



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

**1. Agenda Item Number:**

**20**

**2. Council Meeting Date:**

February 22, 2007

**TO: MAYOR & COUNCIL**

**3. Date Prepared:** February 12, 2007

**THROUGH: CITY MANAGER**

**4. Requesting Department:** Management Services

**5. SUBJECT:** Award of contract MS7-846-2416 for Financial Advisor Services to Piper Jaffray & Co.

**6. RECOMMENDATION:** Staff recommends the award of Financial Advisor Services contract MS7-946-2416 to Piper Jaffray & Co.

**7. HISTORICAL BACKGROUND/DISCUSSION:** It has been five years since the City of Chandler has issued an RFP for financial advisor services. To ensure the City of Chandler receives the best financial advisor services for the most economical fee, staff felt it prudent to issue an RFP.

A financial advisor is used for their expertise on all items of financing necessary to the City's operations, which include general obligation, street and highway, water and sewer revenue, Municipal Property Corporation and Improvement District bonds and other related financial services. In addition, a financial advisor assists the City in developing a bond issuance strategy, preparing bond documents, marketing bonds to investors, and arranging and preparing materials for rating agency presentations.

A finance professional is being sought who will have an understanding of the City's needs, is able to identify creative solutions to meet goals and has an understanding of innovative debt financing methods which can reduce costs.

**8. EVALUATION PROCESS:** On November 30, 2006, City staff issued Request for Proposal (RFP) MS7-946-2416 for Financial Advisor Services. The RFP was advertised, City registered vendors were electronically notified and copies were sent to known providers of the requested service. The City received responses from Piper Jaffray & Co., the incumbent provider, and RBC Capital Markets.

An evaluation committee comprised of: Pat Walker, Management Services Director; Helen Parker, Financial Analyst; Wendy Rodriguez, Sr. Budget & Research Analyst; Brian Ritschel, Accounting Manager; Larry Woolf, Consultant; and Robert Descheemaker, Purchasing Supervisor, evaluated the responses in accordance with the City's established process, inclusive of interviews with both firms.

The City is recommending award of contract MS7-946-2416 to Piper Jaffray & Co.

**9. FINANCIAL IMPLICATIONS:** Financial advisory fees associated with bond sales and incidental expenses related to a bond issue will be paid from bond proceeds. Advisory fees for special projects that are not related to a specific bond transaction will be charged an hourly fee if the project requires four (4) or more hours of work/research and the preparation of written responses or presentations.

**10. PROPOSED MOTION:** Move to approve contract MS7-946-2416 for financial advisor services, per staff recommendation, to Piper Jaffray & Co., and authorize the Mayor to sign the contract.

**APPROVALS**

**11. Requesting Department**

Helen Parker, Financial Analyst

**12. Department Head**

Pat Walker, Director

**13. Procurement Officer**

Robert Descheemaker, CPPB

**14. City Manager**

W. Mark Pentz

**CITY OF CHANDLER SERVICES AGREEMENT  
FINANCIAL ADVISOR SERVICES  
AGREEMENT NO. MS7-946-2416**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Piper Jaffray & Co. (Add if applicable - a Corporation of the State of, etc), hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

**1. CONTRACT ADMINISTRATOR:**

1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Financial Analyst /designee (Contract Administrator), to provide the services required by this Agreement.

1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

**2. SCOPE OF WORK:** CONTRACTOR shall provide Financial Advisor Services all as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference therein.

2.1 **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable CITY, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.2 **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.

2.3 **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.

2.4 **Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

**3. ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.

4. **PRICE:** CITY shall pay to CONTRACTOR in accordance with the rates contained in Exhibit B, attached hereto and made a part hereof by reference.
- 4.1 **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.2 **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
5. **TERM:** The term of the Contract is **ONE** year (s), commencing on April 1, 2007 and terminating on March 31, 2008 unless sooner terminated in accordance with the provisions herein. CITY may extend the contract by mutual agreement of the parties for up to four (4) successive terms of one year each. Additionally, CITY may unilaterally extend the contract up to 31 days.
6. **USE OF THIS CONTRACT:**
- 6.1 **Right to Use Other Sources.** The Contract is for the sole convenience of the CITY. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.
- 6.2 **Cooperative Use of Contract.** In addition to the CITY and with approval of the contracted vendor, this Contract 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.
7. **CITY'S CONTRACTUAL REMEDIES:**
- 7.1. **Right to Assurance.** If the Contract Administrator, in good faith, has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the CITY'S option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. **Stop Work Order.** The Contract Administrator may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the CITY after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.2.1 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.3. **Non-exclusive Remedies.** The rights and the remedies of the CITY under this Contract are not exclusive.
- 7.4. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.

7.5. **Right of Offset.** The CITY shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the CITY, or damages assessed by the CITY concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

## 8. TERMINATION:

8.1. **Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with 10 days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and SUBCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the **Management Services Director** shall determine the percentage of work performed for each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

8.2. **Termination for Cause.** CITY may, upon written notice, terminate this Agreement for CONTRACTOR'S failure to comply with the terms of this Agreement.

8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the CITY is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time. CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

8.4. **Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.

8.5. **Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.

8.6. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process set forth in Exhibit D shall be the exclusive means for resolution of claims or disputes and other matters in question between the CITY and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the CITY, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the CITY, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the CITY. IT IS THE INTENTION OF THE PARTIES to this contract that the CITY, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.
12. **INSURANCE:** CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required as listed in Exhibit C attached hereto and incorporated herein by reference. Such insurance must be written by companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.

**13. NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY		In the case of the CONTRACTOR	
Contract Administrator:	<u>Management Services</u>	Firm Name:	<u>Piper Jaffray &amp; Co.</u>
Contact:	<u>Helen Parker</u>	Contact:	<u>William C. Davis</u>
Mailing Address:	<u>PO Box 4008 – MS 609</u>	Address:	<u>2525 E. Camelback Rd. Suite 925</u>
Physical Address:	<u>55 N Arizona PI Ste 201</u>	City, State, Zip	<u>Phoenix, AZ 85016</u>
City, State, Zip	<u>Chandler AZ 85244</u>	Phone:	<u>(602) 808-5428</u>
Phone:	<u>(480) 782-2267</u>	FAX:	<u>(602) 808-5420</u>
FAX:	<u>(480) 782-2253</u>		

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

**14. GENERAL TERMS:**

- 14.1. **Entire Agreement.** This Agreement, including Exhibits A, B, C and D attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 14.4. **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.
- 14.5. **Independent Contractor.** The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 14.6. **No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

14.7. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

FOR THE CITY OF CHANDLER  
\_\_\_\_\_  
MAYOR

FOR THE CONTRACTOR  
By: \_\_\_\_\_  
Signature

ATTEST:  
\_\_\_\_\_  
City Clerk

SEAL

ATTEST: If Corporation  
\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Attorney  


14.6.

14.7. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of 20 .

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

\_\_\_\_\_  
MAYOR

By: William C. [Signature]  
Signature

ATTEST:

ATTEST: If Corporation

SEAL

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**SCOPE OF WORK**

**Scope:**

The Contractor shall provide financial advisory counsel services including, but not limited to:

- A. For each debt issue, the Contractor shall:
- (1) Provide advice and assistance in planning debt issues, determining the principal amount of debt to be sold, maturity schedules, call and put features and premiums, acceptable risk and legal constraints and taking into account the CITY'S overall financing program. Identify and analyze key issues associated with pending bond sale.
  - (2) Monitor and provide advice concerning bond-refunding opportunities.
  - (3) Analyze the market conditions prior to, during and subsequent to the sale of bonds. Summarize the reception of the bonds in the market and evaluate performance relative to the market and other securities of similar credit.
  - (4) Assist and advise in debt structuring and/or restructuring decisions, the development of debt limits, debt service coverage ratios, reserve funds or other debt policies as requested.
  - (5) Assist in the marketing and sale of bonds. In a competitive sale, provide recommendation of the firms to whom the bid form should be sent, the timing of the sale; attend debt issue bid openings and assist CITY staff in evaluating bids.
  - (6) Prepare preliminary and offering statements for each sale for CITY staff and bond counsel review, provide evaluation and editorial review of tables and sections of test for offering statements and notices of sale prepared by CITY staff and special consultants, print and mail offering statements to prospective bidders, provide explanation and interpretation of the CITY'S offerings to prospective bidders in the municipal securities markets, prepare bond sale documents, bid information and other relevant financing documents.
  - (7) Arrange for bond closings with successful bidder, registrar and trustee; bond counsel and CITY staff, including instructions for closing. If requested by the CITY, attend such closings.
  - (8) Solicit bids from financial printers for sale of bonds on behalf of the CITY; analyze the responses and provide a recommendation.
  - (9) Maintain copies of all transcripts.
  - (10) Maintain and provide the CITY with comprehensive records of all outstanding debt (including refunded amounts) and their associated debt service schedules in the form of an Annual Debt Position Manual. The manual will be due to the CITY no later than the first business day of August of the applicable year.
  - (11) Make all necessary arrangements with, and prepare materials for, the rating agencies with CITY staff, and act as liaison with rating agencies in conjunction with the CITY, providing information as needed.
  - (12) Assist and advise in the preparation of bond elections. If requested by CITY, attend meetings.

**B. General Services:**

- (1) Analyze specific potential capital projects or proposed financing of such.
- (2) Review and advise on various projects involving potential CITY financing as requested by CITY staff. Work directly with staff, bond counsel, independent auditors, or special consultants in developing financial programs and marketing instruments.
- (3) Assist in the development of capital improvement plan including debt capacity constraints.
- (4) Evaluate financing options that do not include the sale of debt obligations.
- (5) Provide general advice on tax issues, particularly compliance with respect to arbitrage rebate, but not including any arbitrage rebate calculations.
- (6) Suggest investment strategy for the issuer's idle funds.
- (7) Create a detailed schedule of events for the issuer's financing programs.
- (8) Assist in the acquisition of security/credit enhancement products and evaluation of the cost to benefit relationship of credit enhancement.
- (9) Coordinate those necessary activities of a legal nature with the CITY'S designated bond counsel.

**Key Personnel**

Bill Davis, Managing Director—Lead Consultant-Day to Day  
Peter J. Phillippi, Managing Director—Banking Support  
Samuel Gray, Asst. VP—Day to Day  
Logan McKenzie, Associate—Banking Support  
Carol Milford, Admin. Asst.—Day to Day  
Darci Doneff, Managing Director—Underwriter  
Frank Fairman, Managing Director—Manager of Public Finance  
James Towne, Managing Director—Investment Services/Derivatives

**EXHIBIT B**

**PRICE LIST**

**Fixed Fee per Bond Sale**

<u>Issue Type</u>	<u>Proposed Fee</u>
General Obligation Bonds	\$25,000
Street and Highway User Revenue Bonds	\$25,000
Water Revenue Bonds	\$25,000
MPC Bonds	\$30,000
Community Facilities District (CFDs)	\$35,000
Improvement Districts	\$15,000
Refunding Bonds	\$35,000

Incidental expenses related to a bond issue will include such fees as bond counsel, official statement preparation and distribution, rating agency fees, trustee/bond registrar and paying agent services, and verification services and miscellaneous expenses for travel, express charges, photocopying, etc. These costs would normally be paid from bond proceeds. All bond issue related expenses, including official statement preparation expenses, will be pre-approved by the CITY prior to payment. Out of pocket expenses for express charges, photocopying and in state travel and meals are capped at \$750/bond issue. All out of state travel expenses and other incidental expenses will be pre-approved by the CITY in advance. To ensure that incidental costs are kept to a minimum, the Contractor will bid out (on behalf of and in conjunction with the CITY) for services for incidental expenses such as Official Statement preparation, Verification Agent Services and Registrar/Paying Agent Services.

For advisory services that are not related to a specific bond transaction, we propose the following fee schedule:

<u>Advisory Fee</u>	<u>Individual</u>
\$195/hr.	Vice President and above
\$95/hr.	Associate/Administrative Assistant

This hourly structure is intended to be the basis for special projects or endeavors requested by the CITY.

Special projects are those which require four hours or more of work/research and the preparation of written responses or presentations.

## EXHIBIT C

### INSURANCE REQUIREMENTS

#### 1. INSURANCE:

##### 1.1. Insurance Representations and Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the CITY'S Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the CITY, the CITY may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the CITY, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.

- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

## **1.2. Proof of Insurance – Certificates of Insurance**

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the CITY'S Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the CITY five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

## **1.3. Coverage**

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

**1.4. Commercial General Liability - Minimum Coverage Limits.**

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

**1.5. General Liability - Minimum Coverage Limits**

The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent CONTRACTORS, and Personal Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than \$1,000,000 or 10% of the contract cost and with a \$2,000,000 aggregate.

**1.6. Automobile Liability**

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

**1.7. Worker's Compensation and Employer's Liability**

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

**EXHIBIT D**  
**ALTERNATE DISPUTE REQUIREMENTS**

1. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the CITY and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
  - 1.1. **Notice.** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as it occurs and not postponed until the end of the Contract nor lumped together with other pending claims.
  - 1.2. **Forfeiture.** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.
  - 1.3. **CITY Response.** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
  - 1.4. **Appeal.** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
  - 1.5. **Arbitration.** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
    - A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with the CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
    - B. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that

end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.

- C. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
- D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.
- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with the CITY.

- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.