shall furnish such additional security covering such claims as may be determined by the CITY.

11.2 Proof of Insurance - Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, DESIGN CONSULTANT shall furnish to CITY Certificates of Insurance, issued by DESIGN 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.
- B. 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.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of DESIGN 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.
- D. 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 DESIGN CONSULTANT of any deficiencies in such policies and endorsements, and such receipt shall not relieve DESIGN CONSULTANT from, or be deemed a waiver of CITY's right to insist on, strict fulfillment of DESIGN CONSULTANT's obligations under this Agreement. DESIGN CONSULTANT reserves its right to redact any proprietary or confidential information contained therein.

11.3 Required Coverage

Such insurance shall protect DESIGN CONSULTANT from claims set forth below which may arise out of or result from the operations of DESIGN CONSULTANT under this Contract and for which DESIGN CONSULTANT may be legally liable, whether such operations be by the DESIGN 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.

- A. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the DESIGN CONSULTANT's employees;
- D. Claims for damages insured by usual personal injury liability coverage;
- E. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- F. 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.
- G. Claims for bodily injury or property damage arising out of completed operations;
- H. Claims involving contractual liability insurance applicable to the Contractor's obligations under the Indemnification Agreement;
- I. Claims for injury or damages in connection with one's professional services;
- J. 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;

11.3.1 Commercial General Liability - Minimum Coverage Limits:

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

11.3.2 General Liability - Minimum Coverage Limits

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

11.3.3 Worker's Compensation and Employer's Liability:

DESIGN CONSULTANT shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over DESIGN 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,

DESIGN CONSULTANT will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of DESIGN CONSULTANT.

11.3.4 Professional Liability:

DESIGN 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 DESIGN CONSULTANT, with a claims made policy limit of not less than \$5,000,000.

12. DISPUTE RESOLUTION:

- A. Disputed Invoices. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- B. Disputed Items. CITY may temporarily delete any disputed items contained in DESIGN CONSULTANT's invoice, including items disputed due to lack of supporting documentation, and pay the remaining amount of the invoice. CITY shall promptly notify DESIGN CONSULTANT of the dispute and request clarification and/or remedial action. CITY may withhold payment on all disputed items until the issues are resolved. After any dispute has been settled, DESIGN CONSULTANT shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.
- C. Good Faith Negotiation. CITY and DESIGN CONSULTANT agree to negotiate all disputes between them in good faith prior to exercising their rights under law.
- D. Binding Special Arbitration. All claims, disputes and other matters in question between CITY and DESIGN CONSULTANT arising out of, or relating to this Agreement, or the breach thereof (except for claims which have been resolved pursuant to paragraphs 9 or 12 A, B and C of this contract) shall be decided by binding, unappealable special arbitration, as described below, if the claim for compensation, costs or expenses, damages or reimbursement is equal to or less than \$50,000. Claims over \$50,000 shall have non-binding mediation as the first step to settling the dispute or claim.
- E. Special Arbitration. All arbitration of claims shall be conducted in Chandler, Arizona, in accordance with the following rules:
 - 1) Any time after the parties have attempted in good faith but without success to resolve one or more disputes, a party may notify the other in writing that they are at impasse (Notice of Impasse) and request immediate arbitration in accordance with the terms herein.
 - 2) Within ten (10) days after the date of such Notice of Impasse, each party shall select an impartial intermediary, who shall, together, agree upon a third impartial person who will be the arbitrator. To be considered impartial an intermediary or arbitrator shall not have any previous or current relationship which would be considered a conflict of interest with either party, including, but not limited to, current or previous employment or contractual relationship, indebtedness or ownership interest.
 - 3) The parties shall immediately cooperate with each other to draft together a short summary of the facts and a list of questions or issues to be resolved by the arbitrator. If the facts are in dispute, such disputed facts shall be listed as contentions by the party asserting them. In the event the parties are unable to agree upon a summary of the facts or a list of questions or issues, each party shall instead include a statement of facts and list of issues in that party's Position Paper submitted to the arbitrator. Such summary of facts and list of questions or issues shall be completed by the parties and submitted to the arbitrator within twenty (20) days of the date of the Notice of Impasse.
 - 4) The parties shall cooperate to gather any documents and exhibits necessary to resolve the issues and provide them jointly to the arbitrator. In the event of a dispute between the parties regarding whether a document should be provided, the disputed document shall be submitted to the impartial intermediaries who will determine its appropriateness for submittal. Correspondence between the parties which discusses settlement or resolution of the issues shall be submitted. All such evidence shall be submitted to the arbitrator within twenty (20) days of the date of the Notice of Impasse.

5) Each party may submit a written Position Paper of no more than ten (10) pages, supporting or explaining that party's position and providing citations to relevant law. Any such Position Paper shall be submitted to the arbitrator within thirty (30) days of the date of the Notice of Impasse.

6) There shall be no hearing, no witnesses, no argument nor contact by the parties or their representatives with the arbitrator except for the joint submittals and each party's Position Paper.

7) The arbitrator may request additional information and may make any other orders necessary to resolve the entire matter.

8) The arbitrator shall issue a written decision resolving all the submitted issues within 30 days after receiving the Position Papers.

F. Nothing herein contained shall be so construed as to preclude DESIGN CONSULTANT or CITY from commencing a legal action in relation to claims in excess of \$50,000, but the sole legal remedy in relation to claims of \$50,000 or less shall be binding, unappealable special arbitration as described above.

13. AMENDMENTS: Whenever a change in the Scope of Work contemplated in this Agreement is determined to be necessary, the work will be performed in accordance with this Agreement provided, however, that BEFORE such work is started, an Amendment shall be executed by CITY and DESIGN CONSULTANT. Additions to, modifications of, or deletions from the project provided herein may be made and the compensation to be paid to DESIGN CONSULTANT may be adjusted accordingly by mutual agreement of the contracting parties. It is agreed that no claim for extra work by DESIGN CONSULTANT will be allowed by CITY except as provided herein, nor shall DESIGN CONSULTANT do any work not covered by this Agreement unless such work is authorized through an executed amendment.

14. TERMINATION WITHOUT CAUSE: CITY may at any time and for any or no reason, at its convenience, terminate this Agreement or any part of the services to be rendered pursuant thereto by ten (10) day written notice to DESIGN CONSULTANT specifying the termination date. Immediately after receiving such notice, DESIGN CONSULTANT shall discontinue advancing the work under this Agreement and shall deliver to CITY all drawings, notes, calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by CITY.

DESIGN CONSULTANT shall receive as compensation in full for services performed to date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of DESIGN CONSULTANT(S) fee described in this Agreement under paragraph 4 and shall be in an amount to be agreed mutually by DESIGN CONSULTANT and CITY. CITY shall make this final payment within sixty (60) days after DESIGN CONSULTANT has delivered the last of the partially completed items.

15. OWNERSHIP OF DOCUMENTS: All documents, including, but not limited to, preliminary designs, tracings, drawings, original mylars, estimates, field notes, investigations, design analysis, communications (e-mail, minutes, telephone, memos, etc.) and studies which are prepared in the performance of this Agreement are to be, and shall remain the property of CITY. DESIGN CONSULTANT shall furnish CITY, upon its request, originals or reproducible copies of technical specifications and copies of all other documents listed above. DESIGN CONSULTANT shall endorse, by his professional seal, all plans and engineering data furnished by it.

16. 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 DESIGN CONSULTANT to be suitable for re-use for any other project. Any reuse without written verification or adaptation by DESIGN CONSULTANT for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to DESIGN CONSULTANT.

17. NO KICK-BACK CERTIFICATION: DESIGN CONSULTANT warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the DESIGN CONSULTANT firm.

For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

18. CONFLICT OF INTEREST: DESIGN 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 Agreement.

Pursuant to A.R.S. Section 38-511, CITY may cancel this Agreement within three (3) years after its execution, without penalty or further obligation by CITY if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of CITY is, at any time while this Agreement is in effect, an employee of any other party to this Agreement in any capacity, or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

19. CONTROLLING LAW: The laws of the State of Arizona shall govern this agreement.

20. COMPLIANCE WITH ARIZONA PROCUREMENT LAW

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the Design Consultant hereby warrants to the City that the Design Consultant and each of its subconsultants ("Subconsultants") 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").

A breach of the Contractor Immigration Warranty (Exhibit C) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

The City retains the legal right to inspect the papers of any Design Consultant or Subconsultant employee who works on this Contract to ensure that the Design Consultant or Subconsultant is complying with the Contractor Immigration Warranty. The Design Consultant agrees to assist the City in the conduct of any such inspections.

The City may, at its sole discretion, conduct random verifications of the employment records of the Design Consultant and any Subconsultants to ensure compliance with Contractors Immigration Warranty. The Design Consultant agrees to assist the City in performing any such random verifications.

The provisions of this Article must be included in any contract the Design Consultant enters into with any and all of its subconsultants 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 Design Consultant or subconsultant. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Sudan."

21. NO ASSIGNMENT: DESIGN CONSULTANT shall not assign, transfer, convey or subcontract this Agreement or the services to be rendered pursuant thereto without the prior written consent of CITY.

22. NO ASSIGNMENT: DESIGN CONSULTANT shall not assign, transfer, convey or subcontract this Agreement or the services to be rendered pursuant thereto without the prior written consent of CITY.

23. **NOTICES:** Any notice required under this Agreement 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 hereunto subscribed their names this _____ day of _____, 2009.

CITY OF CHANDLER

DESIGN CONSULTANT

MAYOR Date

By: *M. J. Medina*
Signature

ADDRESS FOR NOTICE

ADDRESS FOR NOTICE

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

SmithGroup, Inc.
455 N. Third St., Ste. 250
Phoenix, AZ 85004
Phone: (602) 265-2200
FAX: (602) 265-2244

ATTEST:

ATTEST: If Corporation

City Clerk

Secretary

APPROVED AS TO FORM:

[Signature] City Attorney By: _____

SEAL

EXHIBIT A
DETAILED DESCRIPTION OF CITY'S CONCEPT

The Chandler Museum is proposed both to house and display artifacts contained in the existing museum building located northwest of the Downtown Library and to be a flexible, interactive facility that not only tells the history of the Chandler and surrounding area in a broader context but also serves as a forum for the education, outreach and a meeting place for diverse components of the people of the region. Ideas for the use and function of the facility, as well as the types of spaces and their relationships within it, are to be generally determined through the process described below. The City has a current project design and construction budget of \$13,000,000

The purpose of the contract is to have a number of "visioning" meetings throughout the community to discover what the community expects from a new Chandler Museum. The results of these meetings will then be utilized to develop four (4) conceptual designs with program plans that will meet those expressed current and future needs of a museum for the Chandler community. The project will have three distinct phases; review of background materials, public visioning and conceptual design.

Phase 1: Review of Background Materials—All previous studies and reports regarding the needs for a museum will be reviewed. These include published strategic plans, strategic planning meeting minutes, and all previously created conceptual designs and program plans.

Phase 2: Visioning Meetings—This phase will include at least five (5) and no more than ten (10) public meeting to consult with the broader public's expectation of a new Chandler Museum, six (6) focus groups that include heritage organizations, arts and culture organizations, technology and business community, children service providers, the Chandler Unified School district, and museum professionals to determine specific needs that the museum can fulfill, and a web survey to consult with the broader public.

Phase 3: Conceptual Design—This phase will produce four (4) conceptual designs that address the needs expressed in the background material and the visioning meetings. DESIGN CONSULTANT shall produce three (3) unique conceptual designs and program plans for the New Chandler Museum with the ability to produce a fourth design and program created by the CITY from combined components of the three unique designs from the DESIGN CONSULTANT.

The work described in this proposal is intended to inform the City as to the support for the Museum of the focus groups and the general public and to present preliminary concepts for the types and relationships of the spaces and possible appearance concepts

EXHIBIT A-1
SCOPE OF WORK

- DESIGN CONSULTANT shall attend kick-off meeting with City staff.
- DESIGN CONSULTANT shall review previously created studies, reports and strategic plans
- DESIGN CONSULTANT shall meet with museum staff
- DESIGN CONSULTANT shall meet with Mayor and Council to get their vision for the museum
- DESIGN CONSULTANT shall meet with the following groups, either separately or in combination as determined by the museum staff to get their input on their vision for the museum, how they would use it and to gauge their anticipated support of it
 - Heritage organizations in the area
 - Chandler Unified School District
 - The technology and business community
 - Children's service providers
 - Area museum professionals
 - The general public
- DESIGN CONSULTANT shall prepare a report detailing the findings developed through the above meetings
 - Potential space sizes and relationships
 - Staff and patron occupancies and capacities
 - Define anticipated level of quality
 - Assist CM@RISK in developing a cost model defining budget requirements
 - Include parking garage to be located on the northwest corner of Washington Street and Boston Avenue
- DESIGN CONSULTANT shall complete the following tasks as part of the Conceptual design
 - Develop space relationship diagrams that address needs of the background material and visioning meetings
 - Create up to three possible exterior appearance concepts to show what the museum might look like. Concepts to consider:
 - Proximity to City Hall
 - Location in Downtown Chandler
 - Heritage of Community
 - Unique vision of the future
 - Design concepts to include an approximately 240-car parking structure and 7,500 s.f. artist commercial space on the southeast corner of Boston and Washington Streets
 - Present concepts to City and Museum staff
 - Present concepts to City Council and to the public
 - Make revisions based on input from above meetings to create fourth and final concept
 - Present final concept to City council and to the public

DESIGN CONSULTANT shall provide four 36" x 24" mounted renderings of elevations of each conceptual design and floor plans or a detailed program plan for each design that explains what functions are on each floor of the building and their adjacencies. These materials will also be provided as PDFs.

**EXHIBIT A-2
DESIGN CONSULTANT AND THEIR ASSIGNMENTS**

Architecture and Interior Architecture – SmithGroup

Design, project management and leadership of the design consultants. Architectural design and documentation.

Charles Hugh Crain, AIA LEED AP – Principal in Charge

Kent Willcox, AIA LEED AP – Project Manager

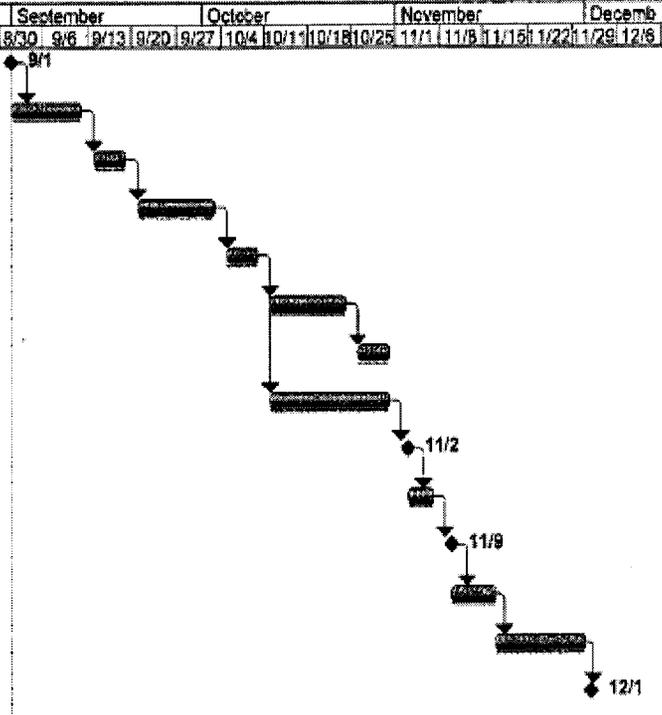
Mark Roddy, AIA – Design Principal

David Greenbaum – Museum Design Expert

EXHIBIT A-3
PRODUCTION SCHEDULE

CHANDLER MUSEUM
Public Input and Concept Development - Project Schedule

ID	Task Name	Duration	Start	Finish	September				October				November			December		
					8/23	8/30	9/6	9/13	9/20	9/27	10/4	10/11	10/18	10/25	11/1	11/8	11/15	11/22
1	Initial meeting - Museum staff/Design team	0 days	Tue 9/1/09	Tue 9/1/09														
2	Review previous information	9 days	Tue 9/1/09	Fri 9/11/09														
3	Meetings w/ Mayor & Council members	5 days	Mon 9/14/09	Fri 9/18/09														
4	Meet w/ Focus Groups	10 days	Mon 9/21/09	Fri 10/2/09														
5	Meet w/ General Public	5 days	Mon 10/5/09	Fri 10/9/09														
6	Prepare report of meeting outcomes	10 days	Mon 10/12/09	Fri 10/23/09														
7	Full project proposed schedule	5 days	Mon 10/26/09	Fri 10/30/09														
8	Concept design	15 days	Mon 10/12/09	Fri 10/30/09														
9	Present to City project staff	1 day	Mon 11/2/09	Mon 11/2/09														
10	Make revisions	4 days	Tue 11/3/09	Fri 11/6/09														
11	Present to project staff	1 day	Mon 11/9/09	Mon 11/9/09														
12	Presentations to Councilmembers	5 days	Tue 11/10/09	Mon 11/16/09														
13	Further revisions as necessary	10 days	Tue 11/17/09	Mon 11/30/09														
14	Present to council & public hearing	1 day	Tue 12/1/09	Tue 12/1/09														



Project: 081409preliminaryschedule.mxd Date: Fri 8/14/09	Task		Milestone		External Tasks	
	Split		Summary		External Milestone	
	Progress		Project Summary		Deadline	

EXHIBIT A-4 DESIGN QUALITY CONTROL PLAN

1. PRIORITIES AND SCHEDULES

The DESIGN CONSULTANT methodology is based on developing and following a systematic schedule, which outlines the basic process of problem definition, analysis and solution. The schedule is an organizational tool that correlates activities throughout the master planning and design phases. The schedule identifies tasks and duration.

To ascertain staffing requirements and ensure that adequate staffing for current and anticipated workload, the DESIGN CONSULTANT projects staff needs on a weekly and quarterly basis which includes all projects in progress and those expected to become active in that period. The DESIGN CONSULTANT takes every step necessary to assign quality people and dedicate them for the life of a project.

The DESIGN CONSULTANT shall develop a schedule that carefully establishes **decision points** within the process, allowing input from all sources. This is a key aspect of coordination and supervision and the depth of staff will allow us to aggressively maintain the schedule milestones. It is continuously monitored throughout the course of the project and updated as necessary.

The schedule shall reflect a continuous line of communication and a decision-making process that involves all parties:

- Regularly scheduled team meetings
- Intensive client participation and input at early critical stages
- Client meetings/approvals at appropriate milestones to keep project moving forward
- Cost modeling at early stages, and then cost estimates based on concepts and narratives which evolve into more detailed analysis as the design evolves. These continue in parallel with the CM@RISK estimates during design development, construction documents phases and in development of the GMP.
- Operations and maintenance coordination with CITY staff to solicit input and assist in decisions for building systems and materials selections.
- Assistance in CM@RISK selection process, their GMP development and providing early release design packages to expedite a fast track schedule
- Phased FF&E installation to support a staged move-in

"Consensus-Building" of the Design. DESIGN CONSULTANT uses consensus building techniques during the design process. These include workshops and meetings to not only gather input but also to inform all interested parties.

Accommodating the Program within the Budget. DESIGN CONSULTANT shall work closely with the CM@RISK, making adjustments as the design progresses to stay within budget. DESIGN CONSULTANT shall employ the services of a cost estimating consultant to **back-check** the information on costs provided by the CM@RISK. Most significantly, the CITY shall rely upon the CM@RISK to use their expertise in providing estimating services. Until a GMP is established, the CM@RISK has no risk with regard to the potential re-design efforts and potential delays over the course of the estimates provided during the design phases.

2. WORKSHOP APPROACH

The DESIGN CONSULTANT utilizes an **interactive workshop** process to establish an understanding of project goals and objectives and to determine a design direction. The workshop allows for a large group of user representatives, users, designers and engineers to gain a **mutual understanding** and direction for the project within a short period of time. Our team will facilitate a concentrated effort wherein the project issues are defined. We will then begin to develop solutions that address variables such as building systems phasing and materials that meet the project's cost, schedule and aesthetic requirements. The workshop process can be used throughout the programming, planning, design and documentation phases of a project. This process **builds consensus** and understanding throughout the design and allows a "no surprises" approach to design of all systems.

3. BUDGET METHODOLOGY/COST CONTROL

Subsequent to the programming workshop, the DESIGN CONSULTANT shall develop a **Cost Model** for the project that becomes a benchmark by which we gauge the results of the CM@RISK cost estimating efforts. Overall project goals of quality, cost and schedule are jointly established and agreed to by the City, CM@RISK and DESIGN CONSULTANT. Based on program requirements, quality levels and proposed systems, a Cost Model is built reflecting estimated market costs for the systems proposed. Included in the Cost Model are contingencies and appropriate cost escalation factors. The Cost Model defines the elements to be included in the project (such as FF&E), which needs to be included in the City's total project budget, but outside of the general construction budget.

If the Cost Model exceeds the budget, the DESIGN CONSULTANT **will revisit the program requirements** and systems selection and make the necessary adjustments to bring the project within the budget. No further design will proceed until the program Cost Model and construction budget are compatible and that all parties are confident that the costs are appropriate, adequate and the CM@RISK and his sub-contractors fully understand the scope of the work.

At each phase of the project, the DESIGN CONSULTANT shall prepare document packages for cost estimating. Upon completion of the cost estimate, the DESIGN CONSULTANT shall meet to review the DESIGN CONSULTANT'S and CM@RISK's cost estimates to resolve any discrepancies. If the cost estimates exceed the budget, the entire DESIGN CONSULTANT shall address the systems together in decreasing order of magnitude and propose revisions to the program, system or quality level to bring the project back into budget before processing to the next level.

At the early design stages, constructability issues, optional MEP systems or program elements will be value engineered by the DESIGN CONSULTANT and CM@RISK to evaluate **first cost versus life cycle cost** and to evaluate methodologies to consolidate or refine building elements to improve the overall value to the owner. These value engineering proposals and their **cost impacts** will be listed and reviewed with the CITY who will make the final determination as to what proposals will be implemented. This value engineering is completed at the end of the Design Development Phase.

4. QUALITY MANAGEMENT REVIEW PROCESS

The DESIGN CONSULTANT is responsible for the level of quality of the construction documents. Our quality management review is a peer-review process designed to 1) assist the DESIGN CONSULTANT and their subs in focusing on the major attributes of each phase of a project, 2) operate as a "checks and balances" for improved quality control, and 3) provide documentation of the review process.

Reviews are performed by a team of senior staff members, assigned to the quality management review team, at project start-up. The quality management review team follows the project through all of its phases. A general guide as to what issues or items will be covered at each phase is created for the type of project involved.

The reviews are to be done at each phase of work and are meant to provide meaningful input points where the DESIGN CONSULTANT can incorporate comments and revise the deliverables if necessary.

5. INTERNAL METHODS

The DESIGN CONSULTANT takes advantage of all the tools used to help **manage, document and present** the project. They include:

- Project schedule to track critical milestones and reviews, standard software programs for other critical project management activities such as meeting minutes, spreadsheets, reports and the latest versions of AutoCAD and 3D modeling software packages for design presentations.
- DESIGN CONSULTANT coordination meetings will be held in our Phoenix office with appropriate client staff, CM@RISK and design team cost estimators.

EXHIBIT B

FEE SCHEDULE - NOT TO EXCEED – HOURLY RATE

PROJECT TITLE: **CHANDLER MUSEUM**
PROJECT NO. **GG0803-202**
Chandler, AZ.

For services described in paragraph 3 of this Agreement, the CITY shall pay DESIGN CONSULTANT a fee not to exceed the sum of **Eighty Three Thousand Three Hundred** dollars (\$83,300) in accordance with the schedule set forth in exhibits B-1 and B-2 attached hereto and incorporated herein by reference.

1. **PAYMENT SCHEDULE:** Payments to Design Consultant will be based on the hourly rates and expense costs shown on the fee schedule attached as Exhibit B-1 and will be made in accordance with the estimated payment schedule attached as Exhibit B-2
2. The not to exceed fee listed above is the total authorized fee and includes “reimbursables”.
3. Payment will be made monthly on the basis of time and costs expended as reported in progress reports and deliverables. Work schedule updates will be included in the monthly progress payment requests.
4. An application and certification for payment must be provided by Design Consultant. Such application must provide a clear, detailed invoice reflecting all items billed for. The summary sheet will show, in addition to hours, rates and costs, the percentage of work completed to date, previous payment invoiced/received and current fee requested.
5. Such application shall also include any/all backup documentation (i.e.: receipts, invoices, logs, etc) supporting reimbursable expenses and consultant fees.

**EXHIBIT B-1
DESIGN TEAM HOURLY RATES AND OTHER CHARGES**

Schedule of Standard Hourly Billing Rates

For period 1/1/09 through 12/31/09

Project Management

Principal-in-Charge	\$ 200
Project Director	\$ 175
Project Manager	\$ 150

Architecture

Architectural Principal	\$ 175
Senior Architect / Senior Designer	\$ 135
Architect / Designer	\$ 105
Job Captain / Junior Architect	\$ 85
Architectural CAD / Intern	\$ 75

Interiors

Interiors Principal	\$ 160
Senior Interior Designer	\$ 125
Interior Designer	\$ 95
Space Planner / Graphic Designer	\$ 80
Interiors CAD / Intern	\$ 70

Engineering

Engineering Principal	\$ 175
Senior Engineer / Senior Designer	\$ 135
Engineer / Designer	\$ 105
Junior Engineer / Junior Designer	\$ 85
Engineering CAD	\$ 75

Special Resources

Clerical	\$ 60
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Billing rates are adjusted once per year in January to reflect cost of labor adjustments, with a maximum average increase of 5% in any one year.

**EXHIBIT B-2
ESTIMATED PAYMENT SCHEDULE**

Phase Breakdown:

<u>Services</u>	
Museum Meetings, report, and design concepts	\$61,275
Parking Garage and artist space	\$17,025
	<hr/> \$78,300
<u>Reimbursable expenses*</u>	<u>\$5,000</u>
	\$83,300

*Reimbursable expenses, including out of town travel, printing, and courier services are estimated at \$5,000

EXHIBIT C

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

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the Design Consultant and subconsultants 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 and attached Employee Verification Worksheet the Design Consultant shall attest that it and all subconsultants performing work under the cited contract meet all conditions contained herein.

Project Number/Division: GG0803-202
Name (as listed in the contract): SmithGroup, Inc.
Street Name and Number: 455 N. Third St., Ste. 250
City: Phoenix State: AZ Zip Code: 85005

I hereby attest that:

1. The Design Consultant 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 subconsultants 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; and
3. The Design Consultant has identified all Design Consultant and subconsultant employees who perform work under the contract and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214.

Signature of Design Consultant (Employer) or Authorized Designee:

Michael L. Medina

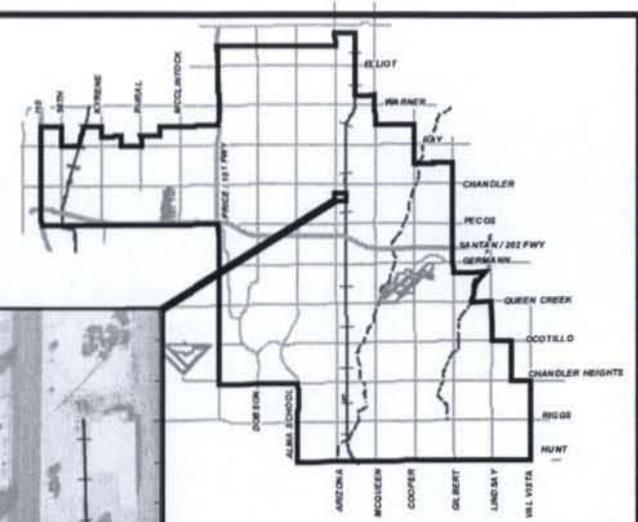
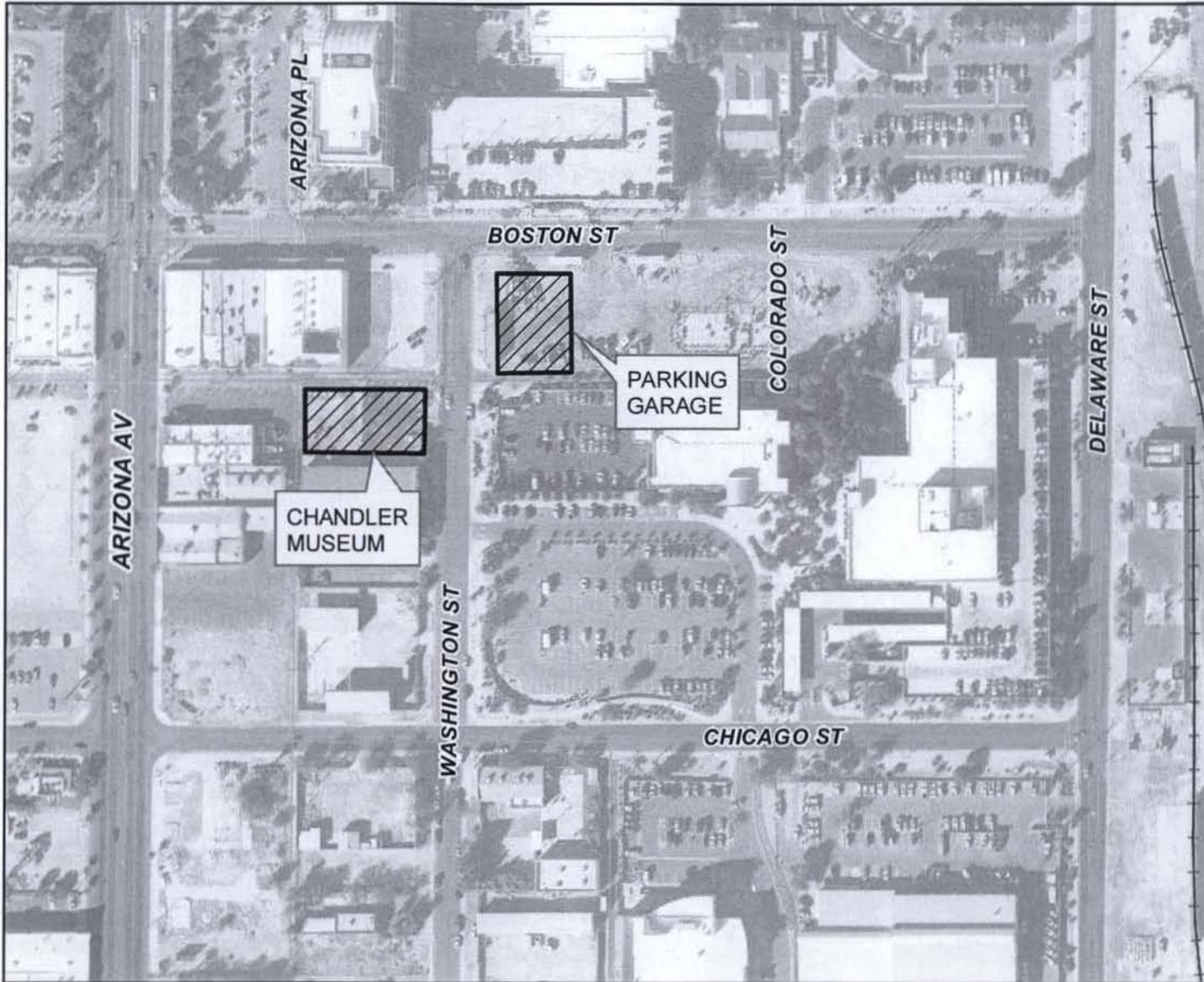
Printed Name: MICHAEL L. MEDINA

Title: PRESIDENT

Date (month/day/year): 08/19/09



CHANDLER MUSEUM PROJECT NO. GG0803-202



MEMO NO. CA10-039

 PROJECT SITE

