



PROFESSIONAL SERVICES AGREEMENT
Design Services
SEWER LIFT STATION REHABILITATION
Project No. WW2106.201
Council Date: May 27, 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 **Brown and Caldwell, Inc.**, a California 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 Design Services for **SEWER LIFT STATION REHABILITATION** 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 **270** 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 **\$483,188** 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: CIP City Engineer P.O. Box 4008, Mail Stop 407 Chandler, AZ 85244-4008 Phone: 480-782-3343 Email: andrew.goh@chandleraz.gov
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:	Brown and Caldwell, Inc. 201 N. Civic Dr., Walnut Creek, CA 94596 Statutory Agent Name: CT Corporation System Statutory Agent Physical Address: 800 N. Central Ave., Ste. 460, Phoenix, AZ 85012 Statutory Agent Mailing Address: 800 N. Central Ave., Ste. 460, Phoenix, AZ 85012 Consultant's Authorized Project Representative: Name: Mark Courtney Title: Client Services Manager Physical Address: 2 North Central Ave., Suite 1600, Phoenix, AZ 85004 Mailing Address: 2 North Central Ave., Suite 1600, Phoenix, AZ 85004 Phone: 602-567-3814 Email: mailto:mcourtney@brwnncald.com

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 (this requirement is increased to five years if construction of this project is federally funded). 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 ("Indemnitee") 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 Indemnitee from and against any and all Claims, except those arising solely from Indemnitee'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 Indemnitee 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

ATTEST:

City Clerk

Seal

"CONSULTANT"

Brown and Caldwell, Inc.

Signature

Date

Print Name

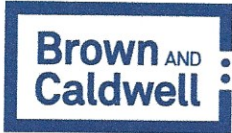
Title

Signer Email Address

EXHIBIT "A"
SCOPE OF SERVICES/SCHEDULE

2 North Central Avenue
Suite 1600
Phoenix, AZ 85004

T: 602.567.4000
F: 602.567.4001



April 9, 2021

Gina Ishida-Raybourn, PE
Utilities Engineering Manager
Public Works & Utilities Department
City of Chandler, AZ

Subject: City of Chandler (COC) Sewer Lift Station Rehabilitation Design
COC Project WW2106

Dear Ms. Ishida-Raybourn:

The City requested this project under the On-Call services agreement with Brown and Caldwell (BC) to provide design and construction documents for implementing recommendations made in a condition assessment report (Report) of the City's sewer lift stations. The Report was completed in 2020 ("City of Chandler Sewer Lift Station Condition Assessment"; Jacobs, February 2020), and recommended rehab and capital improvement projects (CIP) for nine (9) lift stations. BC and City Operations personnel conducted lift station site visits on January 20th and February 16th, 2021. Utilizing CIP recommendations from the Report and City personnel recommendations, BC identified rehab/improvement items for the lift stations.

The total costs for this lift station rehabilitation design contract are \$483,188, and the design project is scheduled to be completed in approximately nine months. Included with this letter are the following documents: Scope of Work, Fee Tables B1 and B2, Project Schedule, and BC Legal Notices Information Form.

We appreciate this opportunity to provide professional design services for this City of Chandler project.

Sincerely,

Brown and Caldwell

A handwritten signature in blue ink, appearing to read "Mark Courtney".

Mark Courtney, PE
Project Manager

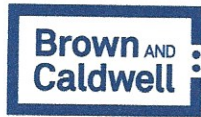


Exhibit A Scope of Work

City of Chandler

Sewer Lift Station Rehabilitation Design

City of Chandler Project WW2106

April 9, 2021

Project Overview

This project consists of preliminary and detailed design services for various items of rehabilitation (rehab), replacement, and improvements to nine (9) remote sewer lift stations/junction structure located in the City of Chandler's (City) wastewater collection system.

The City requested this project under the On-Call services agreement with Brown and Caldwell (BC) to implement recommendations made in a condition assessment report (Report) of the City's sewer lift stations. The Report was completed in 2020 ("City of Chandler Sewer Lift Station Condition Assessment"; Jacobs, February 2020), and recommended rehab and capital improvement projects (CIP) for nine (9) lift stations/junction structure (LS). Below is a list of the nine LSs and the CIP items recommended for each. BC and City Operations personnel conducted lift station site visits on January 20th and February 16th, 2021. Utilizing CIP recommendations from the Report and City personnel comments, BC identified rehab/improvement items for the lift stations and junction structure listed below. BC's scope will be to develop a single detailed, bid ready design package to address the identified rehab/improvements. The list below details BC's understanding of the rehab/improvement items to be addressed for each of the remote facilities:

Kyrene Lift Station

- Replace existing deteriorated wet well access hatch
- Replace existing deteriorated piping in wet well
- Remove and reinstall existing pumps and appurtenances to allow rehabilitation of corrosion coating in the wet well
- Rehabilitate corrosion coating in wet well, including baffle walls
- Rehabilitate five (5) upstream manholes with corrosion coating
- Open and assess the condition of the automatic transfer switch.
- Replace pump discharge valves (replace swing-check with ball-check) in valve vault
- Replace pump isolation plug valves with new, in valve vault

New Junction Structure

- Install fall protection in junction structure and in meter vault

Sunbird Lift Station

- Replace existing deteriorated wet well access hatch
- Replace existing deteriorated ductile iron pipe in wet well
- Remove and reinstall existing pumps and appurtenances to allow rehabilitation of corrosion coating in the wet well
- Rehabilitate corrosion coating in wet well

Manganaro Lift Station

- Replace existing deteriorated wet well access hatch
- Install fall protection in wet well

- Install lighting in dry well
- Install variable frequency drives (VFDs)
- Repair corrosion coating in wet well (with access hatch work)
- EI&C reconnections for equipment replaced under this project.

Golf Course Lift Station

- Wet Well
 - Replace existing deteriorated access hatch on wet well
 - Replace existing deteriorated piping in wet well
 - Demo existing concrete stairs in wet well
 - Rehabilitate corrosion coating in wet well including corrosion coating to repair demolition of stairs.
 - Remove existing entry door
- Replace generator enclosure in kind
- Rehabilitate force main ARV manhole with corrosion coating
- Rehabilitate inflow manhole with corrosion coating
- Dry Well
 - On the discharge piping in the dry well, replace three existing 6-inch butterfly valves with plug valves

Mission Estates Lift Station

- Coat existing piping and valves in valve vault
- Rehabilitate corrosion coating for discharge piping
- Replace ATS to correct neutral bonding issues. Contractor to perform in conjunction with project. Per Vik and in consultation with other internal staff, ATS can be used with conspicuous labeling outside the panel and removal/isolation of upstream Neutral wire prior to hookup and transfer of power to generator. It comes down to repair to configure correctly with integral neutral isolation and generator transfer vs. modified hookup with neutral removal and work inside the ATS to facilitate the hookup of a generator. According to staff, we have never had to run off emergency power. City will need to determine if proper run/transfer is desired versus modified hookup with neutral removal.

Old Pecos Lift Station

- Rehabilitate corrosion coating in wet well, including discharge piping

Riggs Lift Station

- Replace existing deteriorated access hatch
- Rehabilitate corrosion coating in wet well, including discharge piping
- Design offsite water main extension for potable water supply
- Replace deteriorated generator enclosure (in kind)
- Rehabilitate one (1) upstream manhole with corrosion coating (include Lucity manhole ID in plans)
- Modify MCC/concrete slab to enable MCC doors to open properly

Germann/Tumbleweed Lift Station

- Remove and replace slab on grade around wet well

Assumptions

The following items are assumed:

- Where the term "BC" is used in this scope, it shall mean Brown and Caldwell and/or BC's sub-consultants.
- It is not anticipated that City permits will be required.
- Non-City permit fees by MCESD are not anticipated because the scope of this work is not expected to affect lift station capacities or treatment. BC will notify MCESD via email to document this understanding. The only exception is that the proposed water main extension to serve the Riggs LS will require MCESD review and approval. Submission will only include related plan sheets along with the plan set cover sheet. No facility or water demand calculations will be made by BC.
- Opinions of probable construction cost estimates, financial analyses, and feasibility projections are subject to many influences including, but not limited to, price of labor and materials, unknown or latent conditions of existing equipment or structures, and time or quality of performance by third parties. Such influences may not be precisely forecasted and are beyond the control of BC; actual costs incurred may vary substantially from the estimates prepared by BC. BC does not warrant or guarantee the accuracy of construction or development cost estimates.
- All information on the pipe, equipment and features of the existing lift stations will be based on Record Drawings provided, visual inspections, and discussions with City operations staff. No additional pump or modeling calculations will be completed under this scope unless otherwise specified.
- This scope of work excludes public involvement activities.
- Specified corrosion coatings will be standard City approved epoxy type products.
- Any features or equipment that are recommended to be replaced will be in kind to the existing model/manufacture unless specific model/manufacture is requested by the City.
- The design plans and specifications will be prepared in formats suitable for competitive bidding of construction.
- The City will provide all front end specifications.
- The City will provide all plan and specification reproduction for bidding and construction.
- The City shall provide access to Record Drawings for all project lift stations in PDF format.
- BC standards for CAD will be followed.
- No addenda, conformed drawings or construction support is included in this scope of work.
- AutoCAD drawings will be in 2-D format. 3-D design will not be provided.
- Construction administration and inspection services are not included in this scope of work.
- It is assumed City staff will support BC staff during all site visits.

The following specific phases and tasks are proposed.

Phase 100 – Project Management Services

Task 101 – Project Management

BC shall perform overall project management to maintain and monitor the project schedule and fee. BC will submit to the City a payment request that summarizes the following by task: budget amount, previous expenditures, period expenditures, total expenditures, and remaining balance. A monthly progress report will be included with the invoice that summarizes the work completed in the previous billing period.

Task 102 – Quality Management Reviews

BC will perform periodic quality reviews of the work progress utilizing appropriately qualified principal staff to verify that the project scope is achieved. BC will perform in-house quality reviews on deliverables prior to submittal to the City in addition to ongoing quality management of the work flow.

Phase 200 – Project Initiation

Task 201 – Kick-Off and Progress/Review Meetings

A kickoff meeting (assumed one hour duration) with representatives from BC and the City will be conducted at project initiation. The following will be accomplished:

- Introduce team members
- Review the overall project scope and schedule
- Review the itemized list of rehab items for each lift station
- Identify specific goals and expectations
- Identify key issues affecting project development
- Request background information

Meeting minutes will be prepared and distributed to the attendees by BC.

In addition to the kick-off meeting, BC will participate in up to five (5) virtual progress/review meetings (assumed one hour duration each) with the City's project team, with participation by BC's Project Manager, Lead Engineer, Project Engineer, structural engineer and electrical engineer as determined to be necessary. Three (3) of the meetings will be for review of the milestone submittals at 60%, 90%, and final design completion. The purpose of the progress meetings is to provide an opportunity for BC and the City to review progress of the work and draft deliverables; anticipate and mitigate performance problems; adjust project tasks and effort as/if necessary; and address other issues and concerns. BC will prepare an agenda for each of the progress and submittal review meetings. BC will prepare and distribute draft meeting minutes. BC will prepare and distribute final meeting minutes after the draft meeting minutes are approved by the City's Project Manager.

Task 202 – Site Visits

Site visits to the eight lift stations will be conducted to support the designs. The 96 total hours budgeted for site visits over the course of design is based on two, one-hour visits by six BC project team members (PM, Lead Engineer, Project Engineer, Senior Electrical Engineer, EI&C Engineer, and Structural Engineer) for each of the eight sites.

Phase 300 – Design & Construction Documents

Construction documents will be prepared to address the rehabilitation design elements identified for each lift station, as listed above in the Project Overview section. The construction documents will include design drawings and specifications.

Drawings for each lift station will include a site plan with drone photo background and numbered references to specific rehabilitation detail drawings, and detail drawings for the specific rehabilitation items. Detail drawings will be developed using a combination of record drawings and digital photographs of existing facilities and equipment. Drawings will be prepared on 24-inch by 36-inch format using the latest AutoCAD software and in accordance with the City of Chandler Design Guidelines. Specifications will be prepared in CSI Series 50 format. Drawings and specifications will be submitted in PDF format. Opinions of probable construction cost will be provided as part of the 60%, 90%, and Final submittals.

Task 301 – 60 Percent Design & Documents

At approximately 60 percent complete, plans, specifications, and an opinion of probable construction cost will be submitted to the City for review. A review meeting will be conducted with City staff under Task 201 to discuss comments. This deliverable will include a drawings set to include a site plan with recommended rehabilitation callouts for each site and a set of project specifications. The drawings and specifications for each discipline shall be 60% complete, coordinated, and have progressed where the design intent is established and show the work in sufficient detail that a builder can recognize general building elements and requirements for construction. The set of drawings will include a cover sheet, index sheet, general details, and location of each site.

Deliverables:

- 60% Design drawings and specifications in electronic PDF format
- Opinion of Probable Construction Cost

Task 302 – 90 Percent Design & Documents

At approximately 90 percent complete, plans, specifications, and an opinion of probable construction cost will be submitted to the City for review. A review meeting will be conducted with City staff under Task 201 to discuss comments. Drawings and details in all disciplines should be 90% complete, incorporating City comments provided during the 60% deliverable review. Specifications should be essentially complete. Design calculations in all disciplines shall be essentially complete and checked.

Deliverables:

- 90% Design drawings and specifications in electronic PDF format
- Submission of Riggs LS water main extension drawings to MCESD for review to obtain an Approval to Construct
- Updated Opinion of Probable Construction Cost

Task 303 – Final Design & Documents

Upon receipt of all review comments from the City, BC shall prepare final plans, specifications, and opinion of probable construction costs. Drawings and specifications should be complete and accepted by the City.

Deliverables:

- Final Design drawings and specifications in electronic PDF format
- Approved Approval to Construct from MCESD for Riggs LS water main extension
- Final Opinion of Probable Construction Cost

Task 304 – Bidding Assistance

BC will provide support for the City during the bidding phase of the project. Services will include participation in virtual meetings, and assisting the City with answering questions from prospective bidders and providing information for addenda. The total budget for this task is based on 16 hours for a senior engineer and 32 hours for a project engineer. If the City chooses to have the project delivered via Construction Manager at Risk (CMAR) or Job Order Contracting (JOC), services under this task will be provided to assist the City with CMAR/JOC coordination during the pre-construction services.

Phase 400 – Design Phase Allowances**401 – Survey/Confined Space Allowance**

Allowances are provided for the field survey to support the design of the potable water main extension at the Riggs Lift Station, and for confined space entry assessments for wet wells.

402 – Agency Review Allowance

An allowance is provided for Maricopa County Environmental Services Department (MCESD) permit to construct review for the Riggs Lift Station off-site water main extension.

403 – Drone Site Plans Allowance

An allowance is provided for drone digital photographs to serve as background for site plans for each of the lift station sites.

Phase 500 – Owner Allowance

A twenty thousand dollar (\$20,000) Owner Allowance is included for design phase services not described in this scope as required or requested by the City. These services shall be negotiated and approved by the City before work is executed.

Compensation

BC will perform the services described above on a lump sum per task basis in accordance with the fee schedule in Exhibit B1 and the hours and rates in Exhibit B2. The lump sum tasks will be billed monthly based on percent complete per task. The total fee to complete the Scope of Work is \$483,188.00, including allowance funds for Phases 400 and 500. Allowance tasks will be billed based on actual costs incurred.

Schedule

The work will commence once the City provides a written Notice to Proceed (NTP) and is expected to be completed within approximately nine (9) months from receipt of the NTP. A preliminary design schedule is attached as Exhibit C.

EXHIBIT "B"
COMPENSATION AND FEES

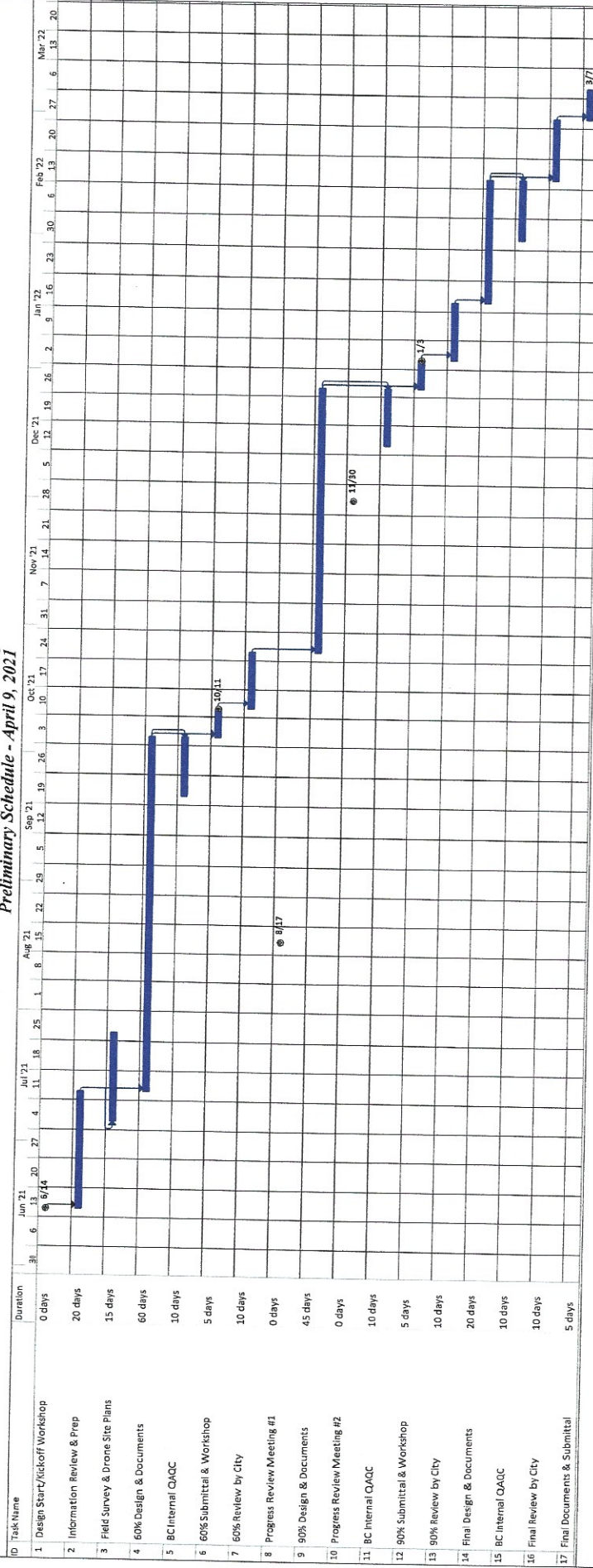
City of Chandler
Sewer Lift Station Rehabilitation Design
Chandler Project WW2106

EXHIBIT "B-1"
Lump Sum Cost Per Task

PHASE/TASK DESCRIPTION		SUBTOTAL
Phase 100 - Project Management Services		\$ 49,680.00
101	Project Management	\$ 26,080.00
102	Quality Management Reviews	\$ 23,600.00
Phase 200 - Project Initiation/Site Visits		\$ 41,280.00
201	Kickoff & Progress/Review Meetings	\$ 24,768.00
202	Site Visits	\$ 16,512.00
Phase 300 - Design & Construction Documents		\$ 359,548.00
301	60% Design & Documents	\$ 186,682.00
302	90% Design & Documents	\$ 103,156.00
303	Final Design & Documents	\$ 63,150.00
304	Bidding Assistance	\$ 6,560.00
Phase 400 - Design Allowances		\$ 12,680.00
401	Survey/Confined Space Allowance	\$ 10,130.00
402	Agency Review Allowance	\$ 1,200.00
403	Drone Photo Allowance	\$ 1,350.00
Phase 500 - Owner Allowance		\$ 20,000.00
TOTAL COST:		\$ 483,188.00

EXHIBIT "B-2"
Hours and Rates2948

Exhibit C
City of Chandler
Sewer Lift Station Rehabilitation Design
Preliminary Schedule - April 9, 2021



Brown and Caldwell

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.

Work within City's Right-of-Way. All work performed within City's Right-of-Way by Consultant and Consultant's subconsultants must comply with City of Chandler requirements.

1. Contract Worker Access Controls, Badge and Key Access Requirements. A Contract Worker from Consultant's firm must not be allowed to begin work in any City facility without: (A) The prior completion and City's acceptance of the required background screening; and (8) when required, the Contract Worker's receipt of a City issued badge. A badge will be issued to a Contract Worker solely for access to City facility(s) to which the Contract Worker is assigned. Each Contract Worker who enters a City facility must use the badge issued to the Contract Worker.
2. Badges. After receipt of the badge application, the Contract Worker will proceed to the Badging Office for processing of the badge application and issuance of the badge. City will not process the badge application until the Contract Worker satisfies the required Background Screening (as defined herein). The Contract Worker must comply with all requirements and furnish all requested information as requested by the Badging Office. Any and all fees associated with security badging will be assessed in compliance with Chandler City Code §4-22.
3. Key Access Procedures. If the Contract Worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Consultant for each key issued.
4. Stolen or Lost Badges or Keys. Consultant must report lost or stolen badges or keys to City immediately. A new badge application or key issue form must be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.
5. Return of Badges or Keys. All badges and keys are the property of City and must be returned to City at the Badging Office within one (1) business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Agreement. Consultant must collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation or expiration of this Agreement.
6. Consultant's default under this Section must include, but is not limited to the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Agreement without the proper badge, key or Background Screening; (4) Contract Worker or Consultant submits false

information or negligently submits wrong information to City to obtain a badge, key or applicable Background Screening; or (5) Consultant fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement. Consultant acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, Consultant agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by City. The parties agree that Consultant's failure to properly cure any default under this Section must constitute a breach of this Section. In addition to any other remedy available to City at law or in equity, Consultant must be liable for and must pay to City the sum of one thousand dollars (\$1,000.00) for each breach by Consultant of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to City at the time and making of this Agreement in the event that Consultant breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving City's actual damages in the event that Consultant breaches this Section. The parties further agree that three (3) breaches by Consultant of this Section arising out of any default within a consecutive period of three (3) months or three (3) breaches by Consultant of this Section arising out of the same default within a period of twelve (12) consecutive months will constitute a material breach of this Agreement by Consultant and City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.