



PROFESSIONAL SERVICES AGREEMENT
Design Services
SNEDIGAR SPORTSPLEX WEST RESTROOM REPLACEMENT
Project No. PR2102.201
Council Date: February 25, 2021 Item No.

THIS AGREEMENT ("Agreement") is made and entered into on the ____ day of _____, 2021 ("Effective Date"), by and between City of Chandler, an Arizona municipal corporation, ("City"), and **Gavan & Barker, Inc.**, an Arizona corporation, ("Consultant") (City and Consultant may individually be referred to as "Party" and collectively referred to as "Parties").

RECITALS

A. City proposes to engage Consultant to provide Select Agreement Type for **SNEDIGAR SPORTSPLEX WEST RESTROOM REPLACEMENT** project as more fully described in **Exhibit "A"**, which is attached to and made a part of this Agreement by this reference.

B. Consultant is ready, willing, and able to provide the services described in **Exhibit "A"** for the compensation and fees set forth and as described in **Exhibit "B"**, which is attached to and made a part of this Agreement by this reference.

C. City desires to contract with Consultant to provide these services under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Agreement, City and Consultant agree as follows:

SECTION I--CONSULTANT'S SERVICES

Consultant must perform the services described in **Exhibit "A"** to City's satisfaction within the terms and conditions of this Agreement and within the care and skill that a person who provides similar services in Chandler, Arizona exercises under similar conditions. All work or services furnished by Consultant under this Agreement must be performed in a skilled and workmanlike manner. All fixtures, furnishings, and equipment furnished by Consultant as part of the work or services under this Agreement must be new, or the latest model, and of the most suitable grade and quality for the intended purpose of the work or service.

SECTION II--PERIOD OF SERVICE

Consultant must perform the services described in **Exhibit "A"** for the term of this Agreement. Unless amended in writing by the Parties, the Agreement term expires **225** calendar days after the Notice to Proceed (NTP) Date.

SECTION III--PAYMENT OF COMPENSATION AND FEES

Unless amended in writing by the Parties, Consultant's compensation and fees as more fully described in **Exhibit "B"** for performance of the services approved and accepted by City under this Agreement must not exceed **\$36,690.07** for the full term of the Agreement. Consultant may not increase any compensation or fees under this Agreement without the City's prior written consent. Consultant must submit monthly requests for payment of services approved and accepted during the previous billing period and must include, as applicable, detailed invoices and receipts, a narrative description of the tasks accomplished during the billing period, a list of any deliverables submitted, and any subconsultant's or supplier's actual requests for payment plus similar narrative and listing of their work. Consultant must submit an Application and Certification for Payment Sheet with the monthly request for payment to: CapitalProjects.Payables@chandleraz.gov. Payment for those services negotiated as a lump sum will be made in accordance with the percentage of the work completed during the preceding billing period. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on the service during the preceding month. All requests for payment must be submitted to City for review and approval. City will make payment for approved and accepted services within 30 calendar days of City's receipt of the request for payment. Consultant bears all responsibility and liability for any and all tax obligations that result from Consultant's performance under this Agreement.

SECTION IV--CITY'S OBLIGATIONS

As part of Consultant's services under this Agreement, City will provide furnished items, services, or obligations as detailed in **Exhibit "D"**.

SECTION V--GENERAL CONDITIONS

5.1 Notices. Unless otherwise provided herein, demands under this Agreement must be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City:	City of Chandler Public Works & Utilities Department Attn: City Engineer P.O. Box 4008, Mail Stop 407 Chandler, AZ 85244-4008
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With a Copy to:	Project Manager City of Chandler Public Works & Utilities Department P.O. Box 4008, Mail Stop 407 Chandler, AZ 85244-4008
To Consultant:	Mr. John Barker Gavan & Barker, Inc. 3030 N. Central Ave., Ste. 700 Phoenix, AZ 85012

5.2 Records/Audit. Records of Consultant's direct personnel payroll, reimbursable expenses pertaining to this Agreement and records of accounts between City and Consultant must be kept on the basis of generally accepted accounting principles and must be made available to City and its auditors for up to three years following City's final acceptance of the services under this Agreement. City, its authorized representative, or any federal agency, reserves the right to audit Consultant's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate this Agreement and any amendments. City reserves the right to decrease the total amount of Agreement price or payments made under this Agreement or request reimbursement from Consultant following final contract payment on this Agreement if, upon audit of Consultant's records, the audit discloses Consultant has provided false, misleading, or inaccurate cost and pricing data. Consultant will include a similar provision in all of its contracts with subconsultants who provide services under the Agreement to ensure that City, its authorized representative, or the appropriate federal agency, has access to the subconsultants' records to verify the accuracy of all cost and pricing data. City reserves the right to decrease Contract price or payments made on this Agreement or request reimbursement from Consultant following final payment on this Agreement if the above provision is not included in subconsultant agreements, and one or more subconsultants refuse to allow City to audit their records to verify the accuracy and appropriateness of all cost and pricing data. If, following an audit of this Agreement, the audit discloses Consultant has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, Consultant will be liable for reimbursement of the reasonable, actual cost of the audit.

5.3 Alteration in Character of Work. Whenever an alteration in the character of work results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project schedule, the work will be performed as directed by City. However, before any modified work is started, a written amendment must be approved and executed by City and Consultant. Such amendment must not be effective until approved by City. Additions to, modifications, or deletions from this Agreement as provided herein may be made, and the compensation to be paid to Consultant may accordingly be adjusted by mutual agreement of the Parties. It is distinctly understood and agreed that no claim for extra services or materials furnished by Consultant will be allowed by City except as provided herein, nor must Consultant do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by Consultant without prior written authorization will be at Consultant's own risk, cost, and expense, and Consultant hereby agrees that without

written authorization Consultant will make no claim for compensation for such work or materials furnished.

5.4 Termination. City and Consultant hereby agree to the full performance of the covenants contained herein, except that City reserves the right, at its discretion and without cause, to terminate or abandon any service provided for in this Agreement, or abandon any portion of the Project for which services have been performed by Consultant. In the event City abandons or suspends the services, or any part of the services as provided in this Agreement, City will notify Consultant in writing and immediately after receiving such notice, Consultant must discontinue advancing the work specified under this Agreement. Upon such termination, abandonment, or suspension, Consultant must deliver to City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by City. Consultant must appraise the work Consultant has completed and submit Consultant's appraisal to City for evaluation. City may inspect Consultant's work to appraise the work completed. Consultant will receive compensation in full for services performed to the date of such termination. The fee will be paid in accordance with Section III of this Agreement, and as mutually agreed upon by Consultant and City. If there is no mutual agreement on payment, the final determination will be made in accordance with the "Disputes" provision in this Agreement. However, in no event may the fee exceed the fee set forth in Section III of this Agreement nor as amended in accordance with Section "Alteration in Character of Work." City will make the final payment within 60 days after Consultant has delivered the last of the partially completed items and the Parties agree on the final fee. If City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement.

5.5 Indemnification. To the extent permitted by law, the Consultant ("Indemnitor") must indemnify, save and hold harmless City and its officers, officials, agents and employees ("Indemnatee") from any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation) ("Claims") caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Consultant or any of its owners, officers, directors, agents, employees, or subconsultants in connection with this Agreement. This indemnity includes any claim or amount arising out of or recovered under workers' compensation law or on account of the failure of Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Consultant must indemnify Indemnatee from and against any and all Claims, except those arising solely from Indemnatee's own negligent or willful acts or omissions. Consultant is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Agreement, Consultant agrees to waive all rights of subrogation against Indemnatee for losses arising from or related to this Agreement. The obligations of Consultant under this provision survive the termination or expiration of this Agreement.

5.6 Insurance Requirements. Consultant must procure insurance under the terms and conditions and for the amounts of coverage set forth in **Exhibit "C"** against claims that may arise from or relate to performance of the work under this Agreement by Consultant and its

agents, representatives, employees, and subconsultants. Consultant and any subconsultant must maintain this insurance until all of their obligations have been discharged, including any warranty periods under this Agreement. These insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. City in no way warrants that the minimum limits stated in **Exhibit "C"** are sufficient to protect Consultant from liabilities that might arise out of the performance of the work under this Agreement by Consultant, Consultant's agents, representatives, employees, or subconsultants. Consultant is free to purchase such additional insurance as may be determined necessary.

5.7 Cooperation and Further Documentation. Consultant agrees to provide City such other duly executed documents as may be reasonably requested by City to implement the intent of this Agreement.

5.8 Successors and Assigns. City and Consultant each bind itself, its partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither City nor Consultant may assign, sublet, or transfer its interest in this Agreement without the written consent of the other party. In no event may any contractual relation be created between any third party and City.

5.9 Disputes. In any dispute arising out of an interpretation of this Agreement or the duties required not disposed of by agreement between Consultant and City, the final determination at the administrative level will be made by City Engineer.

5.10 Completeness and Accuracy of Consultant's Work. Consultant must be responsible for the completeness and accuracy of Consultant's services, data, and other work prepared or compiled under Consultant's obligation under this Agreement and must correct, at Consultant's expense, all willful or negligent errors, omissions, or acts that may be discovered. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications must be accomplished by Consultant. The cost of the design necessary to correct those errors attributable to Consultant and any damage incurred by City as a result of additional construction costs caused by such engineering or architectural errors will be chargeable to Consultant and will not be considered a cost of the Work. The fact that City has accepted or approved Consultant's work will in no way relieve Consultant of any of Consultant's responsibilities.

5.11 Reporting. Written monthly reports, along with updated work schedules, will be made by Consultant in the format prescribed by City. These reports will be delivered to City per schedule. When requested by City, Consultant will attend Council meetings and provide finished documents including correspondence for Council action, supporting charts, graphs, drawings and colored slides of same.

5.12 Withholding Payment. City reserves the right to withhold funds from Consultant's payments up to the amount equal to the claims City may have against Consultant until such time that a settlement on those claims has been reached.

5.13 City's Right of Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by City under the provisions of Section 38-511, Arizona Revised Statutes (A.R.S.).

5.14 Independent Consultant. For this Agreement Consultant constitutes an independent contractor. Any provisions in this Agreement that may appear to give City the right to direct Consultant as to the details of accomplishing the work or to exercise a measure of control over the work means that Consultant must follow the wishes of City as to the results of the work only. These results must comply with all applicable laws and ordinances.

5.15 Project Staffing. Prior to the start of any work under this Agreement, Consultant must submit to City detailed resumes of key personnel that will be involved in performing services prescribed in the Agreement. City hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that Consultant desires to change key personnel while performing under the Agreement, Consultant must submit the qualifications of the new personnel to City for prior approval. Key personnel include, but are not limited to, principals-in-charge, project manager, and project Consultant. Consultant will maintain an adequate and competent staff of qualified persons, as may be determined by City, throughout the performance of this Agreement to ensure acceptable and timely completion of the Scope of Services. If City objects, with reasonable cause, to any of Consultant's staff, Consultant must take prompt corrective action acceptable to City and, if required, remove such personnel from the Project and replace with new personnel agreed to by City.

5.16 Consultants or Subconsultants. Prior to beginning the work, Consultant must furnish City for approval the names of consultants or subconsultants to be used under this Agreement. Any subsequent changes are subject to City's written prior approval.

5.17 Force Majeure. If either party is delayed or prevented from the performance of any act required under this Agreement by reason of acts of God or other cause beyond the control and without fault of the Party (financial inability excepted), performance of that act may be excused, but only for the period of the delay, if the Party provides written notice to the other Party within ten days of such act. The time for performance of the act may be extended for a period equivalent to the period of delay from the date written notice is received by the other Party.

5.18 Compliance with Federal Laws. Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. Consultant agrees to comply with these laws in performing this Agreement and to permit City to verify such compliance.

5.19 No Israel Boycott. By entering into this Agreement, Consultant certifies that Consultant is not currently engaged in, and agrees for the duration of the Agreement, not to engage in a boycott of Israel as defined by state statute.

5.20 Legal Worker Requirements. A.R.S. § 41-4401 prohibits City from awarding a contract to any consultant who fails, or whose subconsultants fail, to comply with A.R.S. § 23-214(A). Therefore, Consultant agrees Consultant and each subconsultant it uses warrants their

compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of the Agreement and may be subject to penalties up to and including termination of the Agreement. City retains the legal right to inspect the papers of any Consultant's or subconsultant's employee who provides services under this Agreement to ensure that Consultant and subconsultants comply with the warranty under this provision.

5.21 Lawful Presence Requirement. A.R.S. §§ 1-501 and 1-502 prohibit City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

5.22 Covenant Against Contingent Fees. 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 Chandler City Council, or any City employee has any interest, financially, or otherwise, in Consultant's firm. For breach or violation of this warrant, City may 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.

5.23 Non-Waiver Provision. The failure of either Party to enforce any of the provisions of this Agreement or to require performance of the other Party of any of the provisions hereof must not be construed to be a waiver of such provisions, nor must it affect the validity of this Agreement or any part thereof, or the right of either Party to thereafter enforce each and every provision.

5.24 Disclosure of Information Adverse to City's Interests. To evaluate and avoid potential conflicts of interest, Consultant must provide written notice to City, as set forth in this Section, of any work or services performed by Consultant for third parties that may involve or be associated with any real property or personal property owned or leased by City. Such notice must be given 7 business days prior to commencement of the services by Consultant for a third party, or 7 business days prior to an adverse action as defined below. Written notice and disclosure must be sent in accordance with Section 6.7 above. An adverse action under this Agreement includes, but is not limited to: (a) using data as defined in the Agreement acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against City; or (b) testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against City; or (c) using data to produce income for Consultant or its employees independently of performing the services under this Agreement, without the prior written consent of City. Consultant represents that except for those persons, entities, and projects identified to City, the services performed by Consultant under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to City's interests. Consultant's failure to provide a written notice and disclosure of the information

as set forth in this Section constitute a material breach of this Agreement.

5.25 Data Confidentiality and Data Security. As used in the Agreement, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to Consultant or its subconsultants in the performance of this Agreement. The Parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to Consultant or its subconsultants in connection with Consultant's or its subconsultant's performance of this Agreement is confidential and proprietary information belonging to City. Except as specifically provided in this Agreement, Consultant or its subconsultants must not divulge data to any third party without City's prior written consent. Consultant or its subconsultants must not use the data for any purposes except to perform the services required under this Agreement. These prohibitions do not apply to the following data provided to Consultant or its subconsultants have first given the required notice to City: (a) data which was known to Consultant or its subconsultants prior to its performance under this Consultant or its subconsultants by a third party, who to the best of Consultant's or its subconsultants' knowledge and belief, had the legal right to make such disclosure and Consultant or its subconsultants are not otherwise required to hold such data in confidence; or (c) data which is required to be disclosed by virtue of law, regulation, or court order, to which Consultant or its subconsultants are subject. In the event Consultant or its subconsultants are required or requested to disclose data to a third party, or any other information to which Consultant or its subconsultants became privy as a result of any other contract with City, Consultant must first notify City as set forth in this Section of the request or demand for the data. Consultant or its subconsultants must give City sufficient facts so that City can be given an opportunity to first give its consent or take such action that City may deem appropriate to protect such data or other information from disclosure. All data must continue to be subject to the confidentiality agreements of this Agreement. Consultant or its subconsultants assume all liability to maintain the confidentiality of the data in its possession and agrees to compensate City if any of the provisions of this Section are violated by Consultant, its employees, agents or subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. Consultant agrees that the requirements of this Section must be incorporated into all subagreements entered into by Consultant. A violation of this Section may result in immediate termination of this Agreement without notice.

5.26 Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times by Consultant or its subconsultants. At a minimum, Consultant or its subconsultants must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. In the event that

data collected or obtained by Consultant or its subconsultants in connection with this Agreement is believed to have been compromised, Consultant or its subconsultants must immediately notify City contact. Consultant agrees to reimburse City for any costs incurred by City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. Consultant agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Consultant. It is further agreed that a violation of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Consultant or its subconsultants under this Section must survive the termination of this Agreement.

5.27 Jurisdiction and Venue. This Agreement is made under, and must be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto must be brought in the courts located in Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

5.28 Survival. All warranties, representations, and indemnifications by Consultant must survive the completion or termination of this Agreement.

5.29 Modification. Except as expressly provided herein to the contrary, no supplement, modification, or amendment of any term of this Agreement will be deemed binding or effective unless in writing and signed by the Parties.

5.30 Severability. If any provision of this Agreement or the application to any person or circumstance may be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application will not be affected and will be enforceable to the fullest extent permitted by law.

5.31 Integration. This Agreement contains the full agreement of the Parties. Any prior or contemporaneous written or oral agreement between the Parties regarding the subject matter is merged and superseded.

5.32 Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

5.33 Date of Performance. If the date of performance of any obligation or the last day of any time period provided for should fall on a Saturday, Sunday, or holiday for City, the obligation will be due and owing, and the time period will expire, on the first day after which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth in this Agreement, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Chandler time) on the day of performance.

5.34 Third Party Beneficiary. Nothing under this Agreement will be construed to give any rights or benefits in the Agreement to anyone other than City and Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and

exclusive benefit of City and Consultant and not for the benefit of any other party.

5.35 Conflict in Language. All work performed must conform to all applicable City of Chandler codes, ordinances, and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in **Exhibit "A"**, the provisions in this Agreement prevail.

5.36 Document/Information Release. Documents and materials released to Consultant, which are identified by City as sensitive and confidential, are City's property. The document/material must be issued by and returned to City upon completion of the services under this Agreement. Consultant secondary distribution, disclosure, copying, or duplication in any manner is prohibited without City's prior written approval. The document/material must be kept secure at all times. This directive applies to all City documents, whether in photographic, printed, or electronic data format.

5.37 Exhibits. The following exhibits are made a part of this Agreement and are incorporated by reference:

Exhibit A - Scope of Services / Schedule

Exhibit B - Compensation and Fees

Exhibit C - Insurance Requirements

Exhibit D - Special Conditions

Exhibit E - Federal Requirements (if applicable)

5.38 Special Conditions. As part of the services Consultant provides under this Agreement, Consultant agrees to comply with and fully perform the special terms and conditions set forth in **Exhibit "D"**, which is attached to and made a part of this Agreement.

5.39 Non-Discrimination and Anti-Harassment Laws. Consultant must comply with all applicable City, state, and federal non-discrimination and anti-harassment laws, rules, and regulations.

5.40 Licenses and Permits. Beginning with the Effective Date and for the full term of this Agreement, Consultant must maintain all applicable City, state, and federal licenses and permits required to fully perform Consultant's services under this Agreement.

5.41 Warranties. Consultant must furnish a one-year warranty on all work and services performed under this Agreement. Consultant must furnish, or cause to be furnished, a two-year warranty on all fixtures, furnishings, and equipment furnished by Consultant, subconsultants or suppliers under this Agreement. Any defects in design, workmanship, or materials that do not comply with this Agreement must be corrected by Consultant (including, but not limited to, all parts and labor) at Consultant's sole cost and expense. All written warranties and redlines for as-built conditions must be delivered to City on or before City's final acceptance of Consultant's services under this Agreement.

5.42 Cooperative Purchasing Agreement (S.A.V.E. – Strategic Alliance for Volume Expenditures). In addition to City of Chandler and with the approval of Consultant, this

Agreement may be extended for use by other municipalities, school districts, and government agencies of the State. Any such usage by other entities must be in accordance with the ordinance, charter, or procurement rules and regulations of the respective political entity.

5.43 Budget Approval into Next Fiscal Year. This Agreement will commence on the Effective Date and continue in full force and effect until it is terminated or expires in accordance with the provisions of this Agreement. The Parties recognize that the continuation of this Agreement after the close of the City's fiscal year, which ends on June 30 of each year, is subject to the City Council's approval of a budget that includes an appropriation for this item as an expenditure. The City does not represent that this budget item will be actually adopted. This determination is solely made by the City Council.

SIGNATURE PAGE TO FOLLOW

This Agreement will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

"CITY"

CITY OF CHANDLER

MAYOR

Recommended By:

Andrew Goh, P.E.
CIP City Engineer

APPROVED AS TO FORM:

City Attorney

WB

ATTEST:

City Clerk

Seal

"CONSULTANT"

Gavan & Barker, Inc.

Signature

Date

John Barker 1-9-21

Print Name

JOHN BARKER

Title

VICE PRESIDENT

Email

j.barker@gavanbarker.com

EXHIBIT "A"
SCOPE OF SERVICES/SCHEDULE

December 14, 2020

Mr. Hafiz Noor
Project Manager
Public Works & Utilities Department
City of Chandler
Mail Stop 407
PO Box 4008
Chandler, AZ 85244-4008

**Re: Design Services Proposal
City of Chandler – Snedigar Sportsplex West Restroom Replacement
CoC Project No.: PR2102.201
Gavan & Barker No. 1921**

Dear Hafiz:

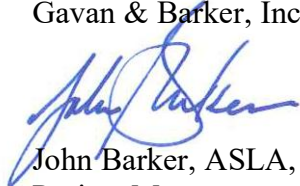
We are pleased to submit our price proposal for the above referenced project. Attached is Attachment A-1 Scope of Services; A-2 Production Assignments; A-3 Production Schedule; Attachment B-1 Task Costs; and Attachment B-2 Task Hours.

Also enclosed are the cost proposals from our subconsultants: Gilliam Architecture and Wright Engineering. We anticipate a project schedule of 225 days total including Design, City Plan Review and Bidding Phase. Please see attached project schedule.

At our scope meeting it was requested to break our proposal out into 3 proposals for: Restroom, Stabilization, and Ramada. Because we have previously prepared work (have design files) for the stabilization area and plans for the ramada, the design costs for these two elements are fairly small, therefore separate proposals were not prepared. The cost for the stabilization element would be a \$500 deduct, and the Ramada element would be a \$1000 deduct from this proposal.

Again, thank you for this opportunity and please call me if you have any questions.

Sincerely,
Gavan & Barker, Inc.

A handwritten signature in blue ink, appearing to read "John Barker".

John Barker, ASLA, PLA
Project Manager

Attachments

ATTACHMENT A-1

DETAILED DESCRIPTION OF THE PROJECT AND CONSULTANT SCOPE OF SERVICES

PROJECT TITLE: Snedigar Sportsplex West Restroom Replacement
PROJECT NO.: PR2102.201
Chandler, AZ.

PROJECT DESCRIPTION & SCOPE OF CONSTRUCTION:

Consultant will provide services for the design, permitting and development of construction documents, for a new restroom building at the Snedigar Sportsplex in Chandler, Arizona.

Snedigar Sportsplex is located at 4500 S. Basha Road, located in the square mile bordered by Alma School Rd., Arizona Ave., Ocotillo Rd. and Chandler Heights Rd. in Chandler, Arizona.

The existing restroom building in the ballfield complex will be removed and a new restroom will be constructed at the same location, along with associated utility connections, and sidewalk reconstruction to ensure accessibility compliance in the general vicinity of the new restroom building.

The project will also include new lighted ramadas at the existing storage/overlook building utilizing a design previously completed in the park's last phase of development.

The project will also include soil stabilizing of areas adjacent to the main walkway through the ballfields.

Consultant shall provide all design services for the Project including normal civil engineering, electrical engineering, and architectural services.

TASKS

1. Administrative

- 1.1. Project management: consultant coordination, monitor schedule, quality control
- 1.2. Progress meeting (2 meetings)
- 1.3. Comment resolution meeting (1 meeting)

2. Data Collection / Base Sheets

Base sheets for the new restroom and ramada areas will be prepared utilizing the existing survey and as-built information from previous projects. Utility data will be collected from the City and other utilities to add and or update the utilities in the project areas. Field measurements will be taken as necessary to verify locations of trees, irrigation, and previous project improvements that may affect this project.

3. Schematic Design / Preliminary Submittal (30%) – Consultant shall prepare a preliminary layout for the new restroom improvements in a conceptual form for City review. The 30% schematic plans shall consist of:

- 3.1. **Site Plan:** A site plan will be prepared to locate the new restroom and ramada in the park to meet City Plan Review requirements. New sidewalks will be placed around the perimeter of the new restroom and connect to existing sidewalks as necessary.
 - 3.2. **Demolition Plan:** Demolition and removals shall consist of the existing restroom building; concrete slabs, and adjacent sidewalk, landscape and irrigation, and sidewalk removals for the new ramada footings.
 - 3.3. **Ramada Plan:** The ramada previously designed with the ballfield sidewalk improvements and located at the existing storage building will be incorporated into the plans for this project. Ramada details and updated electrical plans for ramada lighting will be included in the plans. *(See Wright Engineering Scope of Work).*
 - 3.4. **Restroom Plan:** The restroom building will utilize the restroom building design prepared for the Tumbleweed Park Multi-Use Fields project (PR1811.401), and will include 8 individual unisex stalls and 2 individual unisex accessible stalls. Each stall will have a toilet, sink, and hand dryer. The building will also include a maintenance chase and exterior drinking fountains. *(See attached Gilliam Architecture Scope of Work).*
4. **Construction Documents (95%/100%)** – A final submittal will be prepared which will include final plans, specifications, and cost estimate for submittal to City Plan Review. The final plans will include updating the specifications for the building based on any revisions made to the Tumbleweed Park restroom. Plan Review comments will be addressed, adjusting the plans, specifications, & cost estimate as necessary to obtain plan approvals. Tasks include:
- 4.1. **Final Site Plan**
 - 4.2. **Final Site Demolitions Plan**
 - 4.3. **Final Site Grading/ Construction Plan**
 - 4.4. **Final Site Details**
 - 4.5. **Final Restroom Architectural Plans**
 - 4.6. **Final Technical Specifications**
 - 4.7. **Final Cost Estimate**
5. **Bidding Assistance**
- 5.1. Pre-bid meeting.
 - 5.2. Consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.
 - 5.3. Prepare responses to questions from prospective bidders and provide clarifications and interpretation of the Construction Documents and Specifications to all prospective bidders in the form of addenda.

SUBMITTALS

Preliminary Submittal – Schematic plans will be submitted to the City for review. The preliminary submittal will include electronic PDF files of the schematic plans and cost estimates.

Final Submittal – Upon City review of the preliminary submittal, a final submittal shall be made which will include any revisions requested by the City. The final submittal will be an electronic version in PDF format.

Plan Review Submittal – final plans will be uploaded for City Plan Review.

Allowances:

- 6. Owner's Allowance - Additional Design Tasks & Meetings:** This allowance is to provide additional design services and project meetings in the event that the project budget allows for the design of additional features or improvements beyond items identified in this scope work.
- 7. Reimbursables:** Printing & Deliveries

Assumptions:

1. New water, sewer, or electrical services will not be required for the new restroom. The new restroom and ramada will be connected to the existing services.
2. No drainage study will be required. It is assumed that City Plan Review will not require one since the new structures will have little impact on the existing drainage conditions.
3. No Utility Agency Coordination will be required.

ATTACHMENT A-2
PRODUCTION ASSIGNMENTS
Snedigar Sportsplex West Restroom Replacement
PROJECT NO.: PR2102.201

Prime Design Consultant: Gavan & Barker, Inc.

Principal LA / Project Manager: John Barker, PLA, ASLA

Principal/Senior Engineer: Mark Gavan, P.E., R.L.S

Project Engineer: Omer Karovic, P.E.

Landscape Designer: Joel Hormann

Engineering Designer: Alfred Abalos

Architectural Consultant: Gilliam Architecture

Architect: Randy Gilliam RA, NCARB

Electrical Engineering Consultant (Site Work): Wright Engineering, Inc.

Electrical Engineer: Cliff Tolman

ATTACHMENT A-3
PRODUCTION SCHEDULE
Snedigar Sportsplex West Restroom Replacement
PROJECT NO.: PR2102.201

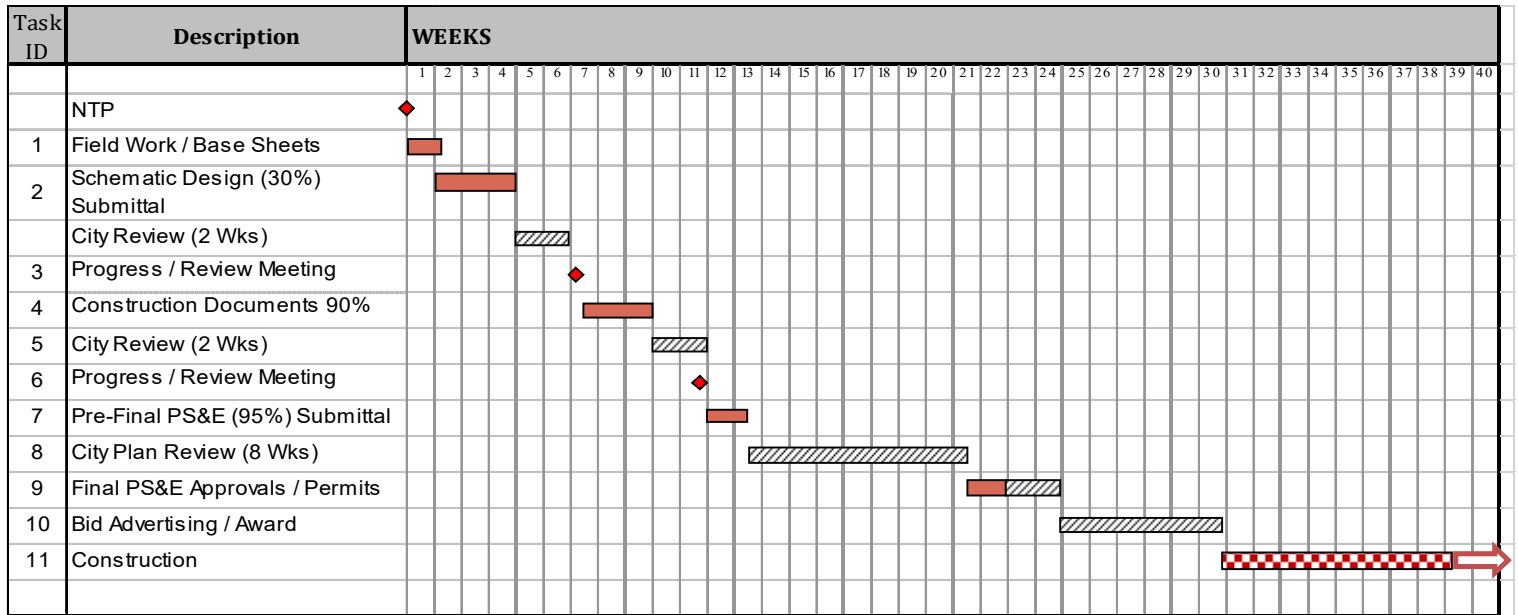


EXHIBIT "B"
COMPENSATION AND FEES

Exhibit B-1

Snedigar Sportsplex Restroom

PR2102.201

Design Services

December 14, 2020



3030 N. Central Ave., Suite 700, Phoenix, Arizona 85012

Task No.	Task Description	Total Costs
1	Administrative	\$ 1,664.50
2	Data Collection/Base Sheets	\$ 1,579.04
3	Schematic Design / Prelim Submittal	\$ 1,763.32
4	Construction Documents	\$ 3,904.92
5	Bidding Assistance	\$ 968.29
	<i>Direct Costs:</i>	
	Gilliam Architecture	\$20,000.00
	Wright Engineering (Electrical)	\$2,310.00
	<i>Allowances:</i>	
	Reimbursables	\$500.00
	Owner's Allowance	\$4,000.00
	Contract Total:	\$ 36,690.07

Exhibit B-2
Snedigar Sportsplex Restroom
PR2102.201
Design Services
December 14, 2020



3030 N. Central Ave., Suite 700, Phoenix, Arizona 85012

		Principal Civil Engr.	Project Manager	Project Engineer	Senior Designer	
TASK DESCRIPTION	SUBTOTAL	\$ 152.05	\$ 136.04	\$ 105.11	\$ 86.24	
1. Administrative	1,664.50	2	10	0	0	12
1.1 Project Management	848.26	2	4			6
1.2 Progress Meetings	544.16		4			4
1.3 Comment Resolution Meeting	272.08		2			2
2. Data Collection / Base Sheets	1,579.04	0	4	0	12	16
2.1 Data Collection / Base Sheets	1,579.04		4		12	16
3. Schematic Design / Prelim Submittal	1,763.32	1	6	1	8	16
3.1 Site Plan	874.20	1	2	1	4	8
3.2 Demolition Plan / Landscape Renovation	358.32		2		1	3
3.3 Ramada Plan	308.52		1		2	3
3.4 Restroom Plan	222.28		1		1	2
4. Construction Documents	3,904.92	4	11	4	16	35
4.1 Final Site Plan	586.11		1	1	4	6
4.2 Final Demolition Plan	222.28		1		1	2
4.3 Final Grading Plans	1,167.80	2	1	2	6	11
4.4 Final Site Details	327.39		1	1	1	3
4.5 Final Restroom Architectural Plans	222.28		1		1	2
4.6 Final Technical Specifications	696.21	1	4			5
4.7 Final Cost Estimate	682.85	1	2		3	6
5. Bidding Assistance	968.29	1	6	0	0	7
5.1 Pre-Bid Meeting	272.08		2			2
5.2 Requests for Substitutions	272.08		2			2
5.3 Respond to Bidder Questions	424.13	1	2			3

Total: 9,880.07

Owner's Allowance 4,000.00

Reimbursables 500.00

Subconsultants

Gilliam Architecture \$20,000.00

Wright Engineering (Electrical) \$2,310.00

Grand Total: \$36,690.07

GILLIAMARCHITECTURE, LLC

ARCHITECTURE + PLANNING + INTERIORS + ILLUSTRATION

40 W. Baseline Rd. #115 | TEMPE | ARIZONA 85283

December 16, 2019 **revised 12/11/2020**

Attn: Mr. John Barker, ASLA, PLA
Gavan & Barker, Inc.
3030 N. Central Ave.
Suite 1530
Phoenix, AZ 85012

Re: Proposal for Architectural and Engineering Services
New Restroom at Snedigar Sportplex

John: We are pleased to submit this **revised** proposal for A/E services for your review and consideration. This proposal is based on the information you provided in our discussions and email correspondence. Scope of services includes Schematic Design, Design Development, Construction Documents, and Permitting. Construction Administration will be provided under a separate agreement.

A. PROJECT SCOPE AND CRITERIA

1. This project includes architectural, structural, mechanical plumbing, and electrical engineering services as required for the addition of the new restroom building at the Snedigar Sportplex Park in Chandler, AZ. It is the City's request to use the same layout, and set of plans as we recently developed for the Tumbleweed Park Restroom, with minimal changes. As part of this scope we will update the design as needed to reflect the current building code requirements. If requested, exterior and interior colors may be changed to reflect the City's design requirements for this project site.
2. Civil and Landscape design and drawings will be provided by Gavan & Barker, the client. We will coordinate with Gavan & Barker as required during the design process. Cad files for the proposed site layout will be provided prior to the start of the design work.
3. Structural engineering is included for the restroom building. Structural engineer will provide drawings and calculations, and adapt drawings to reflect geotechnical recommendations for the soils condition at this site and prepare drawings and calculations for the City's plan review process.
4. Plumbing engineering is included for the restroom building, and include both water supply and waste water plans to within 5' outside of the building. It is assumed that adequate capacity is available to the project site. Plumbing engineer will evaluate and revise, if needed, locations of the plumbing lines that will connect to the existing site main lines.
5. Same as Tumbleweed Park design; it is assumed that the new building will be open to the exterior and that mechanical HVAC will not be required. If requested, or required this would be provided as an additional service.
6. Electrical engineering and Lighting design is included for the restroom building. The electrical engineer will provide drawings and coordinate connections and feeds to the site electrical services. Electrical power and lighting designs will be same as provided for the Tumbleweed Park facility. It is assumed that adequate power is available to the site.

7. Special Fire Protection and fire alarm systems, if required will be provided by the general contractor or by others as a deferred submittal, therefore excluded from this scope of services.
8. As requested, upon completion of the Construction Documents, we will provide signed and sealed PDF files for submittal to the City of Chandler for permit review and approval. If required, additional state or federal or other governmental agencies would be considered an additional service, or will be provided by others.
9. As requested, included is a separate fee breakdown for the Geotechnical / Soils report which will be required for the structural engineering design. The study will be based on one (1) test boring to a depth of 15-20 feet below existing grade which is expected to be. GA's geotechnical engineer to provide a report to illustrate existing soil conditions as required for the structural engineering design and as required for submittal to the City.
10. ***As per our earlier discussion, it is our understanding that the Owner / City representative is interested in researching "smart" technologies and infection control products for this new facility. The design team will work with the Owner and project team to come up options during the initial design process.***

B. BASIC SERVICES TO BE PROVIDED

I. Schematic Phase:

- a. Reuse Tumbleweed Park Restroom plans, and coordinate and exterior color changes as requested by Client / City of Chandler. The proposed layout will be based on a similar design as provided in for the Tumbleweed Park; therefore no further Schematic Design will be required.
- b. If requested, includes one (1) meeting with the client / owner during this phase.
- c. Included is a separate fee breakdown for the Geotechnical Report.
- d. ***Review and research "smart" technologies for infection control or Biophilic design.***

II. Design Development & Construction Drawings Phases:

- a. Prepare and coordinate final set of Construction Drawings and specifications for construction and for permit review.
- b. Gilliam Architecture's engineering consultants to finalize Structural, Plumbing Engineering, and Electrical Engineering, documents for construction and permit review.
- c. Provide Energy Compliance Calculations as required by code.
- d. ***Includes one (1) meeting with the client / owner during this phase, and if requested one meeting with mechanical & electrical engineers.***

III. Bidding & Permitting

- a. Based on our understanding, Client to provide submittals to the City of Chandler for plans review. If requested, we will assist in providing submittals to the City.
- b. Respond to reasonable City comments as required to obtain permit.
- c. Provide PDF files for a bid Set for Clients or Owner's use in obtaining bids from General Contractors, and respond to general contractor's questions regarding construction documents.
- d. Provide electronic CAD files for Architectural and Engineering drawings.

IV. Construction Administration & Post Construction Services

(Excluded to be provided under separate agreement)

C. ADDITIONAL SERVICES The following services are not included under Basic Services, and would be provided for a separate fee or on an hourly basis if requested by the Owner.

1. A change in the project scope or criteria, or making revisions to the design or drawings inconsistent with previously furnished information or approvals.
2. Design of other special systems, equipment, or manufacturing areas, storage systems, foodservice or kitchen equipment, or other special systems or equipment not previously mentioned.
3. Design of other future buildings or remodeling of the existing building. If requested, these can be provided at an additional service fee.
4. Additional meetings or presentations beyond those described in Section B above.
5. Post construction services or preparation of as-built drawings (the contractor will provide a set of as-built drawings, or provided under a separate CA services agreement).
6. Field engineering including site surveys, topographic surveys, construction staking, special structural inspection, or material testing (these services will be provided by the contractor).
7. Civil engineering or landscaping design services, coordination or permitting.
8. Structural engineering design or preparation of separate structural engineering drawings or calculations for other building components other than indicated in sections A & B.
9. As-Builts of the project area are assumed to be accurate; any changes in project scope due to inaccuracies will be an additional service.
10. The design of fire sprinkler system, this will be by the Installer or General Contractor.
11. Coordination or Design of special Signage or Sign permitting other than those integral to the overall building design or required by code.
12. Special studies or reports not listed above such as (sound, traffic, environmental, structural, geotechnical, or seismic) these will be provided by the owner or general contractor.
13. Permitting, planning for environmental remediation or cleanup.
14. Test and balance services, these to be provided by the contractor.
15. Special engineering / structural inspections. These will be provided by the contractor or owner.
16. Excludes County, State or Federal Environmental EPA / ADEQ permitting. It is assumed this will be performed by the owner or by others.
17. Plan Review and Permit fees.

D. FEE SUMMARY

Project Phase / Discipline	Fee
1. Schematic Design Phase	\$1,600
2. Design Development & Construction Documents	\$14,400
Includes design development level construction estimate	
a. Architectural	(\$6,500)
b. Structural	(\$3,400)
c. MPE	(\$4,500)
3. Bidding and Permitting Phase	\$1,200
Includes delivery of electronic cad files	
4. Geotechnical Engineering Report	\$2,800
TOTAL – BASIC SERVICES	\$20,000
*** (Excludes plan review and permit fees, etc.)	

E. OTHER CONDITIONS

1. Upon acceptance of this proposal, we will prepare a standard AIA Owner / Architect Agreement or similar contract between Gavan & Barker Inc. and Gilliam Architecture LLC.
2. Our fee would be billed on a monthly basis in proportion to services performed through that date. Billings will be due and payable within 30 days of the invoice date. Invoices that remain unpaid beyond 60 days will accrue a service charge at the rate of 1.5% per month.

We look to the opportunity to work with Gavan and Barker, Inc. on this important project. If there are any questions or concerns with this proposal, please let me know, as we are flexible and want to provide the level of service that best meets your needs. Thank you for your consideration.

Sincerely,



Randy J. Gilliam, NCARB, RA
Principal
T. 480-236-1228

December 19, 2019

Gavan & Barker, Inc.
3030 N. Central Ave., Suite 1530
Phoenix, AZ 85012

Re: **Snedigar Sports Complex Ramada**

Attn: John Barker

Dear John,

Wright Engineering appreciates this opportunity to submit a proposal for electrical engineering services on the above referenced project. The following services will be performed in a professional manner to meet City of Chandler requirements:

Electrical Design Scope of Services:

1. Coordinate design with owner, power company, civil engineer, and/or architect/landscape architect as required.
 - a. Project coordination will be performed via email and telephone calls, no in-person meetings are included in this scope.
2. Visit the site to determine existing conditions and electrical configuration. Up to (1) one visit.
3. Review existing electrical drawings and load calculations for site.
4. Determine existing peak demand loads and coordinate proposed electrical loads.
5. Design the electrical power system to meet local codes and requirements.
6. Prepare 24" X 36" electrical construction drawings including an overall site plan showing all new equipment to include the following:
 - a. Existing electrical service entrance section and distribution equipment
 - b. Control equipment
 - c. Ramada lighting and electrical
 - d. Power feed to new restroom building, including coordination with building architect/engineer
7. Prepare photometric calculations showing all lighting averages, uniformities and any spill light at adjacent property lines.
8. All lighting on/off control will be designed per client's requirements. All necessary equipment will be shown on the plans.
9. Prepare necessary elevation view and installation details of the equipment listed above to help determine layout and size.
10. Prepare load calculations and single line diagram.
11. Prepare panel schedule and other electrical installation details as required.

12. Prepare a conduit and wire table showing all power conduits and wire for equipment listed above.
13. Prepare system fault current and voltage drop calculations as required.
14. Prepare an engineer's opinion of probable electrical construction costs upon request.
15. Perform in-house QAQC review and modifications.
16. The above plans will be provided to client at 90% and 100% levels for submittal review and comment. Submittals will be made via email in digital PDF format. Client will print, copy and submit to owner as needed.
17. Up to one set of base drawing changes or updates will be included in this engineering cost proposal. Incorporating any additional base drawing changes will incur additional cost at the rates noted under additional services.
18. Municipal review comments will be responded to and addressed.

Construction Phase Scope of Services:

1. Post-Design Services:
 - a. Review electrical equipment submittals and shop drawing packages for conformance to contract documents.
 - b. Respond to RFIs.
2. Project Close-out:
 - a. Visit the site at substantial completion to review the electrical installation and provide a punch list walk-thru report.
3. Prepare record drawings of the electrical installation based on inspection information as well as contractors marked up electrical plans.

Responsibilities of Others:

1. Provide Wright Engineering Corp. electronic base files in an AutoCAD format which includes all proposed and existing utilities, all proposed improvements, and any existing conditions that affect this scope.
2. Wright Engineering will submit plans to the civil engineer or landscape architect for submittal to the local government agencies for approval and permits.
3. It is anticipated that the electrical service for this project is existing, in the case that it does not exist; Designation of electrical service location will be determined by the local utility company. The owner is responsible for coordination of the design of all electrical utility power services during the design process.

Final Deliverables:

1. Upon completion of the design, we will provide one set each of final sealed documents bearing the signature of a registered electrical engineer in the State of Arizona.

Engineering Fee:

The above services will be provided as follows:

1. Electrical Design Services: **\$2,310.00** (Lump Sum)
2. Construction Services: **\$1,200.00** (Billed Hourly, Not to Exceed)

Please Note: Services as stated above can be provided in whole or part to meet client needs.

Additional Services:

Any services not specifically included in the Scope of Services section shall be additional services payable at an hourly fee at the following rates:

Principal	\$165/hour	Designer	\$105/hour
Senior Engineer	\$145/hour	Draftsman	\$95/hour
Engineer	\$125/hour	Secretary	\$55/hour

Printing Charges:

Although not anticipated, any printing and delivery requested will be charged as follows:

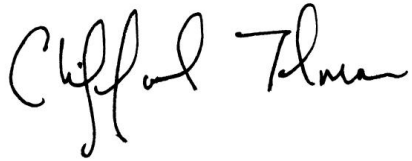
Blacklines	\$ 2.00 each
Mylar Sepia	\$18.00 each
Delivery Cost	cost

Billing:

We will bill you on a monthly basis for these services. Payment terms are Net 30 days. This proposal will be valid for the next 90 days. If you have any questions, please contact us at your earliest convenience.

I look forward to working with you on this project. Please show your acceptance of this proposal by signing below and returning one copy for my records.

Sincerely,

A handwritten signature in black ink, reading "Clifford Tolman". The signature is written in a cursive, flowing style.

Clifford Tolman, P.E.
Wright Engineering Corporation

EXHIBIT "C"

INSURANCE REQUIREMENTS

1. General.

- 1.1 At the same time as execution of this Agreement, Consultant must furnish City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement will not be deemed to apply to required Workers' Compensation coverage.
- 1.2 Consultant and any of its subconsultants must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- 1.3 The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- 1.4 City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Consultant from liabilities that might arise out of the performance of the Agreement services under this Agreement by Consultant, its agents, representatives, employees, subconsultants, and Consultant is free to purchase any additional insurance as may be determined necessary.
- 1.5 Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Consultant from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- 1.6 Use of subconsultants: If any work is subcontracted in any way, Consultant must execute a written contract with subconsultant containing the same Indemnification Clause and Insurance Requirements as City requires of Consultant in this Agreement. Consultant is responsible for executing the Agreement with the subconsultant and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope and Limits of Insurance. Consultant must provide coverage with limits of liability not less than those stated below.

- 2.1 *Professional Liability.* If the Agreement is the subject of any professional services or work performed by Consultant, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Agreement, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability

insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and Consultant, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

2.2 *Commercial General Liability-Occurrence Form.* Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

2.3 *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability:* Consultant must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Consultant owned, hired, and non-owned vehicles assigned to or used in the performance of Consultant's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

2.4 *Workers Compensation and Employers Liability Insurance:* Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

3. Additional Policy Provisions Required.

3.1 *Self-Insured Retentions or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by City. If not approved, City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to City, its officers, officials, agents, employees, and volunteers.

3.1.1. Consultant's insurance must contain broad form contractual liability coverage.

3.1.2. Consultant's insurance coverage must be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Consultant and must not contribute to it.

3.1.3. Consultant's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 3.1.4. Coverage provided by Consultant must not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 3.1.5. The policies must contain a severability of interest clause and waiver of subrogation against City, its officers, officials, agents, and employees, for losses arising from Work performed by Consultant for City.
- 3.1.6. Consultant, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. Consultant must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
- 3.1.7. If a Certificate of Insurance is submitted as verification of coverage, City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

3.2. *Insurance Cancellation During Term of Contract/Agreement.*

- 3.2.1. If any of the required policies expire during the life of this Agreement, Consultant must forward renewal or replacement Certificates to City within 10 days after the renewal date containing all the required insurance provisions.
- 3.2.2. Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice must be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, Consultant or its insurance broker must notify City of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

3.3 *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

- 3.3.1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, Consultant including City's general supervision of Consultant; Products and Completed operations of Consultant; and automobiles owned, leased, hired, or borrowed by Consultant.

- 3.3.2. City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by Consultant even if those limits of liability are in excess of those required by this Agreement.

EXHIBIT "D"

SPECIAL CONDITIONS

Standard Details and Specifications. Consultant must be familiar with City's latest revision of the MAG Specifications and MAG Standard Details as amended by City. City's current amendment to the MAG Specifications, part of City's Unified Development Manual, may be found and downloaded from City's website at <http://www.chandleraz.gov/udm>.

City Ownership of Project Documents. All work products (electronically or manually generated) including, but not limited to: plans, specifications, cost estimates, field notes, tracings, studies, investigations, design analyses, original drawings, original mylars, Computer Aided Drafting and Design (CADD) file diskettes which reflect all final drawings, and other related documents which are prepared in the performance of this Agreement (collectively referred to as "Documents") are to be and remain the property of City and are to be delivered to the Project Manager before the final payment is made to Consultant. In the event these Documents are altered, modified or adapted without the written consent of Consultant, which consent Consultant must not unreasonably withhold, City agrees to hold Consultant harmless to the extent permitted by law from the legal liability arising out of City's alteration, modification or adaptation of the Documents.

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

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

License to City for Reasonable Use. With this Agreement, Consultant and its subconsultants hereby grant a license to City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Documents, works or deliverables developed or created as a result of the Project and this

Agreement. This license also includes the making of derivative works.

Documents to Bear Seal. Consultant and its subconsultants must endorse by professional seal all plans, works, and deliverables prepared by each for this Agreement as required by state law.