



PROFESSIONAL SERVICES AGREEMENT
Design Services
RYAN ROAD UPRR CROSSING IMPROVEMENTS
Project No. PR2106.202
Council Date: March 24, 2022 Item No.

THIS AGREEMENT ("Agreement") is made and entered into on the ____ day of _____, 2022 ("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 Design Services for **RYAN ROAD UPRR CROSSING IMPROVEMENTS** 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 **300** 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 **\$47,757.44** 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:	City of Chandler Public Works & Utilities Department Attn: Project Manager P.O. Box 4008, Mail Stop 407, Chandler, AZ 85244-4008
To Consultant:	Gavan & Barker, Inc. Mailing Address: 3030 N. Central Ave Ste 700 Phoenix AZ 85012 Statutory Agent Name: Lon Licht Statutory Agent Mailing Address: 5225 N Central Ave Ste 115 Phoenix AZ 85012
	CONSULTANT'S AUTHORIZED PROJECT REPRESENTATIVE Name: John Barker Title: Principal Landscape Architect Phone: 602-200-0031 Email: jbarker@gavanbarker.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 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

JNB

ATTEST:

City Clerk

Seal

"CONSULTANT"

Gavan & Barker, Inc.

Signature

John Barker 1-26-22

Date

JOHN BARKER

Print Name

VICE PRESIDENT

Title

j.barker@gavanbarker.com

Signer Email Address

EXHIBIT "A"
SCOPE OF SERVICES/SCHEDULE

January 14, 2022

Mr. Hafiz Noor
City of Chandler
Public Works & Utilities Department
Capital Projects Division
215 E. Buffalo Street
Chandler, AZ 85244-4008

**Re: Design Services Proposal
City of Chandler – Ryan Road U.P.R.R. Crossing Improvements
CoC Project No.: PR2106.202
Gavan & Barker No. 2115**

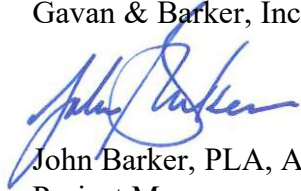
Dear Hafiz:

We are pleased to submit our design services proposal for the above referenced project. Attached is Attachment A-1 Scope of Services; A-2 Production Assignments; A-3 Production Schedule, and Attachment B-1 and B-2 – Fee Schedule.

Also enclosed is the cost proposal from our subconsultant O.G. Engineering.

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, PLA, ASLA
Project Manager

Attachments

CC: Mickey Ohland
Kurt Hoffman
Kimberly Moon, PE

ATTACHMENT A

DETAILED DESCRIPTION OF THE PROJECT AND DESIGN CONSULTANT SCOPE OF SERVICES

PROJECT TITLE: Ryan Road U.P.R.R. Crossing Improvements
PROJECT NO.: PR2106.202
Chandler, AZ.

1. PROJECT DESCRIPTION & SCOPE OF CONSTRUCTION:

- 1.1. Design consultant will provide services for the coordination and design, permitting, and construction documents for the Union Pacific Railroad (U.P.R.R.) crossing on Ryan Road between Arizona Avenue and McQueen Road, in Chandler, Arizona, all as more specifically described herein below.

In association with Ryan Road improvements (under separate project), this project will include coordinating with U.P.R.R. and providing design for improvements to the U.P.R.R. railroad crossing at the U.P.R.R. and Ryan Road intersection. In addition to the crossing design services, other coordination efforts may include meetings, providing exhibits, CAD files, roadway plans, and survey information.

- 1.2. Consultant will provide all design services for the Project including, but not limited to, normal civil and traffic engineering services.

2. ASSIGNMENT:

- 2.1 The design contract has been awarded to an engineer based on their proposed personnel and specified consultants. Any deviations or substitutions of these team members must be pre-approved in writing by City. Those persons listed in Exhibit B will perform those portions of the work listed therein.

3. PROJECT SCHEDULE:

- 3.1. Consultant must perform the services within the times set forth in the Production Schedule included herein and made a part hereof by reference.
- 3.2. Consultant must adhere to the Production Schedule described herein and such schedule may not be modified or deviated from without written consent of City. Consultant must revise and submit for review an updated schedule whenever it is demonstrated that the time for completion of the Project Design or of any of the partial completion points listed in the schedule is delayed by two weeks or more. Such adjusted schedule will include a written explanation stating the reasons for the change and a plan for getting back on schedule. Consultant must take all reasonable actions necessary to get the project back on schedule and City will cooperate to assist Consultant.

4. QUALITY CONTROL:

- 4.1. Consultant must institute and comply with the Design Quality Control Plan attached hereto and made a part hereof by reference.

5. PRELIMINARY RESEARCH:

- 5.1. Document Search and Research: As and for preliminary research before preparing the project design, Consultant will:
 - a. Perform a Document Search for utility as-builts.
 - b. Perform a Document search for rights-of-way.
 - c. Perform a Document search for City policies, regulations, standards, design manuals, and requirements, etc. relevant to project.
 - d. Research all utility companies/agencies and acquire all available as-built and utility records.
- 5.2. Investigate existing conditions, make measured drawings, and verify accuracy of drawings or other information furnished by City.

6. UTILITY/AGENCY COORDINATION:

- 6.1 Coordination with utility companies and agencies will be in accordance with the latest version of the "Public Improvement Project Guide" (PIPG).
- 6.2 Consultant must identify utility conflicts during the initial stages of the design process.
- 6.3 Consultant must coordinate the design and installation of the utilities, which includes, but is not limited to, services for electric, communications, water, storm drainage, irrigation and sanitary systems, etc.
- 6.4 Consultant must submit preliminary plans, specifications, and design calculations to utilities/agencies for review and use during their design for their service improvements or any necessary relocations.
- 6.5 Consultant must conduct utility meetings to coordinate relocations with utility/agency and establish relocation schedules.
- 6.6 Consultant must follow-up with the final design submittal for utility construction and coordination with the documents.
- 6.7 Consultant must incorporate the U.P.R.R. requirements into the documents.

7. SCHEMATIC DESIGN (30% Document Review):

- 7.1. Consultant shall provide a schematic roadway/railroad crossing plan showing the proposed Ryan Road improvements and the U.P.R.R. crossing. The Schematic plans will be provided for City review and submittal and coordination with U.P.R.R. Tasks included in schematic design include:
 - 7.1.1. Base sheet preparation
 - 7.1.2. Schematic roadway/railroad crossing plan (Plan view only)
 - 7.1.3. Preliminary cost estimate
- 7.2. Two schematic on-line design meetings are anticipated during the schematic design phase.

8. CONSTRUCTION DOCUMENTS (90% & 100% Document Review):

- 8.1. Based on the U.P.R.R. approval of the Schematic 30% Plan and any further adjustments in the scope or quality of the Project Plans authorized by CITY, Consultant shall prepare construction documents final submittal which will include final plans, specifications, and cost estimate for submittal to U.P.R.R. and City Plan Review. Tasks include:
 - 8.1.1. Final roadway/railroad crossing plan & profile plans
 - 8.1.2. Final technical specifications
 - 8.1.3. Cost estimate
- 8.2. Two bi-weekly meetings are anticipated during the construction document phase. It is anticipated that an additional on-site meeting may be required in this phase.
- 8.3. Respond to U.P.R.R. and Plan Review comments – Consultant shall address plan review comments, adjusting the plans, specifications, & cost estimate as necessary to obtain plan approvals.

9. BID ASSISTANCE / CONTRACTOR COORDINATION:

- 9.1. Bidding Assistance - Consultant shall provide bidding assistance to the City, including: assistance in the preparation of the Bid Form; attend and participate in the pre-bid conference for the purpose of answering technical questions from potential bidders; assist the city in the evaluation of “substitutions and or-equals” and make a recommendation to accept or decline; and assist in the preparation of addenda for review and approval by City. If the CMAR process is used, the Consultant shall provide services to assist the City in contractor procurement and CMAR questions and pricing.

10. Subconsultants

- 10.1. **O.G. Engineering** – Railroad Crossing Coordination

11. Allowances

- 11.1. **Reimbursables:** Printing, deliveries, and application/review fees for U.P.R.R. Services.
- 11.2. **Pothole Allowance:** This allowance is to provide potholing of underground utilities within the U.P.R.R. right-of-way and any required permitting for pothole work.
- 11.3. **Railroad Crossing Coordination Allowance:** This allowance is to provide the services of O.G. Engineering, and the coordination and assistance with the U.P.R.R. railroad crossing. (SEE ATTACHED SCOPE OF WORK FOR SUPPORT SERVICES PREPARED BY O.G. ENGINEERING).
- 11.4. **Legal Descriptions Allowance:** This allowance is to provide services to prepare legal descriptions in the event that new right-of-way is required for U.P.R.R. / Ryan Road crossing.
- 11.5. **Additional Survey Allowance:** This allowance is to provide additional topographic survey in the event that City Transportation, U.P.R.R., or SRP requires additional survey in the right-of-way or a vertical clearance survey of the electrical transmission lines for the railroad crossing gates.

- 11.6. **Owner's Allowance - Additional Design Tasks & Meetings:** This allowance is to provide additional design services and project meetings, for additional features or improvements beyond items scoped, or for additional design due to unforeseen site conditions.

12. Assumptions

- 12.1. Environmental Services: It is assumed that investigation and reporting of biological and cultural resources will not be required or will be conducted by the City.
- 12.2. ALTA & Condition of Title: Due to the project being located on only a portion of the overall City property, it is assumed that an ALTA survey or a Condition of Title will not be required to meet typical Planning Department requirements.

ATTACHMENT A-2
PRODUCTION ASSIGNMENTS
Ryan Road U.P.R.R. Crossing Improvements
PROJECT NO.: PR2106.202

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.

Project Designer: Joel Hormann

Engineering Designer: Alfred Abalos

Field Survey: Rick Engineering

Registered Land Surveyor: Jason Segneri, RLS

Railroad Coordination: O.G. Engineering

Alex Popovici

ATTACHMENT A-3
PRODUCTION SCHEDULE
Ryan Road U.P.R.R. Crossing Improvements
PROJECT NO.: PR2106.202

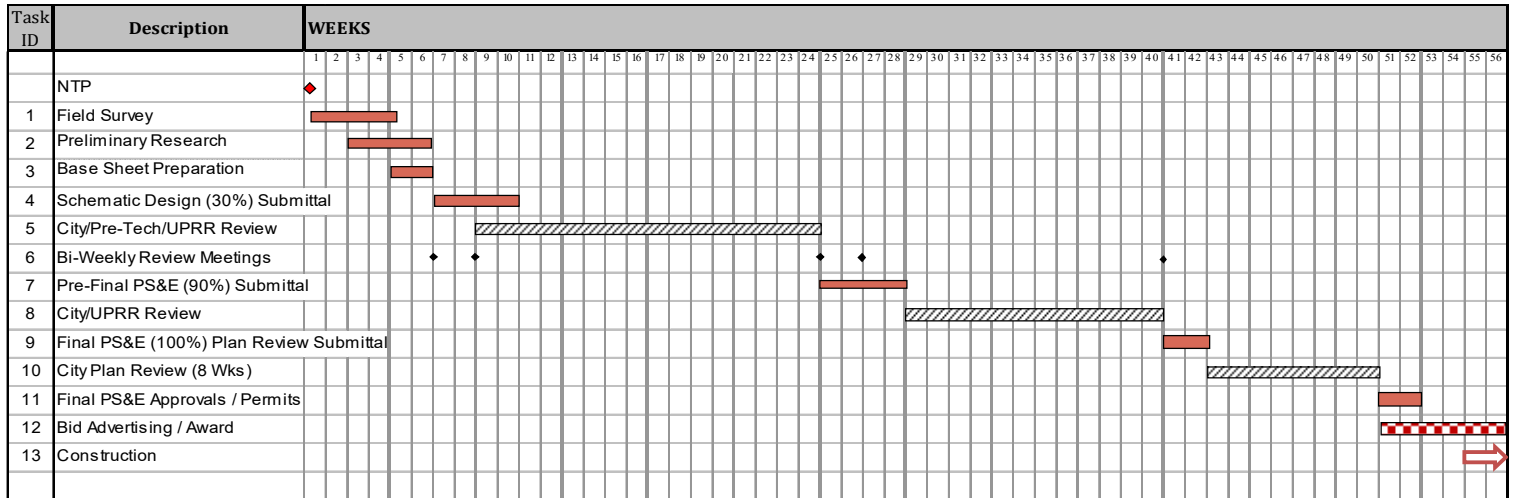


EXHIBIT "B"
COMPENSATION AND FEES

Ryan Road U.P.R.R. Crossing Improvements

PR2106.202

Design Services

EXHIBIT "B-1"

Lump Sum Cost Per Task



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

TASK DESCRIPTION		SUBTOTAL
Task 1.0 Project Description & Scope of Construction		
Task 2.0 Assignment		
Task 3.0 Project Schedule		
Task 4.0 Quality Control		\$ 945.90
4.1	Quality Control Plan	\$ 945.90
Task 5.0 Preliminary Research		\$ 782.50
5.1	Perform Document Search and Research	\$ 557.01
5.2	Investigate Existing Conditions	\$ 225.49
Task 6.0 Utility/Agency Coordination		\$ 3,269.03
6.1	Coordination with Utilities (PIPG)	\$ 310.98
6.2	Identify Utility Conflicts	\$ 868.12
6.3	Coordination Design of Utilities	\$ 557.14
6.4	Preliminary Plans to Utilities/Agencies	\$ 246.03
6.5	Coordination of Utility Relocations	\$ 677.77
6.6	Final Design Construction Coordination	\$ 323.94
6.7	Utility Requirements Incorporations	\$ 285.05
Task 7.0 Schematic Design		\$ 3,727.80
7.1.1	Base sheet preparation	\$ 752.69
7.1.2	Schematic roadway plans	\$ 1,170.09
7.1.3	Preliminary cost estimate	\$ 638.88
7.2	Bi-Weekly Meeting, Agenda, Report	\$ 1,166.14
Task 8.0 Construction Documents (90% & 100%)		\$ 7,260.25
8.1.1	Pre-Final & Final Roadway plan & profile plans	\$ 2,346.73
8.1.2	Final technical specifications	\$ 1,243.92
8.1.3	Cost estimate	\$ 808.56
8.2	Bi-Weekly Meeting, Agenda, Report	\$ 1,166.14
8.3	Respond to Plan Review comments	\$ 1,694.90
Task 9.0 Bid Assistance / Contractor Coordination		\$ 621.96
9.1	Bidding Assistance, RFIs, Substitutions, Addenda	\$ 621.96
10 SUBCONSULTANTS / DIRECT COSTS		\$ -
10.1	O.G. Engineering - UPRR Coord.(See Allowance 11.3 below)	
11 ALLOWANCES		\$ 31,150.00
11.1	Reimbursables:	\$ 1,000.00
11.2	Pothole Allowance	\$ 3,000.00
11.3	Railroad Crossing Coord. Allowance (OGE)	\$ 15,750.00
11.4	Legal Descriptions Allowance	\$ 2,400.00
11.5	Additional Survey Allowance	\$ 4,000.00
11.6	Owner's Allowance	\$ 5,000.00
TOTAL COST:		\$ 47,757.44

Ryan Road U.P.R.R. Crossing Improvements

PR2106.202

Design Services

EXHIBIT "B-2"

Hours and Rates



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

		PM	Sr. Engr.	PE/Prof	Engr / Designer	Tech/ Designer	< PROJECT ROLE < HOURLY RATES	
		\$ 149.00	\$ 161.96	\$ 123.09	\$ 102.41	\$ 97.02		
TASK DESCRIPTION							TOTAL HOURS PER TASK	
Task 1.0 Project Description & Scope of Construction								
Task 2.0 Assignment								
Task 3.0 Project Schedule								
Task 4.0 Quality Control		2	4	0	0	0	6	
4.1	Quality Control Plan	2	4					
Task 5.0 Preliminary Research		2	1	1	1	1	6	
5.1	Perform Document Search and Research	2	1			1		
5.2	Investigate Existing Conditions			1	1	0		
Task 6.0 Utility/Agency Coordination		6	9	5	2	1	23	
6.1	Coordination with Utilities (PIPG)	1	1					
6.2	Identify Utility Conflicts	2	2	2				
6.3	Coordination Design of Utilities	1	1	2				
6.4	Preliminary Plans to Utilities/Agencies	1				1		
6.5	Coordination of Utility Relocations	1	2		2			
6.6	Final Design Construction Coordination		2					
6.7	Utility Requirements Incorporations		1	1				
Task 7.0 Schematic Design (30%)		7	5	7	8	2	29	
7.1.1	Base sheet preparation	1			4	2		
7.1.2	Schematic roadway plans	1	2	4	2			
7.1.3	Preliminary cost estimate	1	1	1	2			
7.2	Bi-Weekly Meeting, Agenda, Report	4	2	2				
Task 8.0 Construction Documents (90% & 100%)		15	19	10	7	0	51	
8.1.1	Pre-Final & Final Roadway plan & profile plans	1	8	4	4			
8.1.2	Final technical specifications	4	4					
8.1.3	Cost estimate	2	1	2	1			
8.2	Bi-Weekly Meeting, Agenda, Report	4	2	2				
8.3	Respond to Plan Review comments	4	4	2	2			
Task 9.0 Bid Assistance / Contractor Coordination		2	2	0	0	0	4	
9.1	Bidding Assistance, RFIs, Substitutions, Addenda	2	2					
Task 11.0 Allowance Hours (Gavan & Barker)								
11.2	Pothole Allowance - Coordination		1		2		3	
11.4	Legal Descriptions Allowance - Descriptions, CADD	2	4	2	8	4	20	
11.5	Additional Survey Allow. - Coordination, CADD	2	2		2	2	8	



O.G. Engineering LLC

Roads and Rails

www.OGEngineeringPro.com

January 7, 2022

Mr. John Barker
Gavan & Barker
3030 N. Central Ave, Ste 700
Phoenix, AZ 85012
Office: (602) 200-0031
JBarker@gavanbarker.com

Subject: Quote for providing supporting services for the Ryan Road railroad crossing improvements

Dear Mr. Barker,

Thank you for contacting O.G. Engineering to provide an estimate for support services for the Ryan Rd project at the UPRR railroad in Chandler, AZ. The project consists in widening the roadway at the railroad crossing. Please find below a summary of tasks, scope, and cost of our proposed services. As we learn more about your project and following demand by Client, changes to the tasks and deliverables could take place or additional tasks can be assigned per mutual understanding.

TASK 1 – Design Services

- Determine the roadway project and the adjacent development's impact on the railroad crossing and provide the guidelines on required improvements crossing.
- Provide support to preparation of crossing plans and compliance with the railroad standards, MUTCD, the ACC requirements and other standards as applicable.
- Coordinate obtaining ROE from railroad for planning purpose (survey, potholing, etc.)
- Coordinate the creation and acceptance of the project by the railroad. Coordinate UPRR's review of plans, response, and progress of crossing design.
- Participate in field meetings with the Client, City, UPRR, ACC and other stakeholders.
- Provide input on utilities impacted by the project. Prepare or support preparation of plans for utilities relocation, modification, or new utilities installation at the railroad. Apply or support the application for railroad permits.

TASK 2 – Railroad agreement, Other Services

- Review proposed construction details and provide input on impact on the railroad.
- Act as liaison for preparation of the C&M Agreement between the City of Chandler and UPRR.
- Prepare and submit the application for crossing modifications to the ACC, coordinate with the Commission the review and processing of application, participate in hearings, manage related items.
- Other services as necessary or requested by Client.

Deliverables include:

- Review project documents and provide input via email (PDF), phone or hard copy as requested by Client.
- Participate in meetings with the Client, the railroad, the ACC, City of Chandler and others as necessary or as requested by the Client.
- Provide any other support and coordination services as requested by Client.

SCHEDULE OF DELIVERABLES

- The schedule for completion of each plan review is 5 to 10 business days after receipt of such plan(s).
- Respond to emails and calls within 1 to 3 business days and reply via email, phone or hard copy as appropriated.
- Provide instant feedback during in-person or virtual meetings (web based, phone conference calls).
- Participate in meetings and conference calls on notice.
- Participate on site visits/meetings as requested by Client.

FEE

- For the services described in the Tasks above, the Client agree to pay O.G. Engineering a fee of up to **\$15,750**

Fee is based on previous experience on similar projects. O.G. Engineering will charge actual cost based on the number of hours worked.

Invoices are submitted at the month's end. Payments of invoices are due within 30 days of being submitted.

You may indicate your acceptance of the proposal by signing and returning this quote via email. If you have any questions regarding this quote or would like further information, please feel free to contact us.

Thank you,



O.G. Engineering LLC.

Alex Popovici
602 818 3896
APopovici@ogengineeringpro.com

AGREED TO AND ACCEPTED BY:

Gavan & Baker

Printed Name

Title

Date

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. (Does not apply to Professional Liability coverage.)
- 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; 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.