



City Clerk Document No. _____

City Council Meeting Date: April 18, 2024

**CITY OF CHANDLER SERVICES AGREEMENT
ARTS FACILITIES NEEDS ASSESSMENT
CITY OF CHANDLER AGREEMENT NO. CD4-918-4725**

THIS AGREEMENT (Agreement) is made and entered into by and between the City of Chandler, an Arizona municipal corporation (City), and AMS Planning & Research Corp., a Connecticut corporation (Contractor), (City and Contractor may individually be referred to as Party and collectively referred to as Parties) and made _____, 2024 (Effective Date).

RECITALS

- A. City proposes to enter an agreement for an arts facilities needs assessment as more fully described in Exhibit A, which is attached to and made a part of this Agreement by this reference.
- B. Contractor is ready, willing, and able to provide the services described in Exhibit A for the compensation and fees set forth and as described in Exhibit B, which is attached to and made a part of this Agreement by this reference.
- C. City desires to contract with the Contractor 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 Contractor agree as follows:

SECTION I: DEFINITIONS

For purposes of this Agreement, the following definitions apply:

Agreement means the legal agreement executed between the City and the Contractor

City means the City of Chandler, Arizona

Contractor means the individual, partnership, or corporation named in the Agreement

Days means calendar days

May, Should means something that is not mandatory but permissible

Shall, Will, Must means a mandatory requirement

SECTION II: CONTRACTOR'S SERVICES

Contractor must perform the services described in Exhibit A to the 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 Contractor under this Agreement must be performed in a skilled and workmanlike manner. Unless authorized by the City in writing, all fixtures, furnishings, and equipment furnished by Contractor 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 III: PERIOD OF SERVICE

Contractor must perform the services described in Exhibit A for the term of this Agreement.

Following execution of this Agreement by City, the Contractor will immediately commence work and will complete all services described within 240 days from the date the Contractor is notified to proceed. The City and the Contractor may mutually agree to extend the Agreement for up to six months.

SECTION IV: PAYMENT OF COMPENSATION AND FEES

4.1 Unless amended in writing by the Parties, Contractor's compensation and fees as more fully described in Exhibit B for performance of the services approved and accepted by the City under this Agreement must not exceed \$122,900. Contractor must submit requests for payment for 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 subcontractor's or supplier's actual requests for payment plus similar narrative and listing of their work. 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 completed on the service during the preceding month. All requests for payment must be submitted to the City for review and approval. The City will make payment for approved and accepted services within 30 days of the City's receipt of the request for payment.

4.2 Applicable Taxes. The Contractor will pay all applicable taxes. The City is subject to all applicable state and local transaction privilege taxes. To the extent any state and local transaction privilege taxes apply to sales made under the terms of this Agreement, it is the responsibility of the Contractor to collect and remit all applicable taxes to the proper taxing jurisdiction of authority.

4.3 Tax Indemnification. The Contractor and all subcontractors will pay all Federal, state, and local taxes applicable to its operation and any persons employed by the Contractor. The Contractor will and require all subcontractors to hold the City harmless from any responsibility for taxes, damages, and interest, if applicable, contributions required under Federal, state, and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation.

4.4 All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, the City may approve a fully documented request for a price adjustment. The City shall determine whether any requested price increases for extension terms is acceptable to the City. If the City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.

SECTION V: GENERAL CONDITIONS

5.1 Records/Audit. Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to this Agreement and records of accounts between the City and Contractor must be kept on the basis of generally accepted accounting principles and must be made available to the City and its auditors for up to three years following the City's final acceptance of the services under this Agreement. The City, its authorized representative, or any federal agency, reserves the right to audit Contractor's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate this Agreement and any amendments. The City reserves the right to decrease the total amount of Agreement price or payments made under this Agreement or request reimbursement from the Contractor following final contract payment on this Agreement if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data. The Contractor will include a similar provision in all of its contracts with subcontractors providing services under the Agreement Documents to ensure that the City, its authorized representative, or the appropriate federal agency, has access to the subcontractors' records to verify the accuracy of all cost and pricing data. The City reserves the right to decrease Contract price or payments made on this Agreement or request reimbursement from the Contractor following final payment on this Agreement if the above provision is not included in subcontractor agreements, and one or more subcontractors refuse to allow the 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 the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

5.2 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 the City. However, before any modified work is started, a written amendment must be approved and executed by the City and the Contractor. Such amendment must not be effective until approved by the City. Additions to, modifications, or deletions from this Agreement as provided herein may be made, and the compensation to be paid to the Contractor may accordingly be adjusted by mutual agreement of the Parties. It is distinctly understood and agreed that no claim for extra work done or materials furnished by the Contractor will be allowed by the City except as provided herein, nor must the Contractor 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 the Contractor without prior written authorization will be at Contractor's own risk, cost, and expense, and Contractor hereby agrees that without written authorization Contractor will make no claim for compensation for such work or materials furnished.

5.3 Termination for Convenience. The City and the Contractor hereby agree to the full performance of the covenants contained herein, except that the 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 the Contractor. In the event the City abandons or suspends the services, or any part of the services as provided in this Agreement, the City will notify the Contractor in writing and immediately after receiving such notice, the Contractor must discontinue advancing the work specified under this Agreement. Upon such termination, abandonment, or suspension, the Contractor must deliver to the City all drawings, plans, specifications, special provisions,

estimates and other work entirely or partially completed, together with all unused materials supplied by the City. The Contractor must appraise the work Contractor has completed and submit Contractor's appraisal to the City for evaluation. The City may inspect the Contractor's work to appraise the work completed. The Contractor will receive compensation in full for services performed to the date of such termination. The fee shall be paid in accordance with Section IV of this Agreement, and as mutually agreed upon by the Contractor and the 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 payment exceed the payment set forth in this Agreement nor as amended in accordance with Alteration in Character of Work. The City will make the final payment within 60 days after the Contractor has delivered the last of the partially completed items and the Parties agree on the final payment. If the 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.

5.4 Termination for Cause. The City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events: in the event that (a) the Contractor fails to perform pursuant to the terms of this Agreement, (b) the Contractor is adjudged a bankrupt or insolvent, (c) the Contractor makes a general assignment for the benefit of creditors, (d) a trustee or receiver is appointed for Contractor or for any of Contractor's property (e) the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, (f) the Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or (g) the Contractor fails to cure default within the time requested. Where Agreement has been so terminated by City, the termination will not affect any rights of City against Contractor then existing or which may thereafter accrue.

5.5 Indemnification. The Contractor (Indemnitor) must indemnify, defend, save and hold harmless the City and its officers, officials, agents and employees (Indemnatee) 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 the Contractor or any of its owners, officers, directors, agents, employees, or subcontractors 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 the Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Contractor must indemnify Indemnatee from and against any and all Claims, except those arising solely from Indemnatee's own negligent or willful acts or omissions. The Contractor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against Indemnatee for losses arising from or related to this Agreement. The obligations of the Contractor under this provision survive the termination or expiration of this Agreement.

5.6 Insurance Requirements. Contractor 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 Contractor and its agents, representatives, employees, and subcontractors. Contractor and any subcontractors 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. The City in no way warrants that the minimum limits stated in Exhibit C are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, the Contractor's agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

5.7 Cooperation and Further Documentation. The Contractor agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Agreement.

5.8 Notices. Unless otherwise provided, notice 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 date notice is sent if by electronic mail, or (c) 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:

For the City

Name: Christina Pryor
Title: Procurement and Supply Senior Manager
Address: 175 S. Arizona Ave., 3rd Floor
Chandler, AZ 85225
Phone: 480-782-2403
Email: christina.pryor@chandleraz.gov

For the Contractor

Name: Bill Blake
Title: Director
Address: 107 John Street
Southport, CT 06890
Phone: 203-256-5219
Email: BBlake@ams-online.com

5.9 Successors and Assigns. City and Contractor 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 the City nor the Contractor 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 the City.

5.10 Disputes. In any dispute arising out of an interpretation of this Agreement or the duties required not disposed of by agreement between the Contractor and the City, the final determination at the administrative level will be made by the City Purchasing and Materials Manager.

5.11 Completeness and Accuracy of Contractor's Work. The Contractor must be responsible for the completeness and accuracy of Contractor's services, data, and other work prepared or compiled under Contractor's obligation under this Agreement and must correct, at Contractor's expense, all willful or negligent errors, omissions, or acts that may be discovered. The fact that the City has accepted or approved the Contractor's work will in no way relieve the Contractor of any of Contractor's responsibilities.

5.12 Withholding Payment. The City reserves the right to withhold funds from the Contractor's payments up to the amount equal to the claims the City may have against the Contractor 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 the City under the provisions of Section 38-511, Arizona Revised Statutes (A.R.S.).

5.14 Independent Contractor. For this Agreement the Contractor constitutes an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Contractor as to the details of accomplishing the work or to exercise a measure of control over the work means that the Contractor must follow the wishes of the 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, the Contractor must assign to the City the key personnel that will be involved in performing services prescribed in the Agreement. The City may acknowledge its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the Contractor desires to change key personnel while performing under the Agreement, the Contractor must submit the qualifications of the new personnel to the City for prior approval. The Contractor will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Agreement to ensure acceptable and timely completion of the Scope of Services. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor must take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel agreed to by the City.

5.16 Subcontractors. Prior to beginning the work, the Contractor must furnish the City for approval the names of subcontractors to be used under this Agreement. Any subsequent changes are subject to the 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 Laws. Contractor understands, acknowledges, and agrees to comply with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. All services performed by Contractor must also comply with all applicable City of Chandler codes, ordinances, and requirements. Contractor agrees to permit the City to verify Contractor's compliance.

5.19 No Israel Boycott. By entering into this Agreement, Contractor certifies that Contractor 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 the City from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees Contractor and each subcontractor 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 Contractor's or subcontractor's employee who provides services under this Agreement to ensure that the Contractor and subcontractors comply with the warranty under this provision.

5.21 Lawful Presence Requirement. A.R.S. §§ 1-501 and 1-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

5.22 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.

5.23 Covenant Against Contingent Fees. Contractor 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 Contractor's firm. For breach or violation of this warrant, the 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.

5.24 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.

5.25 Disclosure of Information Adverse to the City's Interests. To evaluate and avoid potential conflicts of interest, the Contractor must provide written notice to the City, as set forth in this Section, of any work or services performed by the Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice must be given seven business days prior to commencement of the services by the Contractor for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure must be sent to the City's Purchasing and Materials Manager. 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 the City; or (b) testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; or (c) using data to produce income for the Contractor or its employees independently of performing the services under this Agreement, without the prior written consent of the City. Contractor represents that except for those persons, entities, and projects identified to the City, the

services performed by the Contractor 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 the City's interests. Contractor'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.

5.26 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 the Contractor or its subcontractors 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 the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Agreement is confidential and proprietary information belonging to the City. Except as specifically provided in this Agreement, Contractor or its subcontractors must not divulge data to any third party without the City's prior written consent. Contractor or its subcontractors 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 the Contractor or its subcontractors have first given the required notice to the City: (a) data which was known to the Contractor or its subcontractors prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City; or (b) data which was acquired by the Contractor or its subcontractors in its performance under this Agreement and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractors knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors 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 the Contractor or its subcontractors are subject. In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor must first notify the City as set forth in this Section of the request or demand for the data. The Contractor or its subcontractors must give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure. Unless prohibited by law, within ten calendar days after completion or termination of services under this Agreement, the Contractor or its subcontractors must promptly deliver, as set forth in this Section, a copy of all data to the City. All data must continue to be subject to the confidentiality agreements of this Agreement. Contractor or its subcontractors assume all liability to maintain the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the Contractor, its employees, agents or subcontractors. 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. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Agreement without notice.

5.27 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 Contractor and any of its subcontractors. At a minimum, Contractor 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 Contractor or its subcontractors in connection with this Agreement is believed to have been compromised, Contractor or its subcontractors must immediately notify the City contact. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. 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 Contractor or its subcontractors under this Section must survive the termination of this Agreement.

5.28 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.

5.29 Survival. All warranties, representations, and indemnifications by the Contractor must survive the completion or termination of this Agreement.

5.30 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.

5.31 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.

5.32 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.

5.33 Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

5.34 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 the 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.

5.35 Delivery. All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. The Contractor will retain title and control of all goods until they are delivered and accepted by the City. All risk of transportation and all related charges will be the responsibility of the Contractor. All claims for visible or concealed damage will be filed by the Contractor. The City will notify the Contractor promptly of any damaged goods and will assist the Contractor in arranging for inspection.

5.36 Third Party Beneficiary. Nothing under this Agreement will be construed to give any rights or benefits in the Agreement to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and the Contractor and not for the benefit of any other party.

5.37 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 the Exhibits, the provisions in this Agreement prevail.

5.38 Document/Information Release. Documents and materials released to the Contractor, which are identified by the City as sensitive and confidential, are the City's property. The document/material must be issued by and returned to the City upon completion of the services under this Agreement. Contractor's secondary distribution, disclosure, copying, or duplication in any manner is prohibited without the 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.

5.39 Exhibits. The following exhibits are made a part of this Agreement and are incorporated by reference:

- Exhibit A - Project Description/Scope of Services
- Exhibit B - Compensation and Fees
- Exhibit C - Insurance Requirements
- Exhibit D - Special Conditions

5.40 Special Conditions. As part of the services Contractor provides under this Agreement, Contractor 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.

5.41 Cooperative Use of Agreement. In addition to the City of Chandler and with approval of the Contractor, 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 and/or procurement rules and regulations of the respective political entity.

If required to provide services on a school district property at least five times during a month, the Contractor will submit a full set of fingerprints to the school of each person or employee who may provide such service. The District will conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all Contractors, subcontractors or vendors and their

employees for which fingerprints are submitted to the District. Additionally, the Contractor will comply with the governing body fingerprinting policies of each individual school district/public entity. The Contractor, sub-contractors, vendors and their employees will not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City will not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

5.42 Non-Discrimination and Anti-Harassment Laws. Contractor must comply with all applicable City, state, and federal non-discrimination and anti-harassment laws, rules, and regulations.

5.43 Licenses and Permits. Beginning with the Effective Date and for the full term of this Agreement, Contractor must maintain all applicable City, state, and federal licenses and permits required to fully perform Contractor's services under this Agreement.

5.44 Emergency Purchases. City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

5.45 Non-Exclusive Agreement. This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

5.46 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 expenditure. The City does not represent that this budget item will be actually adopted. This determination is solely made by the City Council at the time Council adopts the budget.

This Agreement shall be in full force and effect only when it has been approved and executed by the duly authorized City officials.

FOR THE CITY

By: _____

Its: Mayor

FOR THE CONTRACTOR

By: Steven A. Wolf

Its: Principal

APPROVED AS TO FORM:

By: _____

City Attorney

JNB

ATTEST:

By: _____

City Clerk

EXHIBIT A

SCOPE OF SERVICES

Phase 1: Situation Analysis

In this initial phase of work, the Situation Analysis, the Contractor team will assess the current operations of the Chandler Center, analyze market conditions, and gather key insights and data from the community about the future of the Center, its specific programs and usages, and the needs and aims of arts and culture in Chandler writ-large.

The appointed Working Group, comprised of members representing the City, the District, and the Chandler Cultural Foundation will provide overall guidance and advice to the consulting team, assist in organizing stakeholders, aid in the distribution of surveys, provide feedback on deliverables, and periodically review progress of the scope of work. The team will meet with the working group multiple times throughout the course of the process, planned for three times per phase, both in-person and via video conference. The Contractor anticipates more frequent interaction with Chandler Center leadership who, will be managing the project for the Working Group.

Being sensitive to time, this first phase of research is designed to conclude within four month (assuming relative ease in scheduling meetings, expedient review and transfer of materials, and timely response to surveys), concluding with a workshop to review research and set future direction and vision. Following the end-of-phase workshop, the Working Group could elect to share findings from the Situation Analysis phase and solicit initial feedback from City, District, and Foundation leadership.

1. Kick-Off Meeting

A kick-off meeting will be held with the project Working Group to discuss and verify the work plan and timeline and discuss issues and ideas regarding the Chandler Center and its future role in the community. The Contractor will work interactively to develop a preliminary understanding of the vision, purpose, and objectives for the Center and explore the Group's insights as to the potential for developing new spaces that meet the needs of stakeholders.

2. Background and Operational Review

The consulting team will seek to review existing background documentation, including any previous studies related to the building, City and Cultural Foundation cultural, strategic, and economic development plans, including the 2019 marketing plan, the 2022 Voices of Chandler LIVE discussion, Americans for the Arts economic impact data (AEP6), and other reports and planning documents pertinent to the study effort to gain an understanding of the overarching issues and status of arts and cultural activity within Chandler. The Contractor will develop a memo outlining the types of materials we will be seeking for review and analysis to guide this initial, start-up task.

The Contractor will also assess recent operational performance of the Center to establish a baseline understanding and analysis of what has been working, and what has not. The Contractor will conduct assessments of the following operational aspects through a review of documentation, budgets, audits, and financial reports, but also through interviews with key staff members and other stakeholders. Interviews will also provide insights into facility needs observed by Center staff.

The review will provide the Contractor and project leadership with an operational baseline from which to model future scenarios later in the planning process as well as aid in benchmarking Chandler Center for the Arts against comparable performing arts centers.

Governance & Joint Powers Agreement

Understand current governance structures, roles and responsibilities of three parties involved in the Chandler Center, their history, expectations, and current engagement levels.

Programming

Document both current and projected range, extent, and nature of Foundation and other programming and activity at the Center. This information will provide a basis for assessing the impact of potential changes in the organization's activity and/or structure.

Audiences

Review data and reports on attendance, participants, donors, etc. Reports may be generated from the Center's own patron management software and/or be sourced from other internal data resources, consultant reports or other sources.

Staffing

Review staffing (including tech crew staffing) and organizational (including union agreements, as applicable) by business/programming unit and function to gain understanding of the Center's management structure, culture, and evolution.

Finances

Summarize the composition, contribution, distribution, and variation of the financial results of each key line of business to prepare to evaluate the impact of alternate scenarios on the organization's bottom line. The Contractor will also review budget forecasts, financial scenario plans, and any other relevant financial plans and assessments available.

Facilities

Gain an understanding of current and forecasted utilization of the existing facilities and how use might be impacted by program evolution and new operating goals. Additionally, the subcontractor Shalleck Collaborative review documentation on existing conditions of the Chandler Center and identify site and expansion and/or renovation potential.

3. Stakeholder Engagement

Personal interviews often provide key insights into market conditions, potential partnerships, project funding, and programming opportunities. This qualitative information-gathering is critical to determining future scenarios and, ultimately, the business plan and design of the project.

The Contractor will conduct individual and small group interviews (up to 24) with leadership from the City, Chandler Unified School District, and the Foundation, as well as leadership from current user groups, prospective facility users, area businesses, and others identified by the working group to understand avenues for maximizing spaces, amenities, and programming potential. Individuals unavailable for in-person interviews, due to scheduling, or other issues, will be interviewed by phone or video meeting.

An interview protocol will be developed with the focus on gaining insight into the Center's priorities, needs and opportunities for expanded facilities.

4. 360° Market Conditions Scan

In this 360° evaluation, economic, social, political, city growth, and population data will be gathered and synthesized to illustrate the total environment in which the Center operates its programs and facility. The research will document the organization's potential audiences, supporters, and beneficiaries. This set of data will then be compared with a select number of similar markets across the U.S, defined by size, cultural landscape, and other characteristics, as appropriate.

5. Competitive Assessment

The Contractor will conduct an evaluation of regional performing arts and live entertainment facilities and program assets summarizing characteristics, activities, admission, and facility rental pricing structures, ownership and operating constructs, audience information, and other relevant data (as available). Venues will include civic, academic, non-profit, and commercial and casino owners and operators. This analysis of facility and programming supply will identify gaps in the market and opportunities for the Center to effectively compete and/or collaborate with regional providers of performing arts and live entertainment and event product.

6. User & Content Providers Needs Assessment

The Contractor will develop an online survey to understand the needs of prospective facility users in the market area, current Center users, the Foundation's own programs and staff, and departments and programs of the Chandler Unified School District. These quantitative assessments will provide critical data for determining the strength of the case for an expanded facility and confirm types of spaces needed, sizes of spaces, seating capacities, approximate locations, and other characteristics. It will also allow new prospective users to indicate their interest in, and need for, new facilities.

We will seek assistance from the Working Group and other stakeholders at the City and District to circulate the survey amongst potential Chandler Center users as broadly as possible to ensure a high level of participation.

Survey respondents who indicate a high level of forecasted utilization will be subsequently interviewed to develop deeper understanding their needs and explore opportunities, roles, partnership potential, etc.

7. Community Survey

The Contractor will conduct a web-based survey of Chandler residents. Depending on City and Cultural Foundation protocol, distribution may include all residents or known and likely arts participants through distribution via City of Chandler's listserv, website, and social media, as well as through the Center's donor/patron database, website, and social media and with signage including linked QR codes at each facility.

The survey will provide insight into which demographic segments are participating in Center activities, where else residents seek arts and entertainment events outside of Chandler, and explore research questions to understand current arts participation, perceptions of existing amenities, demand for additional arts and cultural assets in Chandler, as well as drivers and

barriers to attendance.

The Contractor will conduct a detailed analysis of the survey results and prepare a report with summary points and supporting data visualization.

Distribution of the survey will be the responsibility of the City, Foundation, and District with support from the Contractor. The Working Group will be asked to identify who should receive an invitation and how to reach desired populations.

8. Presentation of Findings & Workshop

To complete the Situation Analysis the Contractor will facilitate a workshop to present data found during Phase 1 and explore user needs, gaps in the market, challenges, and opportunities for expanding user and audience amenities.

Together with the Working Group, the Contractor will begin to develop high level, directional scenarios anchored by a shared vision and definition of success for the operations and programming for potentially new and expanded facilities.

At this point in the process, the Contractor will support the Working Group to share the Situation Analysis with City, District, and Foundation leadership if desired.

Deliverable: A PDF copy of presentation materials and appendices compiling all collected data will be provided as a Phase 1 deliverable.

Phase 2: Facility Visioning & Planning

The second phase of the study will build on the first phase's research and findings and focus on determining what activities and amenities a potential expansion should accommodate. The Contractor will research trends in similar facility types and best practice exemplars to develop several scenarios to achieving success. Upon evaluating these scenarios, the Working Group will determine a preferred option. The Contractor will then generate a detailed facility development concept describing major spaces and amenities, and outline opportunities, costs, and constraints for expanding Chandler Center facilities and programs.

1. Exemplar Research & Site Visits

The Contractor will identify and arrange site visits to up to four comparable multi-purpose facilities that have successfully expanded their venues to accommodate their respective communities for comparative analysis. The venues will be selected with input from the subcontractor Shalleck Collaborative and the Working Group. Site visits will prioritize facilities within driving distance of Chandler, with potential for out-of- state travel, but within the western U.S.

The Contractor will analyze factors including facility type and configuration, programming and utilization, operating structure and finances, markets served, community partnerships, and other opportunities and discuss lessons learned with the leaders and managers met with. This input will directly inform the development of a preferred operating and facility scenario and pro forma financial estimates later in the study.

2. Activity Forecast

Based on Phase 1 input from prospective facility users and stakeholders, the Contractor will

develop an initial forecast of activity typologies and utilization mix, and potential schedule that accommodates existing and new activity at the Center. The Contractor will estimate the number of programs, events, and other activities including City, School District, Foundation activities, and third-party renters through a mocked-up annual calendar to reflect daily, weekly, and seasonal variations in use. This activity profile will inform the development of a building program and will be further refined during the operating projection task.

3. Facility Development Scenario(S)

Based on the activity profile, the subcontractor Shalleck Collaborative will develop a conceptual spatial program describes the major spaces, optimal seating capacity and configuration options, amenities, and necessary features including parking, access to roadways and transit, and the necessary size and condition of ideal development sites.

A narrative and diagrammatic description of optimal spaces and features will be developed. Once outlined, the consulting team will develop multiple scenarios to meet the needs identified in Phase 1. At this time, likely within five-months, the Working Group could decide to share the scenarios with City Council, school district officials, and the community with the support of the consulting team.

4. Site Evaluations

The Contractor and the subcontractor Shalleck Collaborative will develop high-level analysis of various sites for new and/or expanded facilities. The evaluation will consider criteria such as vehicular and pedestrian access, adjacent amenities, ability for the site to accommodate the proposed facility (size and configuration), height and other planning constraints, and other factors identified by stakeholder input and the Working Group. The Contractor anticipates evaluating three sites up to a maximum of five. The team will review any available studies, report, and assessments of the property(ies) being considered.

5. Facility Vision Workshop

The Contractor and subcontractor Shalleck Collaborative will describe the order of magnitude size, seating capacity, and major usable spaces of an expanded facility scenario that meets community needs and the definition of success. The Contractor will present scenarios for consideration and together select a singular, optimal scenario as the focus of further planning.

Once the vision for the expansion and any new facilities have been established, the consulting team and Working Group will have the input needed to focus and hone the cost estimate of development, forecast future operations, and consider the various impacts on the community and its arts and cultural ecosystem.

6. Capital Cost Estimate

Subcontractor Mark Taylor, Inc., with support from the Contractor and subcontractor Shalleck Collaborative, will provide an order of magnitude range of expected project costs based on Arizona construction market knowledge and similar facilities that have been recently bid or constructed in North America. Consideration of phasing and multiple scenarios will be made. The optimal scenario will be refined and form the basis of the capital cost forecast and inform the assessment of the viability of the development and its impact on future operation.

7. Governance & Management Recommendations

The Contractor will recommend an appropriate governance, staffing, and operating

structure for the expanded venue based on the definition of success, project goals, best practice findings, capacity of key players, and likelihood of collaboration and partnerships. The Contractor will consider a range of organizational structures including the continuation of the Joint Powers Agreement, as well as other public, private, and partnership models between resident non-profit organizations, creative businesses, the Cultural Foundation, and other entities.

8. Operating Projections

Working iteratively with project leadership, the Contractor will prepare a pro forma operating model for the facility for a normal year of operations, typically the third year following a facility's opening.

The Contractor will collaborate with Center leaders and managers to develop a dynamic financial model that will enable analysis of income and expenses using differing assumptions capacity, attendance, utilization, management structure, building format, rental fees and other variables.

The pro forma will include projected income and expenses. It incorporates income from operations (i.e., program fees, ticket sales, rentals, leases, concessions, and commissions) and operating costs such as salaries and wages, payroll costs, advertising and marketing, administration and overhead, utilities, maintenance and repairs, production costs, and fundraising costs. A net gain/loss assessment will show the degree to which a subsidy will be required and the likely amount to be subsidized.

This financial forecasting tool will be developed as a "living model" that can be updated as assumptions change and are refined throughout facility expansion design, construction, and pre-opening phases.

9. Socializing the Plan

In a final on-site workshop, the Contractor will present the findings of the study to the Working Group. As a group, we will discuss risks and opportunities for the proposed project, solicit feedback from the leadership team, and identify next steps before finalizing the plan and executive summary. The Contractor will also present a summarized presentation of the plan to the City Council and School District leadership on the same site-visit, if requested to do so by the Working Group.

To conclude the study's work, the Contractor will submit a final, executive summary report with relevant appendices, including the financial model.

Project Timeline

The Contractor anticipates completing both phases of work period. The schedule is dependent upon the timely scheduling of key meetings and presentations and receipt of background and other materials from the client, and other project participants.

By the end of Phase 1, estimated to be within a three-and-a-half-month period, the team and Working Group will establish the direction and vision for possible new and expanded facilities. A determination regarding continuation of the scope of work will also be made at this time. Within approximately five months the team will have developed more detailed

facility scenarios that could be shared with City Council, school district officials, and the community.

The consulting team anticipates making up to five site visits over the course of this scope of work, including the tour of comparable facilities. Bill Blake, project director, will attend all site visits and key meetings.

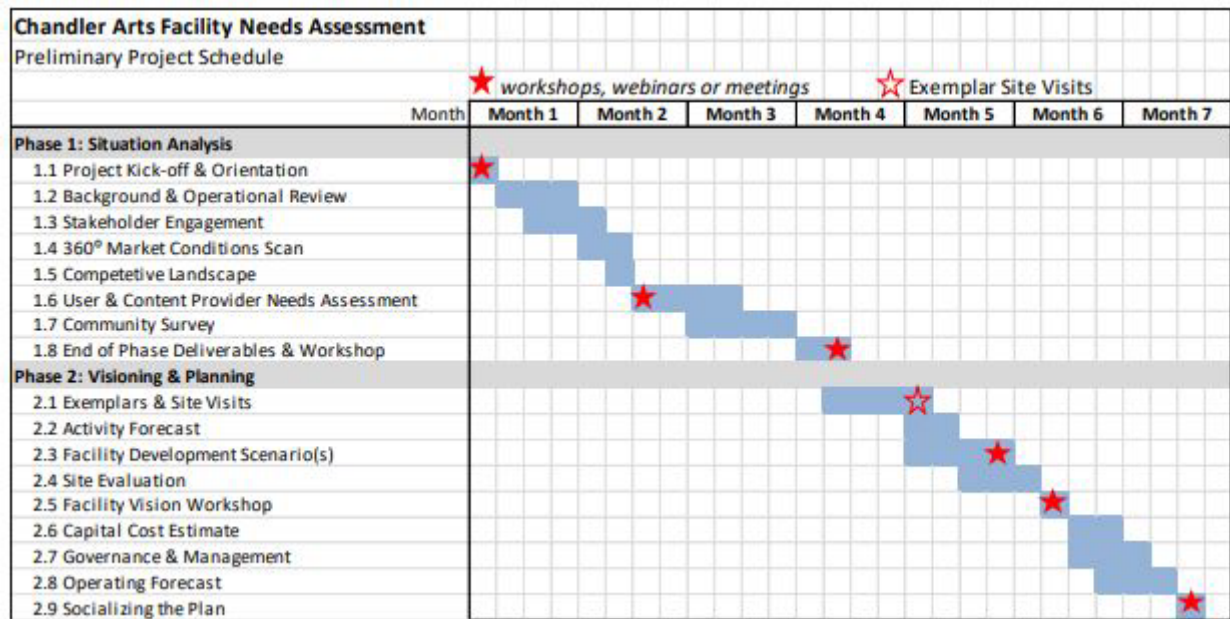


EXHIBIT B COMPENSATION AND FEES

Fees are firm, fixed, and all-inclusive for each Phase of the Scope of Services.

Phase	Fee
Phase 1: Research phase to determine community and stakeholder needs	\$47,000.00
Phase 2: Planning/forecasting phase to explore scenarios and options	\$75,900.00
Project Total	\$122,900.00

Hourly rates for consultant and sub-consultant personnel below to be the basis for pricing should the city require related services in addition to those of the Scope of Work.

Staff Role	Hourly Fee
AMS Project Director	\$280
AMS Analyst	\$150
Theatre Consultant	\$280
Cost Consultant	\$208

EXHIBIT C INSURANCE

INSURANCE

General.

- A. At the same time as execution of this Agreement, the Contractor shall furnish the 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 shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall 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.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor 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.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* Contractor 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.

- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles*
Vehicle Liability: Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor'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.
- C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor 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.

Additional Policy Provisions Required.

- A. *Self-Insured Retentions or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
1. The Contractor's insurance must contain broad form contractual liability coverage.
 2. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
 3. The Contractor'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.
 4. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
 5. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
 6. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of three years following completion and acceptance of the

Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this three year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

7. If a Certificate of Insurance is submitted as verification of coverage, the 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.

B. *Insurance Cancellation During Term of Contract/Agreement.*

1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within ten days after the renewal date containing all the required insurance provisions.
2. Each insurance policy required by the insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after 30 days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten days prior notice may be given. Such notice shall 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, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven days of receipt of insurers' notification to that effect.

A. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

EXHIBIT D
SPECIAL CONDITIONS

NONE