



PROFESSIONAL SERVICES AGREEMENT

Select Agreement Type

TUMBLEWEED RECREATION CENTER EXPANSION MULTI-GENERATIONAL FACILITY (EAST)

Project No. PR2201.271

Council Date: December 7, 2023 Item No.

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 **Barker Rinker Seacat Architecture**, a Colorado corporation, ("Consultant") (City and Consultant may individually be referred to as "Party" and collectively referred to as "Parties").

RECITALS

A. City proposes to engage Consultant to provide **Select Agreement Type** for **TUMBLEWEED RECREATION CENTER EXPANSION MULTI-GENERATIONAL FACILITY (EAST)** 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 **462** 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 **\$356,535** 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: Warren White, P.E. P.O. Box 4008, Mail Stop 407 Chandler, AZ 85244-4008 Phone: 480-782-3337 Email: warren.white@chandleraz.gov		
With a copy to:	City of Chandler - Public Works & Utilities Department Attn: Russ Slotnick, Project Manager P.O. Box 4008, Mail Stop 407, Chandler, AZ 85244-4008 Phone: 480-782-3411 Email: russ.slotnick@chandleraz.gov		
To Consultant:	LEGAL COMPANY NAME:		Barker Rinker Seacat Architecture
	Mailing Address:	990 South Broadway, Suite 222 Denver CO 80209	
	Physical Address:		
	Statutory Agent Name:	Corporation Service Company	
	Statutory Agent Mailing Address:		8825 N. 23 rd Ave. #100 Phoenix AZ 85021
	Statutory Agent Physical Address:		
	CONSULTANT'S AUTHORIZED PROJECT REPRESENTATIVE		
	Name:	Craig Bouck	
	Title:	Partner	
	Phone:	303-455-1366	
	Email:	craigbouck@brsarch.com	

5.2 Records/Audit. Records of Consultant's direct personnel payroll, reimbursable expenses pertaining to this Agreement and records of accounts between City and Consultant must be kept on the basis of generally accepted accounting principles and must be made available to City and its auditors for up to three years following City's final acceptance of the services under this Agreement (this requirement is increased to five years if construction of this project is federally funded). City, its authorized representative, or any federal agency, reserves the right to audit Consultant's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate this Agreement and any amendments. City reserves the right to decrease the total amount of Agreement price or payments made under this Agreement or request reimbursement from Consultant following final 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 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.

5.44 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.

5.45 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"

Barker Rinker Seacat Architecture

MAYOR



11/15/2023

Signature

Date

RECOMMENDED BY:

Craig Bouck, AIA, LEED AP, NCARB

Print Name

Partner, Principal

Title

craigbouck@brsarch.com

Signer Email Address



Warren White, P.E.
Acting CIP City Engineer

APPROVED AS TO FORM:

City Attorney



ATTEST:

City Clerk

Seal

EXHIBIT "A"
SCOPE OF SERVICES/SCHEDULE

TUMBLEWEED RECREATION CENTER EXPANSION

CONSTRUCTION PHASE SERVICES PROPOSAL

Rev 1 - October 13, 2023

Rev 2 – October 26, 2023



EXHIBIT "A"

POST DESIGN SCOPE OF SERVICES

Project Description

Post Design services for the Tumbleweed Recreation Center Expansion Improvements, located at 745 E. Germann Road, Chandler, Arizona. Services include limited pre-construction assistance and Engineering or Architectural Design Services during Construction to address issues and/or specialized technical products regarding the **designer of record**; and preparation of as-built record drawings. Services are based on the construction document package developed by Barker, Rinker, Seacat Architecture dated September 1, 2023.

Project Tasks

1. PRE-CONSTRUCTION ASSISTANCE

A. Task 1.1 Preconstruction Assistance

- i. Consultant will attend the pre-construction meeting via remote virtual meeting. (IF REQUIRED).

2. Engineering or Architectural Design Services During Construction

A. Task 2.1 Attend Construction Meetings as needed

- i. Consultant must attend construction meetings, as needed. Consultant assumes attendance of sixty(60) weekly construction meetings.
- ii. Consultant will attend weekly construction meetings via virtual meeting platform (Zoom, or other) every week.
- iii. Consultant will have a staff member attend construction meetings in person every other week, additional staff may still attend the meeting virtually.

B. Task 2.2 Respond to Requests for Information (RFI's), as needed

- i. Consultant must review, evaluate, and respond to any contractor Requests for Information (RFI's) forwarded by the CM Firm for design review. Consultant assumes a maximum of two hundred fifty (250) RFI responses.

C. Task 2.3 Respond to Shop Drawing Submittals, as needed

- i. Consultant must review, evaluate, and respond to any Contractor Shop Drawing submittals forwarded by the CM Firm for design review. Consultant assumes a maximum of two hundred fifty (250) reviews.

D. Task 2.4 On-Site Construction Observation

- i. BRS and our Consultant Team will provide on-site evaluation during the construction of the project to the extent outlined in this proposal and the associated proposals of the consultant team members. Our role will be to review the status of the construction and determine if the work is in general conformance with the Contract Documents. We will create reports for the City based on our observations and if any work needs remediation to be in conformance of the

We believe we can live better.

Contract Documents based on the design intent and if it is reasonably inferable within the documents.

- ii. It is anticipated that BRS will conduct site observation visits every 3 weeks during construction. For the duration of the construction, we will provide twenty (20) site observation visits.
- iii. Our consultant team will visit the project at intervals necessary to review the work at specific milestone points most beneficial to ensure conformance of the construction to the design intent. The Consultant team will provide the following number of site observation visits:
 - o Kimley Horn Civil Site Observation Visits – Three (3)
 - o Kimley Horn Landscape Site Observation Visits – Two (2)
 - o Kimley Horn Structural Site Observation Visits – Three (3)
 - o Henderson Engineers Mechanical, Electrical, Plumbing and Fire Protection Site Observation Visits - Three (3)
 - o Henderson Engineers AV, Tech, Security Site Observation Visits - One (1)

E. Task 2.5 Change Orders

- i. If a change in work is required that has cost or time adjustments for the CM@R, BRS will work with the City in providing a directive for the change and we will assist the City in the evaluation of the change. It is our intent that any change that may be needed is first approved by the City prior to execution.

F. Task 2.6 Punch List

- i. At the time of Substantial Completion BRS and our Consultant Team will conduct a final observation to review the work of the project to verify it is in compliance with the Contract Documents. Items needing correction will be documented by the CM@R on a Punch List for final adjustment and correction. The Punch List will be reviewed by the Design Team for completeness.
- ii. Once the CM@R believes the work has been corrected, they will notify the City and BRS that a back walk and verification is ready for review. It is anticipated that all items will be corrected and that the work will be finally complete.
- iii. We anticipate that there will be one (1) initial punch walk at the time of Substantial Completion and one (1) back check when notified by the CM@R that the work is ready to be reviewed for Final Completion. If more punch walks are required, they can be provided as an Additional Service.

3. Task 3.1 Record Drawings

- i. Transfer red-line comments to City's construction plans to create record drawings.
- ii. 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. Provide and deliver record drawings in mylar, paper and digital pdf format to the City as required for as-built submittal process at city permit counter.

4. PROJECT TEAM:

A. The Design Team for construction administration services for the project will include the following disciplines and firms:

- | | |
|---|----------------------------|
| i. Architect of Record / Interior Design | Barker Rinker Seacat (BRS) |
| ii. Civil Engineer & Landscape Architect | Kimley-Horn (KH) |
| iii. Structural Engineering | Kimley-Horn (KH) |
| iv. Mech / Elect / Plumbing Engineering | Henderson Engineers (HE) |
| v. Technology / AV / Security / Acoustics | Henderson Engineers (HE) |

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. Construction Administration Services proposal is based on a 14 month construction duration. Services beyond 14 months will be provided as an additional service.
4. Commissioning services will be provided by the City and are excluded from this proposal.

End of Exhibit "A"

EXHIBIT "B"
COMPENSATION AND FEES

TUMBLEWEED RECREATION CENTER EXPANSION

CONSTRUCTION PHASE SERVICES PROPOSAL

Rev 1 - October 13, 2023

Rev 2 – October 26, 2023



EXHIBIT "B"

POST DESIGN

SCOPE OF SERVICES

FEE SCHEDULE

Task	Description	Cost
1	PRE-CONSTRUCTION ASSISTANCE (BRS Fee Only)	
1.1	Pre-Construction Assistance	\$ 500.00
SUBTOTAL TASK 1:		\$ 500.00
2	CONSTRUCTION MANAGEMENT (BRS Fee Only)	
2.1	Weekly Construction Meetings	\$ 21,740.00
2.2	Requests for Information (RFI)	\$ 67,000.00
2.3	Shop Drawing Submittals	\$ 30,000.00
2.4	On-Site Construction Observation (includes \$20,000 travel expenses)	\$ 53,300.00
2.5	Change Orders	\$ 3,200.00
2.6	Punch List	\$ 7,000.00
SUBTOTAL TASK 2:		\$ 182,240.00
3	RECORD DRAWINGS	
3.1	Record Drawings	
	BRS Architecture	\$ 4,500.00
	Kimley Horn - Civil	\$ 2,000.00
	Kimley Horn - Landscape	\$ 2,000.00
	Kimley Horn - Structural	\$ 2,000.00
	Henderson - MEP	\$ 4,000.00
	Henderson - Fire Protection	\$ 500.00
	Henderson - Telecom	\$ 500.00
	Henderson - AV	\$ 500.00
	Henderson - Security	\$ 500.00
SUBTOTAL TASK 3:		\$ 16,500.00
SUBCONSULTANTS		
	Kimley Horn - Civil (includes \$500 expenses)	\$ 14,895.00
	Kimley Horn - Landscape	\$ 10,300.00
	Kimley Horn - Structural	\$ 19,800.00
	Henderson - MEP (includes \$1,600 expenses)	\$ 41,800.00
	Henderson - Fire Protection	\$ 5,500.00
	Henderson - Telecom	\$ 4,500.00
	Henderson - AV	\$ 4,500.00
	Henderson - Security	\$ 4,500.00
SUBTOTAL SUBCONSULTANTS:		\$ 105,795.00
ALLOWANCES		
	Owner's Allowance	\$ 35,000.00
	Art Coordination Allowance	\$10,000
	Additional Site Visit Allowance	\$6,500
SUBTOTAL ALLOWANCES:		\$ 51,500.00
PROJECT TOTAL:		\$ 356,535.00

We believe we can live better.

TUMBLEWEED RECREATION CENTER EXPANSION

CONSTRUCTION PHASE SERVICES PROPOSAL

Rev 1 - October 13, 2023

Rev 2 – October 26, 2023



EXHIBIT "B-2"

Hours and Rates

	Kevin Armstrong	Bill Clifford	Caitlin Milligan	Amanda Spears	Mark Cheeks	Riley Davidson	NAME
	Partner	Project Manager	Design Manager	Designer	Interiors PM	Interiors	< PROJECT ROLE
	\$ 240.00	\$ 190.00	\$ 150.00	\$ 150.00	\$ 190.00	\$ 120.00	< HOURLY RATES
TASK DESCRIPTION							TOTAL HOURS PER TASK
Task 1.0 Pre-Construction Assistance (BRS Only)	0	2	2	0	0	0	
1.1 Pre-Construction Assistance	0	2	2	0	0	0	4
Task 2.0 Construction Management (BRS Only)	34	162	690	84	8	60	
2.1 Weekly Construction Meetings	10	40	70	0	4	4	128
2.2 Requests for Information (RFI)	8	40	320	44	4	20	436
2.3 Shop Drawing Submittals	2	4	140	40	0	20	206
2.4 On-Site Construction Observation (includes travel)	10	60	130	0	0	0	200
2.5 Change Orders	2	8	10	0	0	2	22
2.6 Punch List	2	10	20	0	0	14	46
Task 3.0 Record Drawings (BRS Only)	1	2	20	0	0	0	23
3.1 Record Drawings	1	2	20	0	0	0	23

We believe we can live better.

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.

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

VULNERABLE PERSON

1. **Consultant and Subconsultant Worker Background Screening.** Consultant agrees that all contract workers and subconsultants (collectively "Contract Worker(s)") that Consultant furnishes to City under this Agreement will be subject to background and security checks and screening as set forth in this Section (collectively "Background Screening") at Consultant's sole cost and expense. As part of the Background Screening, Consultant must provide to a person designated by the City the name(s), address(es), and phone number(s) of all Contract Workers who will provide any services under this Agreement. All Contract Workers must comply with these Background Screening requirements. All Contract Workers must be able to provide proof of the legal right to work in the United States. The Background Screening provided by Consultant must comply with all applicable laws, rules, and regulations. Consultant further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety, and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Agreement. City in no way warrants that these minimum requirements are sufficient to protect Consultant from any liabilities that may arise out of Consultant's services under this Agreement or Consultant's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Consultant and its Contract Workers must take such other reasonable, prudent, and necessary measures to further preserve and protect public health, safety, and welfare when providing services under this Agreement.
2. **Background Screening Requirements and Criteria.** Before offering or scheduling any services under this Agreement, Consultant agrees that all Contract Workers, including the Consultant, if the Consultant is an individual or sole proprietorship, must have successfully passed a Background Screening in accordance with this Section. Consultant warrants that no person will be permitted to substitute for a Contract Worker who has satisfied the Background Screening requirements until the proposed substitute has also satisfied the Background Screening requirements in this Section. For review and approval, Consultant must submit to a person designated by the City proof of a completed Background Screening for each Contract Worker over the age of 18 performing services under this Agreement no fewer than two (2) weeks before the proposed start date of such Contract Worker's services. The Background Screening must have been completed within the 12-month period preceding the Contract Worker's start date under this Agreement and must include the results of a social security (SSN) trace, a national criminal databased check with source verification, and a sex offender database search.
3. **Additional City Rights Regarding Security Inquiries.** In addition to the foregoing, City reserves the rights but not the obligations to: (1) have a Contract Worker be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G) (4) or Chandler City Code § 4-22; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and (4) object, at any time and for any

reason, to a Contract Worker performing work (including supervision and oversight) under this Agreement.

4. **Consultant Certification.** By executing this Agreement, Consultant certifies that Consultant has read and understands the Background Screening requirements and criteria in this Section and will fully comply with such requirements. Consultant further certifies that any Background Screening information to be furnished to City related to Consultant or its Contract Workers will be complete, current, and accurate. A Contract Worker rejected for work under this Agreement will not be proposed to perform work under other City contracts or engagements without City's prior written approval.
5. **Terms of This Section Applicable to all of Consultant's Contracts and Subcontracts.** Consultant must include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Agreement including, but not limited to, supervision and oversight services.
6. **Materiality of Background Screening Requirements: Indemnity.** The Background Screening requirements of this Section are material to City's entry into this Agreement and any breach of this Section by Consultant will be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in this Agreement, Consultant must defend, indemnify, and hold harmless City for any and all Claims arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by Consultant or City for failure to satisfy this Section.
7. **Continuing Duty, Audit.** Consultant's obligations and requirements that Contract Workers satisfy this Background Screening Section will continue throughout the entire term of this Agreement. Consultant must notify City immediately of any change to a Background Screening of a Contract Worker previously accepted by City. Consultant must maintain all records and documents related to all Background Screenings and City reserves the right to audit Consultant's compliance with this Section under the terms 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.

City of Chandler

TUMBLEWEED RECREATION CENTER EXPANSION CIVIL & LA CONSTRUCTION ADMINISTRATION SERVICES SCOPE OF WORK

June 27, 2023

Rev 1 - October 26, 2023

Prepared for:

BRS Architects

Prepared by:

Kimley»Horn
Expect More. Experience Better.

7740 North 16th Street, Suite 300
Phoenix, Arizona 85020
(602) 944-5500 | Tel
(602) 944-7423 | Fax

SUMMARY OF TASKS

Task 1.0 Construction Administration2

TASK 1.0 CONSTRUCTION ADMINISTRATION

TASK 1.1 PRE-CONSTRUCTION MEETING

The Consultant Team and specific project team disciplines for civil engineering and landscape architecture will attend the pre-construction meeting for the project. The meeting will be scheduled and facilitated by the contractor and attendance shall include the specific trade and/or sub-contractor superintendent completing the construction scope of work.

Required Staff

1. **Consultant:** Sean Wozny, Marissa Pellegrini, and Design Team staff as necessary

Deliverables

1. Meeting Minutes

TASK 1.2 SUBMITTAL REVIEW

The Consultant Team will review civil engineering and landscape architectural project product submittals. All Project Submittals from the contractor will be submitted to Kimley-Horn through the Architect for review. Kimley-Horn will review and comment on product submittals, return reviewed submittal to Architect for review by the City prior to distribution. Upon review, submittals will be returned to the contractor within the time period specified in the project specifications. The project team anticipates the contractor to utilize an online construction management software program to submit and post project submittals.

Required Staff

1. **Consultant:** Sean Wozny, Marissa Pellegrini and Design Team staff as necessary

Deliverables

TASK 1.3 ISSUE REQUESTS FOR INFORMATION (RFI)

The Consultant shall coordinate RFIs with the Architect and City. Upon review by City Staff, the RFI response shall be distributed to the General Contractor within the time period specified in the project specifications.

Required Staff

1. **Consultant:** Sean Wozny, Marissa Pellegrini, and Design Team staff as necessary

Deliverables

1. RFI Log
2. RFI Responses

TASK 1.4 ISSUE ARCHITECTURAL SUPPLEMENTAL INSTRUCTIONS (ASI)

The Consultant shall coordinate ASIs with the Architect and City. Upon review by City Staff, the ASI response shall be distributed to the General Contractor within the time period specified in the project specifications.

Required Staff

1. **Consultant:** Sean Wozny, Marissa Pellegrini, and Design Team staff as necessary

Deliverables

1. ASI Log
2. ASI Responses

TASK 1.5 CONSTRUCTION MEETINGS

The Consultant will attend construction meetings depending on the civil and landscape / irrigation scope of work. The contractor shall provide project updates, progress, identify current tasks/action items, and discuss upcoming tasks. The Contractor shall provide current schedule with three-week look ahead for distribution to the project team.

This task includes the Civil Engineer attending 24 project meetings over the duration of the project to account for water, sanitary sewer, storm drain, grading and drainage and paving construction activities. Landscape Architect attending 8 construction meetings over the duration of the project to account for irrigation and landscape construction activities.

Required Staff

1. **Consultant:** Sean Wozny, Marissa Pellegrini (Kimley-Horn)

TASK 1.6 SITE OBSERVATION VISITS

The Consultant Team will schedule on-site observation visits and provide field observation reports to document construction work activities and progress. To the extent possible, site observation visits will be coordinated to occur the day a construction meeting. Civil observation to include water and sanitary sewer construction including trench, backfill and compaction work. Site grading and paving preparatory work prior to final grading and paving activities. Landscape architectural observation work to include plant selection, placement and irrigation mainline installation.

This task includes 3 civil site observation visits and 2 landscape architectural site observation visits over the duration of the project.

Required Staff

1. **Consultant:** Sean Wozny, Marissa Pellegrini, and Design Team staff as necessary

Deliverables

1. Field Observation Report per site visit

TASK 1.7 PROJECT CLOSE OUT

The Consultant will attend the pre-final Inspection and initial Punch List site meeting. The responsible disciplines will also be required to attend, inspect and Punch List their area of expertise relating to the project. The Consultant will coordinate the compilation of the Punch List items with the Architect and City punch list items into one Master Punch List to be distribute to the General Contractor.

Contractor to provide as-built plans to the consultant team to create final record drawings for the project. Once final as-built plans have been provided, the Consultant shall update CAD files for distribution to the City.

Contractor to provide all final instruction and warranty information for all site products and construction improvements for the project. Contractor to provide all required close out documents as outlined in the project specifications for Kimley-Horn to review prior to turnover to the City.

Required Staff

1. **Consultant:** Sean Wozny, Marissa Pellegrini, and Design Team staff as necessary

Deliverables

1. Project Closeout Documents and Warranties
2. Record Drawings

Exclusions:

The following services are not currently included with this scope of work:

- Materials Testing
- Construction Staking

Chandler Tumbleweed Civil CA Services
Rev 1 - 2023.10.26

	Kimley-Horn		Total
	Sr. Engineer	Engineer	
TASKS	\$195.00	\$180.00	
TASK 1.0 Construction Administration			
1.1 Pre-Construction Meeting	2		\$ 390
1.2 Submittal Review	2	4	\$ 1,110
1.3 Issue Requests for Information (RFI)	2	4	\$ 1,110
1.4 Issue Architectural Supplemental Instructions (ASI)	2	4	\$ 1,110
1.5 Construction Meetings	48		\$ 9,360
1.6 Site Observaion Visits	9		\$ 1,755
1.7 Project Close Out			\$ -
1.7.1 Punch List Walk	3		\$ 585
1.7.2 Punch List Verification Walk	3		\$ 585
Subtotal Hours	71	16	\$
Subtotal Dollars	\$ 14,235	\$ 2,160	\$ 16,395

Chandler Tumbleweed LA CA SERVICES
Rev 1 - 2023.10.26

	Kimley-Horn		Total
	Sr. Landscape Architect	Landscape Architect	
TASKS	\$195.00	\$180.00	
TASK 1.0 Construction Administration			
1.1 Pre-Construction Meeting	2		\$ 390
1.2 Submittal Review	2	4	\$ 1,110
1.3 Issue Requests for Information (RFI)	2	4	\$ 1,110
1.4 Issue Architectural Supplemental Instructions (ASI)	2	4	\$ 1,110
1.5 Construction Meetings	32		\$ 6,240
1.6 Site Observaion Visits	6		\$ 1,170
1.7 Project Close Out			\$ -
1.7.1 Punch List Walk	3		\$ 585
1.7.2 Punch List Verification Walk	3		\$ 585
Subtotal Hours	52	12	\$ 1,170
Subtotal Dollars	\$ 10,140	\$ 2,160	\$ 12,300

City of Chandler

TUMBLEWEED RECREATION CENTER EXPANSION

STRUCTURAL CONSTRUCTION PHASE SERVICES
EAST ADDITION

SCOPE OF WORK

September 13, 2023

Prepared for: BRS ARCHITECTS

Prepared by:

7740 North 16th Street, Suite 300
Phoenix, Arizona 85020
(602) 944-5500 | Tel
(602) 944-7423 | Fax

Kimley»Horn
Expect More. Experience Better.

SUMMARY OF TASKS

Task 6.0 Additional Services for Construction Phase Services.....2

The following document provides the Tumbleweed Recreation Center Expansion Construction Phase Services project scope of work for Kimley-Horn to provide Structural Engineering Construction Phase Services add services for the East Addition Phase.

TASK 6.0 ADDITIONAL SERVICES FOR CONSTRUCTION PHASE SERVICES

TASK 6.1 STRUCTURAL CONSTRUCTION PHASE SERVICES- EAST ADDITION

Kimley-Horn will provide the following scope of services for the east addition of the Tumbleweed Recreation Center—services to support the construction of the gymnasium and related spaces will be provided via a separate amendment:

- A. Meetings:
 - a. Kimley-Horn will attend up to one (1) pre-construction meeting with the Client in this phase at the project site prior to beginning construction of the primary structural system, if requested.
- B. Review submittals pertaining to items designed by Kimley-Horn as the Structural Engineer of Record (SER).
- C. Perform review of a limited number of submittals pertaining to elements not part of the primary structural system, specifically elements designed by delegated engineer's or others. Review will be limited to determination of general conformance to the design criteria listed within the structural construction documents and that the submittal appears to bear the appropriate professional seals. Up to one (1) round of reviews per submittal.
- D. Provide interpretation of structural construction documents by responding to reasonable Contractor's requests for information (RFI's).
- E. Perform construction phase site visits to observe and become generally familiar with the progress of construction work relative to the primary structural system. These site visits will not be an inspection of the work. Construction inspections shall be provided by a testing agency selected and hired by the Owner. Provide construction phase observation reports to the Client. The following construction phase site visits are anticipated:
 - o Up to one (1) site visit during installation of the foundation systems.
 - o Up to one (1) periodic site visits during construction of the elevated framing system.
 - o Up to one (1) punch list walkthrough upon substantial completion of the primary structural system.
 - o Additional site observations requested will be Additional Services.
- F. Provide Record Drawings at the at the completion of construction for Phase I.
- G. This task assumes up to 130 hours of professional services.

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement:

- Opinion of structural construction cost and construction schedule
- Special Structural Inspection services

- Geotechnical Services
- Design of deferred design items.
- Vibration analysis (per a third-party vibration consultant, if required)
- Material inspection and testing services
- In the performance of any services during construction, Kimley-Horn shall not be responsible for the means, methods, acts, techniques, equipment choice and usage, sequences, schedules or for safety precautions or programs of any Contractor, Subcontractor, or any other individual or entity performing or furnishing work. Kimley-Horn shall not have the authority or responsibility to stop or direct the work of any Contractor or authorize changes to the Contractor's scope of work. Kimley-Horn will not be responsible for any inspections or certifications during or after completion of the project except for Special Structural Inspections if included and authorized within the Scope of Services of this project.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Attendance at meetings beyond those listed in our Scope of Work
- Early bid / construction packages
- Special Structural Inspection as required by the Building Code
- Services During Construction which modify the construction documents including:
 - Requested design changes, modifications or substitutions
 - Design of repairs for elements not installed per construction documents
 - Validating acceptability of elements not installed per construction documents
- Continuation of building information modeling (BIM) after construction documents are submitted
- Design of future expansion of the structure
- Revisions by the Owner and/or Contractor-initiated value engineering issues

Information Provided by Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Prompt review of submittal documents to facilitate the continuous flow of the project through design and construction.

Schedule

We will provide our services as expeditiously as practicable. This proposal is based on the following schedule assumptions:

Construction Start – 2 weeks from permit in hand
 Construction Phase Duration – A maximum of 12 months

Fee and Expenses

Kimley-Horn will perform the services in the Construction Phase Services Tasks for the total lump sum labor fee of \$21,800. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

AGREEMENT FOR PROFESSIONAL SERVICES

Date: September 15, 2023

(Proposal is valid for 30 days)

Client

Barker Rinker Seacat Architecture

3457 Ringsby Court, Unit 200

Denver, CO 80216

Contact: Bill Clifford

Project

**Tumbleweed Recreation Center Expansion
Multi-Generational Facility
Chandler, AZ**

Henderson Project Number: 2150004554

Project Description and Scope of Services

Henderson Engineers, Inc. (Henderson) will provide mechanical, electrical, plumbing, fire protection, technology, Audio/Video, and Security ("M/E/P/F/T/AV/S") construction administration services. Henderson's specific scope of services is set forth in the following Scope of Services. The scope includes Package 1 only – East addition. Package 2 construction administration services is excluded.

Schedule:

- Construction Begins - October 2023
- Substantial Completion - December 2024

Services and Fee Detail

Fee Type	Fixed Fee
Base MEP	Total Base Community Center Fee (MEP) - CA \$44,200
Base Fire Protection	Total Base Fire Protection Community Center Fee - CA \$6,000
Base Telecom	Total Base Telecommunications - Community Center Fee - CA \$5,000
Base AV	Total Base Audio Video - Community Center Fee \$5,000
Base Security	Total Base Security - Community Center Fee \$5,000
	Total Henderson Professional Services Fee \$65,200
	Estimated Reimbursable Expenses (Travel and lodging) \$1,500
	Reimbursable Expenses Multiplier 1.05
	Professional Services Start/End Date (8/2023)/ (12/2024)

When accepted by Client this Proposal for Engineering Services and its attachments shall become a binding Agreement between the parties and shall make it subject to the Scope of Services and Terms and Conditions, which are incorporated by this reference. Henderson is authorized to begin performance upon its receipt of a copy of this Agreement signed by Client. If Henderson proceeds at the direction of Client and Agreement is not signed, or altered within ten (10) business days, then it is agreed that terms of Agreement are accepted by Client.

Accepted for Client:

By (signature):

Print Name:

Title:

Date:

Accepted for Henderson Engineers, Inc.

By (signature):

Print Name: Omid Mottahed, Practice Dir

Title:

Date:

SCOPE OF SERVICES

Only services marked with an "X" are included in the Scope of Services.
Services not marked can be provided as Additional Services if requested. Services not listed are excluded.

Disciplines included in Scope of Services (See following sections for specific tasks):

- ☒ Mechanical
- ☒ Electrical
- ☒ Plumbing
- ☒ Fire Protection [Performance Specification]
- ☐ Fire Code Consulting
- ☐ Refrigeration
- ☐ Architectural lighting
- ☐ Acoustics
- ☒ Audio-Video
- ☒ Security
- ☒ Telecom
- ☐ Broadcast
- ☐ Energy Modeling
- ☐ Daylighting Analysis

Bid/Negotiation Phase:

Refer to Meetings and Travel Time for additional services included within this phase.

- ☒ Respond to Bidder Questions
- ☐ Bid Review and Analysis

Limited Construction Administration Services:

Refer to Meetings and Travel Time for additional services included within this phase.

- ☐ Participate in weekly construction conference calls. Presuming [#] week(s) in schedule and [#] hour(s) per call.
- ☐ Participate in weekly contractor virtual design and construction (VDC) meetings. Presuming [#] week(s) in schedule and [#] hour(s) per call.
- ☒ Respond to construction RFI's within [3-5] business day(s) of receiving construction RFI at Henderson.
- ☒ Review submittals within [10] business day(s) of receiving submittals at Henderson. (maximum of [2] review(s) per submittal)
- ☒ Review O&M manual within [10] business day(s) of receiving O&M manual at Henderson. (maximum of [2] review(s)) for general inclusion of all required items.
- ☒ Review Test & Balance report within [10] business day(s) of receiving report at Henderson. (maximum of [1] review(s))
- ☐ Review contractor as-built drawings (including up to [#] review(s) of each system). Reviews limited to adherence to owner required format and general knowledge of the project.
- ☒ Prepare record drawings to include all issued addendums, change orders requiring drawing updates, and construction RFI's requiring drawing updates.
- ☐ Review and comments on [#] cost estimate(s). Reviews limited to comments on quantities and general system level costs based on past experience. Review is contingent on adequate back-up documentation from contractor/ estimator.

Meetings and Travel Time

These numbers include the numbers for meetings and observations referenced elsewhere in the document.

- ☐ Attend [#] pre-bid meeting(s).
- ☐ Attend [#] bid opening meeting(s).
- ☐ Attend [#] on-site construction meeting(s).
- ☒ Perform [3] construction site observation visit(s) with report (MEPFP).
- ☒ Perform [1] construction site observation visit(s) with report (AV/Tech/Security).

Additional Services

The services listed under Scope of Services which are not checked may be considered additional services. Additional services shall be provided only upon authorization by the Client and shall be paid for by the Client as hereinafter provided. Fees will be invoiced on a time and expense basis for any Additional Services authorized in writing by the Client and will be invoiced separately at the following standard hourly rates. Other additional services may include, but are not limited to:

- Modifications to base building utilities or utility improvements to space
- Evaluation of substitutions
- Value engineering
- Responses to construction RFIs where such information is available to the contractor
- Services made necessary due to default or insufficient work of a contractor
- Envelope compliance documentation based on architect's proposed design
- BIM Renderings
- Design of theatrical/stage lighting
- Photorealistic renderings of lighting designs
- Under-slab or underground package for submittals or permit
- Equipment procurement packages.
- Siphonic Storm Systems design
- Foundation Drainage design - based on information provided by third party geotechnical engineer
- Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Consultant is party thereto
- Design of broadcast lighting
- Storm water design
- Documentation of, or modification to, base building utilities within tenant space which services other spaces
- Street lighting
- Solar hot water system design
- Photovoltaic power system design
- Lightning protection design
- Wind power system design
- Mock-ups
- Daylighting modeling or design
- Computational fluid dynamics (CFD) modeling applications not explicitly listed elsewhere
- Preparation or modification of BIM model for the purpose of integration into computer maintenance management system (CMMS)
- Involvement in Water Management Program
- Fault Current Studies and Reports
- Coordination Studies and Reports
- Arc Flash Studies and Reports
- Changes resulting from sponsorships post design

Assumptions

Basis of Proposal

The Scope of Services above is based on the information provided to Henderson as of the date of this proposal. Changes to the scope, changes in conditions, additional information, or redesigns may necessitate additional services.

Plan documents

Plans are generally coordinated with other disciplines but minor clashes may still exist. It is the expectation of Henderson that an installation contractor will be retained to cross check final equipment and component dimensions once they have completed the submittal process. Specifications and/or details will include some accessories that are not shown on plans due to scale limitations. Plumbing plans cover components within 5'-0" outside of the building and do not include foundation drainage.

BIM Assumptions

Definition of BIM Model

Building Information Model (Model) is a digital representation of physical and functional characteristics of a facility. A Model is a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle; defined as existing from earliest conception to demolition.

Level of Development (LOD):

In general terms, systems covered by this scope of work are graphically represented within the Model as a specific system, object, or assembly with approximate quantities, size, shape, location, and orientation. Model content is limited to show the routing and installation intent of building systems and is generally coordinated with the architectural design and design of other consultants. Final coordination is the responsibility of the installation contractor.

Authorized Uses are Limited to the Following:

The Model is suitable for general clash detection with other consultants' elements and systems. If the Model is used to generate quantity take offs for cost estimating purposes, there is no guarantee of completeness or accuracy. When conflicts arise, the contract documents take precedence over the Model. The Model may be used to show ordered, time-scaled appearance of majority of detailed architectural and other consultants' elements and systems. The Model and its content may only be used as stated above and only for this Project. It may not be used for any other purpose without first obtaining Henderson's written permission.

Copyright and Distribution:

Henderson is not transferring its copyrights or other rights in the Model or the Model content. The Client will be given a license to use the Model for the Authorized Uses listed above. The recipient may not distribute the Model or the content of the Model, to any other person or entity, including contractors or other consultants on the Project, nor may it be shared with anyone within the Client's organization who does not have a need to access it for the listed uses on this project without the written consent of Henderson.

BIM Execution Plan (BEP)

As soon as is practicable, but in no event later than thirty (30) days after the execution of the Contract between the Owner and the Construction Manager, all Project Participants shall meet, confer and use their best efforts to agree upon the terms of or modifications to a BIM Execution Plan. In the event of a conflict between this contract and the BEP, this contract shall control unless all parties agree in writing to adopt the BEP.

Facility Management Integration Excluded

The Model will be used to represent the design intent for reference on this Project only. The Model is not intended to be used for data integrated into a Computerized Maintenance Management System (CMMS). It is not intended to be used for ongoing operations. This service use can be provided as an additional service.

Level of Assumed Reliability

Unless otherwise stated in the agreed BEP, the reliability of existing objects is assumed to be Level 0 as defined below.

- Level 0 – Object location is based on as-built information. Henderson is not responsible for accuracy of assumed object locations.

- Level 1 – Object location is based on Radar scanning, Lidar scanning, or Photogrammetry identified information. Henderson is entitled to rely on provided information with the assumption that scanned objects are within 6 inches of their indicated location. Properties of and data associated with scanned objects are not verified.
- Level 2 – Object location is based on Level 1 plus physical verification of object properties.

Expert Witness

Expert witness services and other services related to legal proceedings are explicitly excluded from this Agreement.

Hygrothermal Analysis

Hygrothermal Analysis services and other services related to vapor barriers are explicitly excluded from this Agreement.

Fee Details

All Compensation to be in US Dollars net of tax

Reimbursable Expenses

Client shall reimburse Henderson, at the multiplier listed in the Fee Detail, for reimbursable expenses necessarily incurred by Henderson in relation to the Project. Reimbursable expenses include, but are not limited to:

- a. Reproductions, plots, postage, handling, and delivery of Project related documents and electronic media requested by the Client or Owner
- b. Travel expenses including, but not limited to, airfare, lodging, meals, airport parking, and car rental
- c. Overnight delivery, handling, and postage charges
- d. Local delivery, handling, and postage charges
- e. Automobile mileage, required to meet Project meeting requirements and site visit requirements, calculated at the current published IRS standard mileage rate.

Local Tax

Sales, excise, and/or other local tax ("Local Taxes") will be applied when required by law. Any Local Taxes are in addition to, and are not included in, the stated fee. Any necessary Local Taxes will be billed to Client and are payable within thirty days of the invoice.

HOURLY RATE SCHEDULE - \$ per hour

Engineering Rates

Director and Executive	215-230
Practice / Technical Manager	190
Project Manager	175-185
Senior Engineer/Designer	185
Lead Engineer/Designer	160
Engineer / Designer III	145
Engineer / Designer II	130
Engineer / Designer I	115
Site Observation Specialist	115
BIM Technician	90
Project Administration	85-90

Construction Management + Commissioning

Director and Executive	215-230
Construction Management	210
Pre-Construction Management	160
Project Development	155
Commissioning Manager / Agent	165
Technician	130
Estimator	155
Project Administration	85-90

Terms & Conditions

This Agreement is entered into by the Client and Henderson Engineers, Inc. (Henderson). For purposes of this document the term Henderson pertains to all employees, officers, directors, and all divisions of Henderson Engineers, Inc.

Performance of Services: Henderson shall perform the basic services as outlined above, and additional services as required or directed by the Client in consideration of the fee arrangements and payment terms described in this Agreement. Henderson shall perform its services consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances. Henderson shall perform its services as expeditiously as is consistent with the standard of care.

Verification of Existing Conditions: Because evaluation of the existing structure or site requires that certain assumptions be made regarding existing conditions the Client agrees to indemnify and hold Henderson harmless from and against any and all damage, liability and cost arising or allegedly arising out of any existing conditions which Henderson is unable to verify. Henderson shall not be required to sign any documents that would result in Henderson having to certify, guarantee or warrant the existence of conditions that Henderson cannot ascertain.

Changed Conditions: In light of occurrences or discoveries that were not originally contemplated by or known to Henderson, Henderson may at such time call for Agreement renegotiation. If terms cannot be agreed to through good faith negotiations, the parties agree that either party has the absolute right to terminate this Agreement.

Hazardous Materials: In the event Henderson or any other party learns of asbestos, toxic materials, or other hazardous materials ("Hazardous Materials") at the jobsite, Henderson may, at its option and without liability for any damages, suspend performance of services until the Client identifies, abates and/or removes the Hazardous Materials and warrants that the jobsite is in full compliance with applicable laws and regulations. Henderson is not responsible for any services related to Hazardous Materials or any claims resulting from the existence, discovery, or removal of Hazardous Materials or costs associated therewith.

Client Responsibilities: Client shall provide information in a timely manner regarding requirements for and limitations on the Project, detailed layouts showing the location of connections, tabulations and information on equipment designed, specified, or

furnished by others, a copy of the preliminary estimate or updated estimates of the cost of the work, bidding documents, bid tabulations, negotiated proposals and Agreement documents, including change orders and construction change directives, as well as any information requested by Henderson. Henderson shall be entitled to rely upon the accuracy and completeness of information provided by Client. Client represents that it has obtained all necessary rights, approvals, and consents necessary for Henderson to use, in the course of performing Services hereunder, any information provided by Client. Client shall provide safe access to all areas requiring observations at no cost to Henderson and without further consideration.

Notification of Defects: Client shall promptly report to Henderson any defects or suspected defects in Henderson's services of which Client becomes aware. Failure by Client, or its contractors or subcontractors, to promptly notify Henderson shall relieve Henderson of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.

Opinions of Probable Costs: In providing opinions of probable cost, the Client understands that Henderson has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of Henderson's qualifications and experience. Henderson makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. Henderson shall be compensated as Additional Service, as provided for herein, for all time spent to review, redesign and to incorporate revisions due to probable costs.

Substitutions and Value Engineering: Substitutions and value engineering reviews shall be submitted in a timely manner so as to cause no delay. Henderson shall be compensated as an Additional Service for any modification to the Construction Documents required due to Owner approved substitutions or value engineering. If the Client accepts a change that is not recommended in writing by Henderson, the Client agrees to indemnify, defend, and hold Henderson harmless from any claim, damage, liability, or cost which arise in connection with, or as a result of, the incorporation of such changes accepted by the Client.

Ownership of Documents: All documents, including all documents on electronic media, prepared by Henderson under this Agreement are instruments of Henderson's professional service and shall remain the property of

Henderson and may be used by Client for purposes of constructing and maintaining this Project, but may not be modified or used by the Client for any other purpose without the written prior consent of Henderson. Any unauthorized use or modification of Henderson's instruments of services shall be at Client's sole risk and with no exposure to Henderson. Further, to the extent permitted by law, Client agrees to release, indemnify, and hold harmless Henderson and its subconsultants from all costs and expenses, including the cost of defense, related to damages, liabilities, claims and causes of action arising from the Client's reuse or modification of the Instruments of Service.

Interpretation of Documents and Reports: The Client shall confer with Henderson before issuing interpretations or clarifications, or allowing others to issue interpretations or clarifications, of reports or documents prepared by Henderson. Henderson is not responsible for interpretations of its documents by others.

Construction Phase Services: Henderson shall be responsible only for those Construction Phase services expressly required of Henderson in the Scope of Services section of this Agreement. With the exception of such expressly required services, Henderson shall have no other obligations during construction and Client assumes all responsibility for all other necessary Construction Phase professional services. Client waives all claims against Henderson that may be connected in any way to Construction Phase professional services except for those services that are expressly required of Henderson in the Scope of Services. If Henderson's scope of services includes site observation, Henderson shall visit the Project at appropriate intervals during construction to become generally familiar with the progress and quality of the work and to determine if the work is proceeding in general accordance with the Agreement Documents. Henderson is not required to make detailed inspections or to provide exhaustive or continuous project review and observation services. Henderson does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or other entity furnishing materials or performing any work on the Project.

Jobsite Safety: The Client agrees that the contractor is solely responsible for jobsite safety and construction means and methods. Neither Henderson's services nor presence at the site shall relieve the contractor or any other entity of its obligations, duties and responsibilities necessary for performing or coordinating all portions of the work and any health/safety precautions required by regulatory agencies. Henderson and its personnel have no authority to exercise any control over any contractor

or other entity or its employees in connection with its work or any health/safety precautions.

Payment: Henderson shall submit invoices for services and reimbursable expenses in accordance with its standard practices, unless otherwise agreed. Client shall review such invoices and, if they are considered incorrect or untimely, Client shall so notify Henderson of its dispute within ten days of its receipt of the invoice. Client must pay all undisputed amounts to Henderson within 30 calendar days of the invoice date. No deductions may be made from Henderson's compensation without the consent of Henderson.

Interest & Collection Costs: If payment is not received by Henderson when due, the Client shall pay as interest an additional charge of one (1.0) percent (or the maximum allowable by law, whichever is lower) of the PAST DUE amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. In the event legal action is necessary to enforce the payment provisions of this Agreement, Henderson shall be entitled to collect from the Client, to the fullest extent permitted by law, any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by Henderson in connection therewith and the reasonable value of Henderson's time and expenses spent in connection with such collection action, computed at Henderson's prevailing fee schedule and expense policies.

Betterment: If, due to Henderson's error, any required item or component of the Project is omitted from the Construction Documents produced by Henderson, Henderson's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the Construction Documents. In no event will Henderson be responsible for any cost or expense that provides betterment, upgrade or enhancement of the Project.

Mutual Waiver: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Henderson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this Project.

Dispute Resolution: Any claims or disputes between the Client and Henderson arising out of this Agreement or the services to be provided hereunder, except for claims related to Client's non-payment of compensation due, shall, as a condition precedent to litigation, be submitted to non-binding mediation in the Kansas City area. The costs of the mediator shall be shared equally between the parties. If a dispute is not resolved after mediation either party may submit such dispute to litigation. Venue for litigation shall be Johnson County, Kansas. If Client is in default of the payment terms of this Agreement, Henderson may begin collections actions, including litigation, at its discretion without attempting mediation. Client and Henderson shall commence all claims and causes of action, whether in Agreement, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of substantial completion of the work. Client and Henderson waive all claims and causes of action not commenced in accordance with this Section.

Limitation of Liability: In recognition of the relative risks and benefits of the Project to both the Client and Henderson, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Henderson and its subconsultants to the Client for any and all injuries, claims, losses, expenses, damages of any nature whatsoever or claims expenses arising out of this Agreement, or the services to be provided hereunder, from any cause or causes, so that the total aggregate liability of Henderson and its subconsultants to the Client shall not exceed Henderson's total fee for services rendered on this Project or \$10,000, whichever is greater. Such claims and causes include, but are not limited to Henderson's, errors, omissions, strict liability, indemnity, breach of Agreement or breach of warranty.

Waiver of Subrogation: Client and Henderson waive against each other and Owner (if different than Client), Henderson's subconsultants, Client's separate contractors and consultants, agents, and employees of each and all of them, all damages covered by insurance provided herein, except such rights as they may have to the proceeds of such insurance. Client and Henderson shall, where appropriate, require similar waivers of subrogation from subconsultants and subcontractors and shall require each of them to include similar waivers in their contracts.

Suspension: If Client fails to make payments when due under this Agreement, Henderson may elect to suspend performance of services upon five (5) calendar days'

notice to Client. Henderson shall have no liability whatsoever to Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by Client. If the Project is suspended, delayed, or abandoned for more than 90 days, Henderson may renegotiate or terminate this Agreement.

Termination: This Agreement may be terminated at any time by either party upon seven (7) days' written notice should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, Client shall pay Henderson for all services rendered to the date of the termination, and all reimbursable expenses incurred prior to termination.

Construction Before Design Completion: If construction work begins before Henderson's design is complete, the Client agrees to waive all claims against Henderson for design changes and modifications of portions of the work already constructed due to the Client's decision to employ this process. The Client further agrees to compensate Henderson as an additional service where Henderson is required to modify, correct or adjust the Construction Documents and coordinate them because of the Client's decision to construct the Project this manner. If Client elects to solicit bids based on incomplete or schematic drawings Henderson is not responsible for change orders or increased costs that arise from the addition of details in the design process or other changes to the design prior to completion.

Delays: Henderson shall not be responsible for delays which are due to causes beyond its reasonable control, including, but not limited to: (a) acts of God; (b) epidemics, pandemics, and quarantines, (c) flood, fire, earthquake or explosion; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) law; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; and (i) delays caused by Client or its contractors, consultants, or other parties not under the control of Henderson. In the case of any such delay, the time of completion shall be extended accordingly. If Henderson's services are delayed or extended more than three (3) months beyond the date listed in this Agreement for reasons other than the negligence of Henderson, Henderson reserves the right to modify the fee.

Residential Units: If Henderson's services include design of residential units, such services and construction documents are intended solely for the design and construction of residential rental units under the ownership and control of a single, integrated owner.

In the event the Project is changed to any other purpose or use, including, but not limited to, subdivision into individual units for sale, Henderson shall have no responsibility, and shall be released from all obligations and liabilities for the project, and each and every right, license and/or ownership interest of the Client in the construction documents shall be void. The Client shall be expressly prohibited from making any further use of the construction documents for any purpose, including, but not limited to, the conversion of the project to another purpose. If the Project is converted to condominiums at any time, the Client agrees, to the fullest extent permitted by law, to waive any claims against Henderson, defend Henderson against any claim from a future owner, and indemnify Henderson for any cost, loss, or damage to Henderson resulting from any claim brought by any party against Henderson related to any change in use of the project. Client agrees that this provision and obligations hereunder shall survive the termination of this Agreement.

LEED: If one of the goals of the Project is to achieve certification under the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED®) or other green building-rating system, Client understands that the Project cannot achieve LEED certification until after substantial completion of construction and will be subject to the LEED-certification process and procedures as determined by the USGBC, which are outside of the control of Henderson. Further, LEED certification will require input and effort from the Client and other parties associated with the Project that are not parties to this Agreement. Henderson will make reasonable efforts to pursue LEED certification for the Project, subject to scope of services, terms and provisions of this Agreement. Henderson cannot, however, guarantee LEED certification or the actual performance of the building based on Henderson's design drawings, specifications, or resource use or consumption modeling for This Portion of the Project, nor can it guarantee certain performance levels anticipated through the LEED-certification process.

Energy Modeling: If Henderson is to provide energy modeling under this Agreement, the Client understands that any estimate of cost or energy savings represents Henderson's professional opinion. Energy savings and costs may be affected by factors outside of Henderson's control and Henderson does not guarantee or represent that the actual cost or energy consumption will not vary from any such estimates.

Peer Review: If Henderson's scope of services includes review of designs completed by others, Client agrees that Henderson is not responsible for designs completed by others, nor is Henderson responsible for reviewing any design or other component outside of its specific

scope of services. Henderson's peer review scope of services does not include reviewing or evaluating existing conditions or signing and sealing any documents. Henderson's peer review of the design of others does not relieve the original designer of liability for its design. The original designer remains responsible for all documents and for the final design and construction documents. Client agrees to indemnify and hold Henderson harmless from and against any and all claim, damages, liability and cost arising or allegedly arising out the design or any services which are not included in Henderson's scope of services.

Prototype Designs: If prototype design is selected in the Scope of Services and the Client intends to reuse the construction documents produced by Henderson under this Agreement on other sites and on other projects, then the Client acknowledges that the design may need to be modified or adapted for each project site. If Henderson is not retained to provide services in connection with any of these reuses, the Client agrees to waive all claims against Henderson that might be contributed to or caused by Henderson's exclusion from the reuses, and any claims which may, with reasonable certainty, have been avoided or lessened by Henderson's participation in any future project involving the reuse of the construction documents. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold Henderson harmless from all damage, liability, or cost (including reasonable attorneys' fees and cost of defense) arising from any reuse of the construction documents on any other project or site without the involvement of Henderson in the construction phase services normally associated with such a project

Governing Law: This Agreement shall be governed by the laws of the State of Kansas.

Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

Third Party Beneficiaries: Nothing in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Henderson.

Assignment: Henderson and Client bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither party may assign this Agreement without the written consent of the other.

Survival: Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions

shall continue to be valid and binding upon Client and Henderson, which agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Any dispute resolution provisions, limitations of liability, and indemnities shall survive termination of this Agreement.

Infection Control: If infection control services are included in this Agreement, Client understands that infection control services are recommendations to mechanical systems to improve infection control based on current knowledge and strategies. Henderson does not guarantee or represent that the services will prevent infection.

EXHIBIT "F"
FEDERAL REQUIREMENTS

N/A