



PROFESSIONAL SERVICES AGREEMENT
Consultant Services
Water System Upgrades Program
Project No. PW3-925-4631
Council Date: October 19, 2023

This Agreement ("Agreement") is made and entered into on the ____ day of _____, 2023 ("Effective Date"), by and between City of Chandler, an Arizona municipal corporation, ("City"), and Hazen and Sawyer, P.C., a New York professional 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 **Consultant Services** for the **Water System Upgrades Program** 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 enter into an Agreement 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 **240** 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 **\$695,720** 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 – Purchasing Division Attn: Christina Pryor, Procurement and Supply Senior Manager P.O. Box 4008, Mail Stop 901 Chandler, AZ 85244-4008 Phone: 480-782-2403 Email: christina.pryor@chandleraz.gov																																														
With a copy to:	City of Chandler - Public Works & Utilities Department Attn: Gina Ishida-Raybourn, Principal Engineer P.O. Box 4008, Mail Stop 905, Chandler, AZ 85244-4008 Phone: 480-782-3584 Email: gina.ishida-raybourn@chandleraz.gov																																														
To Consultant:	<table border="1"> <tr> <td colspan="2">LEGAL COMPANY NAME:</td><td colspan="2">Hazen and Sawyer, P.C.</td></tr> <tr> <td>Mailing Address:</td><td colspan="3">1400 E. Southern Ave., Tempe, AZ 85282</td></tr> <tr> <td>Physical Address:</td><td colspan="3">1400 E. Southern Ave., Tempe, AZ 85282</td></tr> <tr> <td colspan="2">Statutory Agent Name:</td><td colspan="2">Corporation Service Company</td></tr> <tr> <td colspan="2">Statutory Agent Mailing Address:</td><td colspan="2">8825 N. 23rd Ave, Ste.100 Phoenix, AZ 85021</td></tr> <tr> <td colspan="2">Statutory Agent Physical Address:</td><td colspan="2">8825 N. 23rd Ave, Ste.100 Phoenix, AZ 85021</td></tr> <tr> <td colspan="4">CONSULTANT'S AUTHORIZED PROJECT REPRESENTATIVE</td></tr> <tr> <td>Name:</td><td colspan="3">Brindhya Dhanasekaran, PE</td></tr> <tr> <td>Title:</td><td colspan="3">Program Manager</td></tr> <tr> <td>Phone:</td><td colspan="3">480-287-3706</td></tr> <tr> <td>Email:</td><td colspan="3">bdhanasekaran@hazenandsawyer.com</td></tr> </table>			LEGAL COMPANY NAME:		Hazen and Sawyer, P.C.		Mailing Address:	1400 E. Southern Ave., Tempe, AZ 85282			Physical Address:	1400 E. Southern Ave., Tempe, AZ 85282			Statutory Agent Name:		Corporation Service Company		Statutory Agent Mailing Address:		8825 N. 23 rd Ave, Ste.100 Phoenix, AZ 85021		Statutory Agent Physical Address:		8825 N. 23 rd Ave, Ste.100 Phoenix, AZ 85021		CONSULTANT'S AUTHORIZED PROJECT REPRESENTATIVE				Name:	Brindhya Dhanasekaran, PE			Title:	Program Manager			Phone:	480-287-3706			Email:	bdhanasekaran@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 Agreement 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 Agreements 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 Agreement 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 an Agreement 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 an Agreement 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 Agreement 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 Agreement 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 Agreement 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 - Subconsultant Documents with Consultant (if applicable)

Exhibit F - 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 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.

5.42 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.

5.43 Forced Labor of Ethnic Uyghurs Prohibited. By entering into this Agreement, Contractor certifies and agrees Contractor does not currently use and will not use for the term of this Agreement: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; or (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

5.44 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.

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

"CONSULTANT"
Hazen and Sawyer, P.C.

MAYOR

Curtis Courter September 26, 2023
Signature Date

RECOMMENDED BY:

Curtis Courter

Print Name

Jeremy Abbott
Public Works and Utilities Assistant Director

Associate Vice President

Title
ccourter@hazenandsawyer.com

Signer Email Address

APPROVED AS TO FORM:

City Attorney 

ATTEST:

City Clerk Seal

EXHIBIT "A"

SCOPE OF SERVICES/SCHEDULE

Introduction

The City of Chandler (City) has hired Hazen and Sawyer (Consultant) to serve as Program Manager for the Water System Upgrades Program. This program consists of planning, design, and construction phases. The purpose of this document is to define the Consultant's scope of work for the planning phase. The objective of the planning phase is to complete a holistic evaluation of the Pecos Surface Water Treatment Plant (SWTP) to address water quality challenges with respect to Disinfection Byproducts (DBPs) while addressing the operations challenges to maintain the plant at its 60 mgd rating and maximizing the use of Salt River Project (SRP) water in the system. Consultant will perform the following tasks as part of planning phase.

Task 1: Program Management

Task 2: Data Collection and Review

Task 3: Pecos Water Treatment Plant – Short Term Plan

Task 4: Pecos Water Treatment Plant – Long Term Plan

Task 5: Strategic Execution Plan

Task 6: Owner's Allowance

Task 1: Program Management

As Program Manager, the Consultant will develop the 'executive strategic plan' as part of the planning phase and serve as the City Project Manager for all additional services/projects that will be required to implement the City approved projects and tasks constituting the Program. These services include but not limited to contractor/vendor solicitations, selections, negotiation, contract preparation, pre-submittal meetings, overall schedule and budget tracking, coordinating design reviews, permitting, overseeing construction, providing inspections, startup support and commissioning. The current scope in Tasks 1 through 5 defines the details of activities leading up to the executive strategic plan. The City will issue future amendments for tasks which are currently undefined. As projects and tasks outside of Tasks 1 through 5 get defined, Consultant will submit a proposal to the City detailing the specific additional services that will be covered under future amendments.

1.1 Program Management and Coordination Activities

Consultant will perform Program Management and related coordination activities, including monitoring and tracking schedule, budgets for Program tasks. Consultant will provide on-site presence of the Program Manager (PM) and/or Deputy Program Manager (DPM) for the duration of the project for minimum 6 hours a day, 5 days a week, excluding weekends and City holidays. City will provide a desk/office for PM and DPM at the City's offices.

1.2 Program Execution Plan

Consultant will prepare a Program Execution Plan for the project and distribute all project team members. This work plan will include the project purpose and objectives, scope of work, detailed project delivery schedule, deliverables, budget, organizational chart and team contact information, document management system and the communication plan. Consultant will update the plan with any major changes as the project progresses.

1.3 Program Kickoff Meeting and Monthly Progress Meetings

Consultant will conduct initial project kick-off meeting/chartering session with stakeholders at the City's offices to review the project goals, objectives, scope of work, project schedule, and roles and responsibilities. Meeting minutes will be prepared and distributed to document the meeting.

Consultant will conduct regular progress meetings with stakeholders at the City to review the development of the project. During the first 90 days, these meetings will occur approximately once per week. After the first 90 days, progress meetings will occur once a month. Meetings may be combined with project milestone workshops. Key takeaways and action items lists will be prepared and distributed to document the meeting.

Team conference calls and e-mail exchanges will be conducted as needed with the City to support communication throughout the project to facilitate efficient delivery of the task elements. In addition, PM and/or DPM will be in-person at Chandler offices coordinating and conducting meetings with City staff and the Consultant team as necessary.

1.4 Progress Reports

Consultant will prepare and distribute monthly progress reports to the City throughout the course of the project. The progress reports will summarize the work that has been completed during the preceding month and any key action items for the City in the upcoming month. These reports will be delivered as part of the monthly invoice packet.

Assumptions:

- Progress meetings will be 1 hour long and will be held once per month or combined with project milestone meetings; all meetings will have a virtual option.
- Planning phase duration = 8 months from NTP

Deliverables:

- Meeting agenda and key takeaway notes with action items for each progress meeting
- Project execution plan including project schedule with major tasks and key milestones
- Monthly progress reports along with invoice

Task 2: Data Collection and Review

The objective is to establish baseline data and information on conditions, operations, and water quality. Once data is received, Consultant will review the data, documents, and models to identify any data gaps. For any data gaps identified, Consultant will initiate additional data request(s), field verification, bench testing, or field data collection.

2.1 Data Request

Consultant will request and review technical and operations data at the onset of the project. Information anticipated to be requested includes:

- Raw, Finished, and Distribution System water quality data for past 5 to 10 years
- SCADA and Operations data for past 5 to 10 years
- As-builts drawings and relevant previous studies
- Pecos Digital Twin
- Operations staff interviews

2.2 Pecos SWTP - Establish baseline

Consultant will review operations and water quality data to establish trends. Utilizing the SWTP records, Consultant will create system hydraulic profile of the SWTP. Consultant will identify opportunities and/or limitations in the hydraulic profile for siting of future filters and additional treatment processes. Consultant will meet with City operations staff to understand how the SWTP is operated under varying influent water quality conditions. Consultant will document the limitations in current unit processes and the drivers for operational decisions under varying influent water quality conditions. Consultant will test the digital twin model to determine its level of completeness and identify any gaps that may require updates in future phases of work.

Assumptions:

- Operations interviews will include Consultant staff meeting with operators in the control room over 2 - sessions, ~2 hours each, to cover various operating scenarios.
- City will assign 1 key contact for each data source, and data will be available within 2 weeks of NTP

Deliverables:

- Data request
- Pecos SWTP hydraulic profile - ppt
- Key findings, gaps in information and recommendations to close gaps – ppt

Task 3: Pecos Water Treatment Plant – Short Term Plan

The objectives of this task are (1) to mitigate water quality risks until permanent solutions are constructed/commissioned and (2) to evaluate long-term solutions (at a planning level) for leaking filters 9 through 12. Consultant will complete the following items as part of this task.

3.1 Evaluate GAC optimization in Filters 1 through 8

Utilizing the water quality and operations data from summer 2023, Consultant will develop a mathematical model to evaluate the optimization of GAC media in Filters 1 through 8. Results will be discussed with the City and documented in PowerPoint slides.

3.2 Evaluate short term procurement (rental) options for Post Filter GAC Contactors and Solids Dewatering Equipment

Evaluation will include feasibility of rental options along with lead time, cost, and impact to current SWTP Operations. Results will be discussed with the City and documented in PowerPoint slides.

3.3 Evaluate filter rerating

Utilizing the digital twin, Consultant will evaluate if existing Filters 1 through 8 can be rerated to higher surface loading rate (and capacity). Based on the results, Consultant will determine how many new filters are needed to maintain the plant rated 60 MGD capacity with adequate redundancy. Results will be compiled with results in the following task (Task 3.4).

3.4 Evaluate maximum SWTP throughput

Based on available SWTP data, operations interviews, and leveraging the digital twin and the hydraulic profile developed as part of Task 2.2, Consultant will identify hydraulic and treatment limitations in current unit processes to operate the SWTP at 60 MGD. Industry standards for expected throughput through unit processes (example, surface loading rates on clarifiers) will be used as benchmark. Findings will be documented in PowerPoint slides.

3.5 Structural evaluation of Filters 9 through 12

The City has conducted an external visual inspection of the Filters 9 through 12 in 2019 and has documented the results in a technical memorandum. Utilizing the results of this inspection, the Consultant will verify if there have been significant increases in external cracks since 2019. Based on this assessment, the Consultant will provide recommendations for internal inspection of filters and any additional destructive or non-destructive testing needed to assess the structural integrity of the filters. Consultant will also provide planning level costs and logistics for each of the recommendations.

3.6 Perform bench-scale tests

Consultant will develop a bench scale testing plan. The objective of bench scale testing plan is to capture lessons learned from previous studies and correlate with the operational adjustments made at the Pecos SWTP in 2022 and 2023 (example, starting up enhanced coagulation and PAC feed). Investigation will include the impact of variation of chemical dosage on finished water quality and future treatment alternatives.

Consultant staff will conduct the tests using City facilities and equipment. Results will be documented in PowerPoint slides. Supporting appendices will be included with the collected data in tabular format.

3.7 Develop short term implementation plan

Consultant will develop short term implementation plan utilizing the results of Tasks 3.1 to Task 3.6 described above. This plan will include planning level costs, vendor/contractor provided lead times and recommendations for implementation. Results will be discussed in meetings with the City and documented in a technical memorandum (TM).

Assumptions:

- Structural testing of Filters 9 through 12 is excluded, but can be executed under future amendments if needed.
- All expenses for chemicals, lab sample analysis, and lab equipment are excluded and assumed to be provided by City.
- Maximum 2 jar tests (6 jars each) in the City's Phipps and Bird jar tester
- Maximum of 6 digital twin scenario runs:
 1. Average Water quality - current minimum flow, current average flow, current maximum flow
 2. Average water quality – buildout maximum flow
 3. Challenging (maximum) water quality – buildout average flow, buildout maximum flow
- Maximum of 6 meetings. Each meeting with be 1 hour long and will have virtual option

Deliverables:

- Short term implementation plan
-

- PowerPoint of GAC optimization, short term rental options, maximum SWTP throughput analysis, structural evaluation for Filters 9 through 12, benchscale testing plan and results
- GAC optimization spreadsheet model.

Task 4: Pecos Water Treatment Plant – Long Term Plan

The objective of this task is to develop the long-term plan for the Pecos SWTP to meet water quality requirements while providing sustainable drinking water production at 60MGD under worst case quality conditions. The worst-case water quality for this task will be defined by City. Consultant will complete the following items as part of this task.

4.1 Long Term Treatment Options

Working with the City, Consultant will establish average and worst case raw water quality parameters (based on various water qualities expected from Verde/SRP/Groundwater supplies) and establish finished water quality and operational goals. Once the raw and finished water targets are established along with the operational constraints (developed in Task 3.4) and future operational goals, Consultant will identify CIP projects under each of these categories – 1. Liquids train to meet capacity goals (example: filters); 2. Solids train to meet capacity goals (example: dewatering equipment and recycle pumping); 3. Advanced treatment options to mitigate TTHM formation potential (example ozone or post filter GAC adsorbers).

4.2 Conceptual Design

For CIP projects defined in Task 4.1 Consultant will develop 5% conceptual design to aid in cost estimate development and constructability assessment. The conceptual design will include the following:

1. Process Flow Diagram
2. Preliminary Site Layout
3. Process equipment sizing and vendor budgetary quotes to support capital cost estimates
4. Process Building Equipment Layout Plan
5. Estimated O&M costs
6. AACE Class 5 cost estimate – included in Task 7

4.3 Review workshops

Consultant will conduct three review workshops with City to gain alignment on long term options, to discuss conceptual design of each of the CIP, and to make final recommendations on long term CIPs. Each of the workshops will be 2 hours long.

Assumptions:

- Maximum of 5 meetings/workshops. Each to be 1 hour long and will have virtual option except the workshops under Task 4.3 (3 workshops maximum), which will be in-person and 2 hours in length.
- Cost estimates will be completed in Task 5.
- 3D models may be developed for select CIP conceptual designs, but not all.
- Conceptual design drawings will be to scale where appropriate.

Deliverables:

- Powerpoint of raw water quality targets, finished water quality goals, and long-term treatment options.
- TM outlining long-term CIP projects with descriptions and justification.

Task 5: Strategic Execution Plan

The objective of Task 7 is to develop Strategic Execution Plan based on comprehensive review of the Pecos SWTP to meet the City's water quality goals while addressing the capacity concerns the Pecos SWTP and maximizing the production and use of SRP water. While Tasks 3 and 4 will provide recommendations on specific aspects of the system, the strategic execution plan developed in this task will evaluate those recommendations on a holistic basis and prioritize the projects based on risk to the City. The criteria for defining risk and the associated weightage will be developed by the Consultant with input from City. The plan will include costs, schedule, implementation method (JOC, CMAR, DBD, DB, etc), and prioritization ranking of these projects to achieve City's goals.

5.1 CIP Program

Consultant will develop recommendations for capital improvement projects (CIP) and operational improvement projects. Consultant will develop cost estimates, schedule, and delivery method for all CIP projects resulting from Tasks 3 and 4. Cost estimate memo will include a summary scope of work and engineer's opinion of capital project cost for each CIP project.

AACE Class 5 cost estimates will be provided, which are common for this level of planning. In providing opinions of cost and schedules for each project, Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from the Consultant's opinions, analyses, projections, or estimates.

5.2 Prioritization Workshops

Consultant will conduct two 2 – hour workshops to review and prioritize the CIP program and an additional 1 hour workshop to communicate final plan. Meeting minutes will be prepared and distributed to document the meeting.

5.3 Develop Strategic Execution Plan

Consultant will develop a Strategic Execution Plan that will include the following:

- Comprehensive evaluation of all CIP projects recommended in Task 3 and 4 and risk-based ranking of the projects.
- Strategy for execution and justification for proposed CIP projects
- Cost estimate and delivery method recommendation for each CIP project proposed.
- Recommended schedule for implementation of all CIP projects

Assumptions:

- Cost estimates will be AACE Level 5.
- Schedules will be developed in Gantt format.

Deliverables:

- Strategic Execution Plan in pdf format
- Cost models in excel format along with Basis of Estimate

Task 6: Owner's Allowance

Owner's allowance is to any additional efforts relevant to the Program as and when they come up.

Consultant will request written authorization from the City to utilize the funds. The associated scope will be included in the authorization request.

SCHEDULE

	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Task 1: Program Management								
Task 2: Data Collection and Review								
Task 3: Pecos Water Treatment Plant – Short Term Plan								
Task 4: Pecos Water Treatment Plant – Long Term Plan								
Task 5: Strategic Execution Plan								

Notes on Schedule:

- Detailed Gantt schedule will be developed as part of Task 1.

EXHIBIT "B"
COMPENSATION AND FEES

FEE

Task	Name	Curt Courter	Brindha Dhanasekaran	Daniela Panfil	Jason Curl	Katie Vanyo	Mag Roberts	Chris Currier	Eric Peterson	Varies	Varies	Varies	Varies			
	Classification	Project Director	Program Manager	Deputy Program Manager	Technical Leader	Water Treatment Lead	Distribution System Lead	Construction / Cost Estimates	Water Quality	Discipline lead (Structural, Electrical, Mech)	Mid level engineer (PE)	Assistant Engineer (AE)	Admin or Intern	Expenses	Subtotal Hours	Fee
	Hourly Rates	\$ 265	\$ 250	\$ 200	\$ 265	\$ 220	\$ 250	\$ 220	\$ 190	\$ 220	\$ 180	\$ 150	\$ 90			
LEVEL OF EFFORT (HOURS)																
Task 1	Program Management														1423	\$ 311,510
	Project Management/Project Execution Plan/Meetings	24	507	892											1423	\$ 311,510
Task 2	Data Collection and Review														160	\$ 28,720
2.1	Data Request											20			20	\$ 3,000
2.2	Pecos SWTP - Establish baseline				16	24					40	60			140	\$ 25,720
Task 3	Pecos SWTP - Short Term Plan														710	\$ 130,740
3.1	Evaluate GAC				8	20			16			24			68	\$ 13,160
3.2	Short term rental				8	20					24	32			84	\$ 15,640
3.3	Filter rerating				12	20					40	40			112	\$ 20,780
3.4	Max throughput				6	10			16		20	40			92	\$ 16,430
3.5	Structural Evaluation				2	2		12		24	8	16			64	\$ 12,730
3.6	Bench Scale Test				12	8			40			100			160	\$ 27,540
3.7	Short term implementation plan				12	20		20	12	6	12	40	8		130	\$ 24,460
Task 4	Pecos SWTP - Long Term Plan														518	\$ 100,130
4.1	Long term treatment options				40	40			0		40	70			190	\$ 37,100
4.2	Conceptual Design				40	40		12		40	50	100	4		286	\$ 55,200
4.3	Workshops				6	12						24			42	\$ 7,830
Task 5	Strategic Execution Plan														276	\$ 52,620
5.1	CIP development				20			80				80			180	\$ 34,900
5.2	Prioritization workshops				8			8				24			40	\$ 7,480
5.3	Strategic Execution Plan				16							40			56	\$ 10,240
Task 6	Owners Allowance													\$ 60,000	0	\$ 60,000
ODC	Expenses (travel, shipping, etc)													\$ 12,000		\$ 12,000
															BASE LUMP SUM FEE	\$ 695,720
Total Hours		24	507	892	206	216	0	132	84	70	234	710	12			

- NOTES:
- QC hours are included in individual tasks.
 - Hours for progress meetings are included in Tasks 2,3,4, and 5.

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 Agreement 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 \$5,000,000 for each occurrence, \$5,000,000 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 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.

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.

Intellectual Property Fees, Licenses, Indemnity. 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.

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

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

this Section must constitute a breach of this Section. In addition to any other remedy available to City at law or in equity, Consultant must be liable for and must pay to City the sum of one thousand dollars (\$1,000.00) for each breach by Consultant of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to City at the time and making of this Agreement in the event that Consultant breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving City's actual damages in the event that Consultant breaches this Section. The parties further agree that three (3) breaches by Consultant of this Section arising out of any default within a consecutive period of three (3) months or three (3) breaches by Consultant of this Section arising out of the same default within a period of twelve (12) consecutive months will constitute a material breach of this Agreement by Consultant and City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.

EXHIBIT "E"
SUBCONSULTANT DOCUMENTS WITH CONSULTANT

Any subconsultant assumptions, clarifications, exclusions, terms & conditions, signature blocks, etc. included are strictly between the Consultant and their subconsultants, and do not apply to the Agreement between the Consultant and the City.

EXHIBIT "F"
FEDERAL REQUIREMENTS

Not Applicable