



**PROFESSIONAL SERVICES AGREEMENT
Construction Management Services
PECOS SURFACE WATER TREATMENT PLANT MEDIA REPLACEMENT**

Project No. WA2104.451

Council Date: July 14, 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 **Hazen and Sawyer, P.C.**, a New York 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 Construction Management Services for **PECOS SURFACE WATER TREATMENT PLANT MEDIA REPLACEMENT** project as more fully described in **Exhibit "A"**, which is attached to and made a part of this Agreement by this reference.

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

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

AGREEMENT

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

SECTION I--CONSULTANT'S SERVICES

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

SECTION II--PERIOD OF SERVICE

Consultant must perform the services described in **Exhibit "A"** for the term of this Agreement. Unless amended in writing by the Parties, the Agreement term expires **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 **\$412,305** 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: 480-782-3349 Email: kimberly.moon@chandleraz.gov																							
With a copy to:	City of Chandler - Public Works & Utilities Department Attn: Gina Ishida-Raybourn, Project Manager P.O. Box 4008, Mail Stop 407, Chandler, AZ 85244-4008 Phone: 480-782-3584 Email: gina.ishida-raybourn@chandleraz.gov																							
To Consultant:	<table border="1"> <tr> <td>LEGAL COMPANY NAME:</td> <td>Hazen and Sawyer P.C</td> </tr> <tr> <td>Mailing Address:</td> <td>1400 E Southern Ave, Ste 340, Tempe AZ 85282</td> </tr> <tr> <td>Physical Address:</td> <td>1400 E Southern Ave, Ste 340, Tempe AZ 85282</td> </tr> <tr> <td>Statutory Agent Name:</td> <td>Corporation Service Company</td> </tr> <tr> <td>Statutory Agent Mailing Address:</td> <td>8825 N 23rd Ave, Ste 100, Phoenix, AZ 85021</td> </tr> <tr> <td>Statutory Agent Physical Address:</td> <td>8825 N 23rd Ave, Ste 100, Phoenix, AZ 85021</td> </tr> <tr> <td colspan="2">CONSULTANT'S AUTHORIZED PROJECT REPRESENTATIVE</td> </tr> <tr> <td>Name:</td> <td>Curtis Courter</td> </tr> <tr> <td>Title:</td> <td>Associate Vice President</td> </tr> <tr> <td>Phone:</td> <td>480-404-5009</td> </tr> <tr> <td>Email:</td> <td>ccourter@hazenandsawyer.com</td> </tr> </table>		LEGAL COMPANY NAME:	Hazen and Sawyer P.C	Mailing Address:	1400 E Southern Ave, Ste 340, Tempe AZ 85282	Physical Address:	1400 E Southern Ave, Ste 340, Tempe AZ 85282	Statutory Agent Name:	Corporation Service Company	Statutory Agent Mailing Address:	8825 N 23rd Ave, Ste 100, Phoenix, AZ 85021	Statutory Agent Physical Address:	8825 N 23rd Ave, Ste 100, Phoenix, AZ 85021	CONSULTANT'S AUTHORIZED PROJECT REPRESENTATIVE		Name:	Curtis Courter	Title:	Associate Vice President	Phone:	480-404-5009	Email:	ccourter@hazenandsawyer.com
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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:



Kimberly Moon, P.E.
CIP City Engineer

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk Seal

"CONSULTANT"

Hazen and Sawyer, P.C.



Signature

6/13/2022

Date

Curtis D. Courter

Print Name

Associate Vice President

Title

ccourter@hazenandsawyer.com

Signer Email Address

EXHIBIT "A"
SCOPE OF SERVICES/SCHEDULE

EXHIBIT "A"

CONSTRUCTION MANAGEMENT SCOPE OF SERVICES

PROJECT TASKS

1. PRE-CONSTRUCTION ASSISTANCE

A. Task 1.1 Preconstruction Assistance

- i. Consultant will coordinate, conduct and attend the pre-construction meeting with the Contractor and the City to review the project communication, coordination and other procedures and discuss the Contractor's Quality Control System. Consultant will lead the meeting and record the results of this conference.
- ii. City will verify that the required permits, bonds and insurance have been obtained and submitted by the Contractor prior to the City issuing construction Notice to Proceed. The Contractor will be required to list Hazen and Sawyer as the City Rep as an additional insured and indemnified party along with the City for construction.
- iii. City will review all bids and evaluate them for responsiveness and bid amount. The City will perform any additional investigation such as verifying the financial and performance history documentation submitted. The City will prepare and issue the notice of award and the notice to proceed to the Contractor.
- iv. Consultant will develop and administer contract for Process Instrumentation and Control Systems (PICS) Integration.
- v. The City will obtain and provide to the Contractor those permits issued by the City of Chandler in accordance with the general conditions.
- vi. The fee estimate breakdown is included in Exhibit B. This fee estimate is based on work being completed prior to July 2023.

2. CONSTRUCTION MANAGEMENT

A. Task 2.1 Weekly Construction Meetings

- i. Consultant will conduct up to 18 weekly 1 hour construction progress meetings with the Contractor, subcontractors as appropriate, and the City attending. Consultant will develop agenda and minutes for each meeting. Work progress, progress schedule, quality control, schedule of submittals, application for payment, contract modifications, Field Directives (FDs) and Requests for Information (RFIs) will be reviewed. These meetings will be combined with pre-installation meetings and quality control meetings as defined by the specifications. In addition to the inspector attending, up to one additional Consultant staff will be in attendance. Consultant assumes up to 18 weekly meetings will be held.

B. Task 2.2 CPM Schedule

Consultant will review and evaluate Contractor's initial CPM schedule and verify that it is consistent with the requirements of the contract for construction. Consultant will review Contractor's monthly CPM schedule updates submitted with each payment application. Consultant will advise the Contractor of any areas where the schedule is not in compliance with the contract for construction. Consultant will provide comments to the City to assist the City in approving, accepting or taking other action on the Contractor's schedule, in accordance with the contract for construction. Consultant's review and comments will not be considered as a guarantee or confirmation that the Contractor will complete the work in accordance with the contract for construction. Consultant assumes one (1) draft review and (1) final review of updated CPM schedule.

C. Task 2.3 Requests for Information (RFI's)

- i. Consultant will review the Contractor's requests for information (RFI) or clarification of the contract for construction. Consultant will coordinate such review with the design team and with the City as appropriate. Consultant will coordinate and issue responses and log the Contractor's requests in a submittal log. The Consultant will assist the City in reviewing and responding to the Contractor's

requests for substitution of materials and equipment. The Consultant will review such requests and will advise the Owner as to the acceptability of such substitutions. Consultant assumes a maximum of 25 RFI responses.

D. Task 2.4 Submittal Review

- i. Consultant will obtain from the Contractor and review a proposed submittal schedule of shop drawings, samples, submittals, and operation and maintenance (O&M) manuals required by the contract for construction, along with the anticipated dates for submission. The Consultant will coordinate with the design team for the reviews of the Contractor's, shop drawings, samples, submittals, and O&Ms in accordance with the contract documents. Consultant will prepare and maintain a submittal log of all shop drawing submittals. Consultant assumes a maximum of 40 submittals, including resubmittals, of shop drawings, informational submittals, and operations and maintenance manuals. Consultant's review of all shop drawings, samples and submittals will be for general conformance with the design concept and general compliance with the requirements of the contract for construction. Such review will not relieve the Contractor from its responsibility for performance in accordance with the contract for construction.

E. Task 2.5 Requests for Proposal (RFP)

- i. Consultant will prepare Requests for Proposal (RFP) documents detailing requested additional work tasks; review and evaluate Contractor RFP responses (cost derivations) with approval recommendations; and prepare and maintain a submittal log list of all RFP's. Consultant assumes 5 RFPs.

F. Task 2.6 Work Change Directives and Field Directives (FD's)

- i. Consultant will issue field instructions, orders or similar documents during construction as provided in the contract for construction. Consultant may authorize minor variations in the work which do not involve an adjustment in the Contractor's contract price nor time for construction and are not inconsistent with the intent of the contract documents.
- ii. Consultant will assist the City with the issuance of field directives to authorize allowances in the contract for construction. Consultant will also review Contractor requested changes to the contract for construction. The Consultant will make recommendations to the City regarding the acceptability of the change order and, upon approval of the City, assist the City in negotiations of the requested change. Upon agreement and approval, the Consultant will assist the City in preparing final change order documents.
- iii. Consultant will maintain logs regarding the status of field directives, including pending field directives and their amounts. Consultant will also receive, log, and notify the City about all letters and notices from the Contractor concerning claims or disputes between the Contractor and City pertaining to the acceptability of the work or the interpretation of the requirements of the contract for construction.

G. Task 2.7 Contractor Payment Applications

- i. Consultant will receive and review the Contractor's requests for payment and will determine whether the amount requested reflects the progress of the

Contractor's work, and is in accordance with the contract for construction. The Consultant also will review the Contractor's schedule of values at the beginning of construction. The Consultant will provide recommendations to the City as to the acceptability of the requests, in addition will advise the City as to the status of the total amounts requested, paid, and remaining to be paid under the terms of the contract for construction; maintain a record of constructed pay quantities and compile monthly totals; and coordinate payment application with the City quantity report and the inspectors' daily logs. Consultant assumes a maximum of 9 payment applications, with (1) draft review and (1) final review each.

- ii. Recommendations by Consultant to the City for payment will be based upon the Consultant's knowledge, information and belief from its observations of the work on site and selected sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the Consultant to ascertain that the Contractor has completed the work in exact accordance with the contract for construction.

H. Task 2.8 Safety

- i. Consultant will manage the health, safety and environmental activities of its staff and the staff of its subcontractors to achieve compliance with applicable health and safety laws and regulations. Consultant will coordinate its health, safety and environmental program with the responsibilities for health, safety and environmental compliance specified in the contract for construction. Consultant will coordinate with responsible parties to correct conditions that do not meet applicable federal, state and local occupational safety and health laws and regulations, when such conditions expose Consultant staff, or staff of Consultant subcontractors, to unsafe conditions.

Consultant will notify affected personnel of any site conditions posing an imminent danger to them which Consultant observes. Consultant is not responsible for health or safety precautions of construction workers. The Consultant is not responsible for the Contractor's compliance with the health and safety requirements in the contract for construction, or with federal, state, and local occupational safety and health laws and regulations.

I. Task 2.9 Progress Reports

- i. Consultant will keep the City advised of the progress of the construction from notice to proceed through final completion. The Consultant will submit a monthly construction progress summary via email that includes construction schedule, expected date of completion, contract price, retainage, pending changes to the contract price or completion date and other issues material to the cost and time for completion of the construction and attachments of documentation logs including the Contractor's Quality Control Reports. In addition, the Consultant will provide monthly reports and invoices to the City activities related to the Consultant scope.

3. CONSTRUCTION INSPECTION

A. Task 3.1 Inspection & Observation Services

- i. Consultant will conduct periodic on-site observations of the Contractor's work for the purposes of determining if the work generally conforms to the contract for construction and that the integrity of the design concept as reflected in the contract for construction has been implemented and preserved by the Contractor. The Consultant will not provide a full time Resident Engineer/Inspector. All observation will be provided on an as needed basis to confirm compliance with the Contract Documents. For the purposes of this scope of work, up to 3 site visits per week for 4 hours each by Consultant are anticipated to occur while the Contractor is mobilized on site and construction

is active (up to 5 months). As necessary, a City inspector will be assigned to this project for certain aspects of the work based on the City's discretion.

- ii. Consultant will prepare written reports of their observations. Consultant will attend the weekly progress meetings. The Consultant's observation staff will obtain from the Contractor monthly photographs of the work in progress. The Consultant's observation of the work is not an exhaustive observation or inspection of all work performed by the Contractor. The Consultant does not guarantee the performance of the Contractor. The Consultant's observations will not relieve the Contractor from responsibility for performing the work in accordance with the contract for construction.
- iii. Consultant will observe the Contractor's quality control coordination. Should Consultant discover or believe that any work by the Contractor is not in accordance with the contract for construction, or is otherwise defective, or not conforming to requirements of the contract or applicable rules and regulations, Consultant will bring this to the attention of the Contractor's Quality Control Manager and the City. Consultant will thereupon monitor the Contractor's corrective actions and will advise the City as to the acceptability of the corrective actions.
- iv. Consultant must provide weekly construction inspection to verify materials and installations conform to construction documents; prepare inspection reports documenting Contractor construction activities and progress during field inspection visits; and perform intermittent erosion control inspections.

B. Task 3.2 MCESD Permitting and Project Closeout

- i. Consultant will assist the City in closing out the contract for construction and commencement of the City's use of the completed work.
- ii. Consultant will assist the CITY with securing the Approval of Construction (AOC) from the Maricopa County Environmental Services Department (MCESD). The CONSULTANT will review all Approval to Construct Permit Stipulations and prepare all required documentation and will submit on behalf of the CITY to MCESD.
- iii. Consultant must compile non-conformance list prior to Substantial Completion; assist the Owner with scheduling and conducting Substantial Completion inspection in accordance with the contract for construction; prepare up to (2) Substantial Completion punch lists requiring completion or correction generated from Substantial Completion inspection; track items on punch list and note completed items; and complete and distribute Substantial Completion certificates.
- iv. Consultant must assist Owner with scheduling and conducting Final Completion inspection; and complete and distribute Final Completion certificates. Consultant will make recommendations to the City regarding acceptance of the work based upon the results of the final inspection.
- v. Consultant will coordinate with the Contractor for the submission of required warranties, guarantees, lien releases and other similar documents as required by the contract for construction. Consultant will advise the City as to the acceptability and compliance of these documents with the contract for construction. Consultant will provide to the Owner an organized set of project documents and records.

4. MATERIALS & EQUIPMENT TESTING

A. Task 4.1 Quality Control (QC) Test Program

- i. Not Used.

B. Task 4.2 Quality Assurance (QA) Test Program

- i. Consultant must prepare and maintain a materials Quality Assurance plan per City and MAG.

- ii. Consultant must coordinate with Contractor's testing representative to obtain required QA tests and samples, as applicable.
- iii. Examples of expected tests and samples requiring QA include compaction testing of subgrade, concrete materials testing, workmanship of pipe, conduit and equipment supports.
- iv. This task will be managed as an allowance, for 30 hours of senior staff time.

C. Task 4.3 Specialty Inspection and Testing

- i. Consultant will provide specialty inspections and testing in accordance with the construction specifications. This will include structural inspection of filter box. An email report will be issued following each inspection to provide the results of the testing and any clarification on the Contractor's work.
- ii. Consultant will contract for material testing to independently verify the quality of the Contractor's work in an amount not to exceed \$5,000. The testing is anticipated to consist of soil proctors, soil density testing, coatings testing and inspection, and limited media analysis testing. Consultant will review the reports and other information prepared by the independent firms and provide to the City.

D. Task 4.4 Process Instrumentation and Control Systems (PICS) Integration

- i. Consultant will contract with a PICS Integrator for the work tasks related to the implementation, specifically the programming, of the Process Instrumentation and Control Systems (PICS) as indicated in their engineering services proposal including site inspections, point to point testing verification, calibration verification, installing and testing software, and operator training.
- ii. Hardware and wiring purchase and installation is excluded from this scope of work.
- iii. Consultant will coordinate construction activities with the PICS integrator when work activities are scheduled. Consultant will schedule and conduct up to 2 coordination meetings to review task requirements as outlined in the specifications with up to two Consultant representatives attending. Consultant will coordinate and schedule factory acceptance test (FAT) and site acceptance test (SAT), according to the Contract Documents. Attendees will include Consultant, City, Contractor, PLC programmer, and PICS subcontractor.

E. Task 4.5 Equipment Testing and Facility Startup

- i. Startup planning meetings shall be conducted by Consultant in order to facilitate completion and communication of the start-up plan. The Consultant will review Contractor's start up plan which include facility and performance demonstration plan. The Consultant will provide 1 day for witness field performance tests required to confirm that individual components and systems operate as specified in startup plan. Consultant will provide up to 3 days of witness polymer system functional testing in the field after equipment installation to verify system performance in accordance with the specifications. The Contractor will perform testing under the witness of the Consultant. A report will be issued for the testing based on data presented by the Contractor.
- ii. Consultant will provide up to 24 total hours of field witnessed pump testing after pump installation to verify pump performance is in accordance with specifications. Contractor will perform testing under the witness of Consultant. Consultant will provide a report on the testing based on field witness test observations, and data provided by Contractor.
- iii. Upon completion of start-up, Consultant will review functional and performance test results submitted by Contractor, and advise City if the facility is functioning in accordance with contract documents.

- iv. As part of the Start Up plan, the Consultant will receive and review disinfection plan and procedures including review and approval of independent testing agency for performing water quality sampling and testing. Consultant will witness disinfection performance. Upon receiving water quality test results from the Contractor, the Consultant will review and advise the City on the acceptance and water quality is met based upon the conformance of bacterial limitations for public drinking water.

5. RECORD DRAWINGS

A. Task 5.1 Record Drawings

- ii. Consultant will coordinate the Contractor's submittal of construction red lines of drawings, specifications and other record documents in preparation for finalizing record drawings and will transmit these to the Owner. The Consultant will meet with the Contractor to discuss the preparation and submittal of record drawings. Consultant will provide resident engineer and/or architect and/or landscape architect stamp/certification on record drawings cover sheet. Ensure all required signatures on the cover sheet.
- iii. Consultant will provide and deliver record drawings in mylar (cover sheet only), paper and digital pdf format to the City as required for as-built submittal process at city permit counter.
- iv. Electronic files (pdf and AutoCAD format) will be transmitted to the City. Based on experience of similar work and drawing count, up to 4 hours of CAD technician labor is anticipated for each sheet. An As-Built Certification note will be included on each drawing that contain as-built changes that will state: "I certify that the "as-built" information shown hereon was obtained under my direct supervision and is correct and complete to the best of my knowledge and belief." This note will be sealed by a Registered Professional Engineer in Arizona. The following note will be included in the title block for each drawing: "This drawing was originally sealed on referenced date by referenced PE, a registered Professional Engineer in Arizona."

ASSUMPTIONS, CLARIFICATIONS, AND EXCLUSIONS

- 1. Application fees for City reviews and permits will be paid by City.
- 2. The Owner's Allowance will only be utilized with prior written approval from the City representative.
- 3. The Direct Expense Allowance will be used for normal reimbursable expenses on the project. Items must be billed at cost and backup must be provided with pay applications.
- 4. On-site construction support is assumed to be 5 months in duration.
- 5. Off-site office support is assumed to be 3 months in duration prior to contractor mobilization.
- 6. Consultant's services are based upon a construction duration of 270 calendar days to Substantial Completion and 300 calendar days to Final Completion as advertised in the Contract Documents.
- 7. City will be actively involved in the construction process to make decisions, provide approvals, and perform other actions necessary for the completion of the construction.

8. Contract Documents consist of one (1) set of final drawings and one (1) set of project specifications.
9. Consultant general nature of the work will be to provide services during construction, review of Contractor's work in accordance with the Contract Documents, engineering services during construction, and construction close-out. The Consultant will not be responsible for the means, methods, techniques, sequences or procedures of the Contractor.
10. Consultant will not communicate directly with the Contractor's subcontractors.

EXHIBIT "B"
COMPENSATION AND FEES

**EXHIBIT B-1
CONSTRUCTION MANAGEMENT
SCOPE OF SERVICES
FEE SCHEDULE**

Task	Description	Cost
1	PRE-CONSTRUCTION ASSISTANCE	
1.1	Pre-Construction Assistance	\$ 7,440.00
	SUBTOTAL TASK 1:	\$ 7,440.00
2	CONSTRUCTION MANAGEMENT	
2.1	Weekly Construction Meetings	\$ 11,740.00
2.2	CPM Schedule	\$ 5,290.00
2.3	Requests for Information (RFI)	\$ 16,980.00
2.4	Shop Drawing Submittals	\$ 24,730.00
2.5	Requests for Proposal (RFP)	\$ 15,820.00
2.6	Field Directive (FD)	\$ 12,840.00
2.7	Contractor Payment Applications	\$ 5,290.00
2.8	Safety	\$ 3,760.00
2.9	Progress Reviews	\$ 6,920.00
	SUBTOTAL TASK 2:	\$ 103,370.00
3	CONSTRUCTION INSPECTION	
3.1	Inspection Services	\$ 46,540.00
3.3	Project Closeout	\$ 13,520.00
	SUBTOTAL TASK 3:	\$ 60,060.00
4	MATERIALS TESTING	
4.1	QC Test Program	\$ -
4.2	QA Test Program	\$ 7,050.00
4.3	Specialty Inspections	\$ 12,760.00
4.4	PICS Integration	\$ 10,240.00
4.5	Testing and Startup	\$ 26,040.00
	SUBTOTAL TASK 5:	\$ 56,090.00
5	RECORD DRAWINGS	
5.1	Record Drawings	\$ 22,780.00
	SUBTOTAL TASK 6:	\$ 22,780.00

SUBCONSULTANTS	
Jacobs - Programming	\$ 115,565.00
Subconsultant Name	\$ -
Subconsultant Name	\$ -
Subconsultant Name	\$ -
SUBTOTAL SUBCONSULTANTS:	\$ 115,565.00
ALLOWANCES	
Direct Expense Allowance	\$ 17,000.00
Owner's Allowance	\$ 30,000.00
SUBTOTAL ALLOWANCES:	\$ 47,000.00
PROJECT TOTAL:	\$ 412,305.00

Client	City of Chandler
Project	Pecos SWTP Filter Media Replacement Construction Management
Date	6/8/2022

[illegible]

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.
- 2.5 *Cyber Technology Errors and Omissions, Network Security, and Privacy Liability Insurance.* The policy must cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Agreement with a limit of not less than \$3,000,000 for each occurrence, \$3,000,000 aggregate. In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Consultant warrants that any retroactive date under the policy must precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed. If such insurance is maintained on an occurrence form basis, Consultant must maintain such insurance for an additional period of one (1) year following termination of Agreement. If such insurance is maintained on a claims-made basis, Consultant must maintain such insurance for an additional period of three (3) years following termination of the Agreement. If Consultant contends that any of the insurance it maintains pursuant to other sections of this Exhibit C satisfies this requirement (or otherwise insures the risks described in this section), then Consultant must provide proof of same.
- 2.5.1. The insurance must provide coverage for the following risks:
- 2.5.1.1 Liability arising from theft, dissemination, or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security

numbers, etc. information) stored or transmitted in electronic form.

2.5.1.2 Network Security Liability arising from the unauthorized access to, use of, or tampering with computer systems including hacker attacks, inability of an authorized third party, to gain access to your services including denial of service, unless caused by a mechanical or electrical failure.

2.5.1.3 Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

2.5.2. The policy must provide a waiver of subrogation.

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.

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.