

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

cc: QC
Amend No. _____

Date Prepared: October 16, 2009

Council Meeting Date: December 15, 2009

TO: Carl Swenson, City Manager
THROUGH: Susan K. Thorpe, Deputy City Manager *SJT*
FROM: William Mattingly, Public Works-Utilities Director *WJM*
PREPARED BY: Javier Setovich, Construction Superintendent
SUBJECT: Award a contract to KUV Consultants, LLC. for the development of a Security Vulnerability Assessment of Water and Wastewater Facilities.

RECOMMENDATION:

Discussion and possible action to Award a contract to KUV Consultants, LLC. for the development of a Security Vulnerability Assessment of Water and Wastewater Facilities for an amount equal to \$75,000. Payment in the amount of \$75,000 will be made from the current Security Master Plan program, Water Utility Account 2400-2550-520099-CIPWR-UT00257-SY

SUMMARY:

This project will conduct a Security Vulnerability Assessment of the City of Peoria's entire Water and Wastewater systems, including treatment facilities. The vulnerability assessment will identify significant security risks and recommend mitigation measures to reduce threats and minimize any potential impact on the operation of Utility facilities.

The assesment will utilize the Vulnerability Self Assessment Tool (VSAT™) methodology that was developed by the American Metropolitan Sewerage Agency (AMSA) and recommended by the United States Environmental Protection Agency (U.S.EPA) for water and wastewater systems.

The Assessment will address the following six elements required by the U.S. EPA for

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business

ORD. # _____ RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

preparation of a vulnerability assessment:

- Characterization of the water utility including its mission and objectives.
- Identification and prioritization of adverse consequences to avoid.
- Determination of critical assets that might be subject to malevolent acts that could result in undesired consequences.
- Assessment of the likelihood of such malevolent acts from adversaries such as terrorists or vandals.
- Evaluation of existing countermeasures.
- Analysis of current risks and development of a prioritized plan for risk reduction.

KUV Consultants, LLC. was selected based on their expertise and their availability. The City intends to use an existing contract with the City of Scottsdale established for the furnishing of Vulnerability Assessment and related services to the Utilities Department (City of Scottsdale Contract: 05RP010).

Staff recommends approval of this contract award to KUV Consultants, LLC. for an amount not-to-exceed \$75,000.

FISCAL NOTE:

Payment in the amount of \$75,000 will be made from the Security Master Plan Project UT00257, Water Utility Account No. 2400-2550-520099-CIPWR-UT00257-SY.

ATTACHMENT(S):

- Exhibit A: KUV Proposal
- Exhibit B: City of Scottsdale Contract 05RP010

Exhibit A

Utilities Department
City of Peoria, AZ

Security Vulnerability (VSAT™) Assessment of City's Water & Wastewater Systems

Proposed Scope of Service

Project Description:

Peoria Utilities Department (PUD) owns and operates both potable water and wastewater systems. The water system includes two surface water treatment facility, several wells, storage tanks and booster pump stations, and distribution system. The wastewater system consists of a total of 10 wastewater lift stations and a total of three separate wastewater treatment facilities.

The purpose of the project is to conduct a security vulnerability assessment of PUD's entire water and wastewater systems.

The vulnerability assessment will identify significant security risks and recommend mitigation measures to lower risks to acceptable levels.

Project Approach:

- ❑ The assessment will consider the water and wastewater systems' vulnerability to a terrorist attack or other intentional acts intended to *substantially disrupt* the ability of the system to provide a safe and reliable service to the customers.
- ❑ The assessment will use the Vulnerability Self-Assessment Tool (VSAT™) methodology that was developed by American Metropolitan Sewerage Agency (AMSA) and recommended by the United States Environmental Protection Agency (USEPA) for water and wastewater systems.

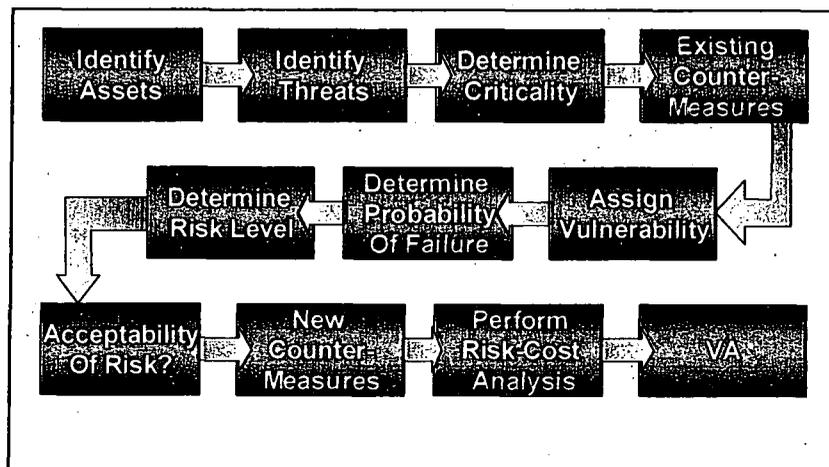


Exhibit A

- The assessment will address the following six elements required by the US Environmental Protection Agency (EPA) for preparation of a vulnerability assessments:
 1. Characterization of the water utility including its mission and objectives.
 2. Identification and prioritization of adverse consequences to avoid.
 3. Determination of critical assets that might be subject to malevolent acts that could result in undesired consequences.
 4. Assessment of the likelihood (qualitative probability) of such malevolent acts from adversaries such as terrorists or vandals.
 5. Evaluation of existing countermeasures.
 6. Analysis of current risks and development of a prioritized plan for risk reduction.

KUV Project Team:

Kal Raman, P.E., Principal Consultant, KUV: Kal will be the Project Manager and Principal Investigator. He has over 21 years of experience in public works, utility management, operation and engineering. His expertise is in security vulnerability assessment, organizational performance improvement and development of master plans and business strategies.

Tom Liffiton, Associate Consultant, KUV: Tom will lead the Threat Assessment component of the study. He recently retired from FBI (Phoenix), and has over 25 years of experience in intelligence and criminal investigations. He also has significant involvement with InfraGuard, Arizona Department of Emergency Management and ACTIC.

Diane Barrett, CISS, Associate Consultant, KUV: Diane will serve as a subject matter expert (SME) for SCADA/IT issues. Diane is currently an instructor for Computer Network Security and Forensics at University for Advanced Technologies, Phoenix. She is certified in computer network security, has 7 years experience.

Dr. Danny Peterson, Associate Consultant, KUV: Danny will serve as a SME in Physical Security to identify appropriate risk mitigation measures. He is one of the recognized experts in Arizona in the field of security and emergency management. He teaches at ASU Polytechnic, and maintains strong interaction with Arizona Department of Emergency Management.

Richard Fairbourn, Security System Designer, Durrant Security: Richard will serve as a SME in Physical Security to identify appropriate risk mitigation measures. Richard has over 24 years experience in security improvement analysis, security improvement pricing and cost analysis. His security experience includes utility, industrial, military, justice, and commercial facilities.

Exhibit A

Scope of Service:

This vulnerability assessment will cover all of the water and wastewater system assets including:

- Water production and distribution facilities – treatment plants, wells, booster pump stations, reservoirs, PRV sites, distribution pipe network, etc.
- Wastewater collection and treatment facilities – lift stations, collection pipe network, treatment facilities, recharge facilities, etc.
- SCADA and business computer systems.
- Personnel, records and files.

The scope of service will include completing the following tasks:

Task #1 - Project Kick-off Meeting:

KUV will conduct a 2-hour meeting to discuss project scope, project Teams, deliverables and schedules.

- Participants will include PUD Project Manager, PUD Security Team and KUV Project Manager.
- The meeting will be held at a City facility, arranged for by PUD Project Manager.
- KUV will prepare the meeting agenda, facilitate the meeting and prepare meeting minutes.

Task #2 - Review Previous Assessments:

KUV will review previous vulnerability assessments, water and wastewater system master plans and other documents/reports relevant to the project. PUD will make these documents available to KUV.

Task #3 - Conduct Threat Assessment Workshop:

KUV will facilitate a 2-hour workshop between PUD staff, City law enforcement and emergency management to discuss likely threats/hazards that should be considered in this study.

- Participants will include PUD Project Manager, PUD Security Team, City's ACTIC Terrorism Liaison officer (TLO), SRP and KUV Team.
- The meeting will be held at a City facility, arranged for by PUD Project Manager.
- KUV will prepare the meeting agenda, facilitate the meeting and prepare meeting minutes.

Task #4 - Conduct Water Facility Characterization Workshop:

KUV will conduct a 3-hr workshop to identify water system facilities to be considered in this study; prioritize such facilities and identify critical assets in each facility. The water facilities will be grouped into the following three categories (i) Group A - Critical facilities that cannot be off-line for more than 24 hours without seriously impacting service, (ii) Group B - Important facilities that cannot be off-line for more an one week without seriously impacting service, (iii) Group C – Back-up facilities that can be off-line for extended period without seriously impacting service.

The workshop will also identify security concerns related to water personnel and critical records.

Exhibit A

- Participants will include PUD Project Manager, PUD Security Team, water system supervisors and KUV Team.
- The meeting will be held at a City facility, arranged for by PUD Project Manager.
- KUV will prepare the meeting agenda, facilitate the meeting and prepare meeting minutes.

Task #5 - Conduct Wastewater Facility Characterization Workshop:

KUV will conduct a 3-hr workshop to identify wastewater system facilities to be considered in this study; prioritize such facilities and identify critical assets in each facility. The wastewater facilities will be grouped into the following three categories (i) Group A - Critical facilities that cannot be off-line for more than 24 hours without seriously impacting service, (ii) Group B - Important facilities that cannot be off-line for more an one week without seriously impacting service, (iii) Group C – Back-up facilities that can be off-line for extended period without seriously impacting service.

The workshop will also identify security concerns related to wastewater personnel and critical records.

- Participants will include PUD Project Manager, PUD Security Team, wastewater system supervisors and KUV Team.
- The meeting will be held at a City facility, arranged for by PUD Project Manager.
- KUV will prepare the meeting agenda, facilitate the meeting and prepare meeting minutes.

Task #6 - Conduct Site Visits of Group A - Water/Wastewater Facilities:

KUV Team (Subject Matter Experts) will visit Group A facilities to make field observations of existing security measures and procedures. They will make field notes of the observed risks and of their thoughts on appropriate risk mitigation measures.

- PUD will provide access of the facilities to KUV Team members.
- Participants will include PUD operator(s), PUD Project Manager (optional) and KUV Team.

Task #7 - Conduct Site Visits of Groups B&C - Water/Wastewater Facilities:

Kal Raman, P.E., Principal Consultant from KUV will visit each facility in Group B and representative facilities in Group C. He will make field notes of the observed risks and of his thoughts on appropriate risk mitigation measures.

- PUD will provide access of the facilities to KUV Team members.
- Participants will include PUD operator(s), PUD Project Manager (optional) and KUV Team.

Task #8 - Review SCADA Security:

Subject Matter Expert from KUV will spend one day interviewing PUD IT staff and visiting SCADA stations. She will assess security risks related to the SCADA system. She will make field notes of the observed risks and of her thoughts on appropriate risk mitigation measures.

Exhibit A

- PUD will provide access of the facilities to KUV Team member.
- Participants will include PUD IT staff, PUD Project Manager (optional) and KUV Team.

Task #9 - Populate VSAT™:

KUV will populate VSAT™ software (version 3.1 water/wastewater which is the latest, as on Oct 2009) with information obtained from workshops and site visits. Using the software, KUV will estimate "Baseline Risks" and perform "Improvement Analysis". KUV will conduct a two (2) hour meeting with PUD staff to review the proposed risk mitigation measures.

- Participants will include PUD Project Manager, PUD Security Team, City's ACTIC Terrorism Liaison officer, and KUV Team.
- The meeting will be held at a City facility, arranged for by PUD Project Manager.
- KUV will prepare the meeting agenda, facilitate the meeting and prepare meeting minutes.

Task #10 - Submit "Draft" Report and Customized VSAT™:

KUV will submit three (3) hardcopies of a "draft" report documenting the findings of the vulnerability assessment. The report will be marked "CONFIDENTIAL" and PUD may choose to limit its distribution. KUV will also submit one (1) CD containing the customized VSAT™ database.

Task #11 – Conduct Review Meeting:

KUV will conduct a two (2) hour meeting with PUD staff to review the draft report.

- Participants will include PUD Project Manager, PUD Security Team, City's ACTIC Terrorism Liaison officer, and KUV Team.
- The meeting will be held at a City facility, arranged for by PUD Project Manager.
- KUV will prepare the meeting agenda, facilitate the meeting and prepare meeting minutes.

Task #12 – Submit "Final" Report and Customized VSAT™:

KUV will submit three (3) hardcopies of a "final" report documenting the findings of the vulnerability assessment. The report will be marked "CONFIDENTIAL". KUV will also submit one (1) CD containing the customized VSAT™ database.

The following tasks are not included in the scope of work:

- Installation of VSAT™ software in PUD computer(s).
- Development of cost estimates for mitigation measures.
- Preparation of Emergency Response Plan (ERP) or Business Continuity Plan (BCP).
- Vulnerabilities of other City Departments (example, IT, Finance, Human Resources, Police, etc.), although there may be considerable inter-dependencies.

The project will have a heavy involvement of PUD staff. A list of major meetings and workshops, and their anticipated time periods, are shown in Table 1.

Exhibit A

Fee:

KUV will complete the project for a fixed fee of \$75,000.

Schedule:

KUV will complete the projects within six months from notice to proceed, subject to the availability of City staff to participate in workshops and review reports.

Exhibit A

Table 1
Schedule of Proposed Project Meetings/Workshops

| Task No. | Task | Suggested Participants | Schedule of Meeting/Workshop ^{(1), (2)} | |
|----------|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|----------------------|
| | | | Duration (hours) | Suggested Time Frame |
| 1 | Project Kick-off Meeting | <ul style="list-style-type: none"> • PUD Project Manager • PUD Security Team • KUV | 1 | 1/4/10 – 1/15/10 |
| 3. | Threat Assessment Workshop | <ul style="list-style-type: none"> • PUD Project Manager • PUD Security Team • City's ACTIC Terrorism Liaison officer (TLO) • Salt River Project • KUV | 2 | 1/18/10 – 1/29/10 |
| 4. | Water Facility Characterization Workshop | <ul style="list-style-type: none"> • PUD Project Manager • PUD Security Team • Water system supervisors • KUV | 3 | 2/1/10 – 2/12/10 |
| 5 | Wastewater Facility Characterization Workshop | <ul style="list-style-type: none"> • PUD Project Manager • PUD Security Team • Wastewater system supervisors • KUV | 3 | 2/1/10 – 2/12/10 |
| 6, 7 | Site Visits | <ul style="list-style-type: none"> • PUD operator • PUD Project Manager (optional) • KUV | 7 - 10 days | 2/15/10 – 3/12/10 |
| 8 | SCADA Security | <ul style="list-style-type: none"> • PUD IT staff • PUD Project Manager (optional) • KUV | 4 | 2/15/10 – 3/12/10 |
| 9 | Populate VSAT | <ul style="list-style-type: none"> • PUD Project Manager • PUD Security Team • City's ACTIC Terrorism Liaison officer • KUV Team | 2 | 4/26/10 – 4/30/10 |
| 11 | Review Meeting | <ul style="list-style-type: none"> • PUD Project Manager • PUD Security Team • City's ACTIC Terrorism Liaison officer • KUV Team | 2 | 5/24/10 – 5/28/10 |

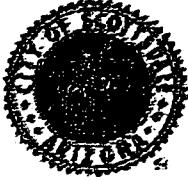
Note:

(1) Assumes a project start date of January 1, 2010. Final deliverable will be made by June 30, 2010.

(2) In addition to meetings listed, KUV Principal Consultant (Kal Raman) will meet with PUD Project Manager on a monthly basis for project status and progress updates.

Exhibit B

08-53



Purchasing

9191 E. San Salvador Dr.
Scottsdale, AZ 85258

December 10, 2008

KUV Consultants, LLC
Attn: Mr. Kai Raman
P.O. Box 10790
Glendale, AZ 85318

Re: Contract 05RP010
Water Department Vulnerability Assessment and Related Services

Dear Mr. Raman:

Pursuant to your letter of December 1, 2008 and the contract terms and conditions, the City of Scottsdale hereby extends Contract 05RP010 for Water Department Vulnerability Assessment and Related Services for a period of one (1) year. All terms, conditions and pricing shall remain the same.

Contract terms and conditions require current certificates of insurance for Commercial General Liability, Professional Liability, Vehicle Liability, and Workers Compensation / Employer's Liability be on file with the City of Scottsdale. The certificate(s) provided shall list the City of Scottsdale, its agents, representatives, officers, directors, officials and employees as an additional insured and certificate holder, and include a waiver of subrogation against the City of Scottsdale. Per contract terms and conditions the following MINIMUM amounts of coverage are required:

- Commercial General Liability: \$2,000,000 each occurrence
\$2,000,000 Products-Completed Operations Aggregate
\$2,000,000 General Aggregate
Current certificate on file valid through 07/01/09
- Professional Liability: \$2,000,000 each claim
\$2,000,000 all claims
Current certificate on file valid through 07/01/09
- Vehicle Liability Insurance: \$500,000 each accident
Current certificate on file valid through 07/01/09
- Workers Compensation and Employer's Liability Insurance: \$100,000 each accident
\$100,000 Disease each employee
\$500,000 Disease policy limit
Sole Proprietor - Not Applicable

Failure to keep current the required insurance certificates may render this extension void.

When necessary, updated insurance certificates can be emailed, faxed or mailed to my attention using the contact information listed below.

Exhibit B

**The new term of the extension shall be from January 26, 2009, through January 25, 2010.
All provisions of the contract shall remain in effect during the new contract period.**

If you have any questions, please let me know.

Sincerely,



**Bob Huston
Bid & Contract Specialist
City of Scottsdale
9191 E. San Salvador Dr.
Scottsdale, AZ. 85258
Phone: (480) 312-5719
Fax: (480) 312-9159
Email: bhuston@scottsdaleaz.gov**

**cc: Chris Mitchell
Water Operations Manager
Water Resources**

Exhibit B

Contract # 2005-001-COS



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, made and entered into this 25th day of January, 2005, by and between the City of Scottsdale, a Municipal Corporation of the State of Arizona hereinafter referred to as "City", and KUV Consultants, LLC, hereinafter referred to as "Consultant".

WITNESSETH

THAT, the Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services;

WHEREAS, the City desires to contract for Water/Wastewater Department Vulnerability Assessment and Related Services;

WHEREAS, Consultant is duly qualified to perform the requested services;

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

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant shall act under the authority and approval of the Contract Administrator for the City, further named herein, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Scope of Work for Request for Proposal No. 05RP010, including Addenda #1, identified as Water/Wastewater Vulnerability Assessment and Related Services, is incorporated herein by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number 05RP010 and dated November 22, 2004 is incorporated herein by this reference as fully as if written out below. If any provision incorporated by reference from the Scope of Work conflicts with any provision of the Consultant's proposal, the provision of the Scope of Work will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

Key Personnel – The Contractor understands that changes to the key personnel assigned to this project may be subject to prior written consent by the City's Contract Administrator.

Exhibit B

Contract # 2005-001-COS

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City shall provide all necessary information to the Consultant for timely completion of the tasks specified in Item 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task shall be recorded and submitted to the Contract Administrator. Consultant shall maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and make such materials available for audit by the City pursuant to Section 4.7 of this Contract.

2.2 FEE SCHEDULE

Consultant shall be paid according to following schedule:
Five Year Schedule and Pricing, KUV Consultants, LLC

Year 1, FY 2004/2005

| | | |
|---------------------------------------------|--------------------|--------------------|
| Conduct Wastewater Vulnerability Assessment | 360 Hrs. | \$33,000.00 |
| Develop Wastewater Emergency Response Plan | 120 Hrs. | \$11,050.00 |
| Customize EPA Modules 1 - 6 | 120 Hrs. | \$11,050.00 |
| Combine all ERP's & Modules | 60 Hrs. | \$6,400.00 |
| Create Response Flow Charts | 20 Hrs. | \$1,800.00 |
| Develop Site Char. & Field Safety Plans | 40 Hrs. | \$3,600.00 |
| | Total Costs | \$66,800.00 |

Year 2, FY 2005/2006

| | | |
|---------------------------------------------|--------------------|--------------------|
| Develop Security Program Manual (SPM) | 120 Hrs. | \$12,200.00 |
| Review/Revise & Update ERP/BCP | 80 Hrs. | \$8,550.00 |
| Provide ERP/BCP Training | 70 Hrs. | \$7,500.00 |
| Conduct Three (3) Tabletop Exercises | 180 Hrs. | \$15,500.00 |
| Assist in Development of e-ERP | 120 Hrs. | \$12,700.00 |
| Assist in Development of Community Outreach | 120 Hrs. | \$12,700.00 |
| | Total Costs | \$69,150.00 |

Exhibit B

Contract # 2005-001-COS

Five Year Schedule and Pricing, KUV Consultants, LLC - Cont'd

| | | |
|-----------------------------------------------|----------------------------------|---------------------|
| Year 3, FY 2006/2007 | | |
| Review/Revise & Update ERP/BCP/SPM | 80 Hrs. | \$8,950.00 |
| Provide ERP/BCP Training | 70 Hrs. | \$7,850.00 |
| Conduct One (1) Field Exercise (City) | 160 Hrs. | \$16,300.00 |
| Assist in Development of Community Outreach | 120 Hrs. | \$13,300.00 |
| | Total Costs: | \$46,400.00 |
| Year 4, FY 2007/2008 | | |
| Review/Revise & Update ERP/BCP/SPM | 80 Hrs. | \$8,950.00 |
| Provide ERP/BCP Training | 70 Hrs. | \$8,265.00 |
| Conduct Three (3) Tabletop Exercises | 100 Hrs. | \$17,130.00 |
| Assist in Development of Community Outreach | 120 Hrs. | \$14,000.00 |
| | Total Costs: | \$48,345.00 |
| Year 5, FY 2008/2009 | | |
| Review/Revise & Update ERP/BCP/SPM | 80 Hrs. | \$9,850.00 |
| Provide ERP/BCP Training | 70 Hrs. | \$8,650.00 |
| Conduct One (1) Field Exercise (Multi-Agency) | 200 Hrs. | \$22,300.00 |
| Assist in Development of Community Outreach | 120 Hrs. | \$14,740.00 |
| | Total Costs: | \$55,540.00 |
| | Five (5) Year Total Costs | \$286,800.00 |

Consultant may submit work in progress billings for services rendered together with applicable documentation as directed by the Contract Administrator.

Amounts indicated in this Section 2.2 represent the entire amounts payable under this Contract. Additional expenses will not be authorized.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator prior to payment.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one year period. The City reserves the option to extend this Contract for a maximum of four more one year periods, upon the recommendation of the Contract Administrator and concurrence of the Purchasing Director.

3.2 TERMINATION

Termination for Convenience: City reserves the right to terminate this contract or any part hereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Consultant 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 Consultant shall receive a fee for the percentage of services actually completed.

Exhibit B

Contract # 2005-001-COS

TERMINATION - CONT'D

This fee shall be in the amount to be mutually agreed upon by the Consultant and the City, based on the agreed Scope of Work. If there is no mutual agreement, the Contract Administrator shall determine the percentage of completion of each task detailed in the Scope of Work and the Consultant's compensation shall be based upon such determination. The City shall make this final payment within sixty (60) days after the Consultant has delivered the last of the partially completed items. Consultant shall not be paid for any work done upon receipt of the notice of termination, nor for any costs incurred by Consultant's suppliers or Subcontractors, which Consultant could reasonably have avoided.

Termination for Cause: City may also terminate this contract or any part hereof with seven (7) days notice for cause in the event of any default by the Consultant, or if the Consultant fails to comply with any of the terms and conditions of this contract. Unsatisfactory performance as judged by the Contract Administrator, and failure to provide City, upon request, with adequate assurances of future performance shall all be causes allowing City to terminate this contract for cause.

In the event of termination for cause, City shall not be liable to Consultant for any amount, and Consultant shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this contract immediately upon giving notice to the Consultant.

3.3 FUNDS APPROPRIATION

If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice pursuant to Section 4.11 of termination to the Consultant at least thirty (30) days prior to the end of its current fiscal period and will pay to the Consultant all approved charges incurred through the end of such period.

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract shall be governed and interpreted according to the laws of the State of Arizona.

Exhibit B

Contract # 2005-001-COS

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the Purchasing Director and Contract Administrator.

4.5 SUCCESSORS AND ASSIGNS

This Contract shall extend to and be binding upon Consultant, its successors and assigns, including any individual, company, partnership or other entity with or into which Consultant shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which Consultant shall sell its assets.

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City shall be Karl Pape, Water Operations Coordinator, or designee. The Contract Administrator shall oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, and approve payments. The Consultant shall channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

Consultant shall require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Consultant and payee. Such requirements will also apply to any and all Subcontractors,

If an audit in accordance with this article, discloses overcharges, of any nature, by the Consultant to the City in excess of one percent (1%) of the total contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

Exhibit B

Contract # 2005-001-COS

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to received from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the City is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. §38-511).

4.12 NOTICES

All notices or demands required to be given pursuant to the terms of this Contract 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 Consultant: KUV Consultant, LLC
Kal Raman
P. O. Box 10790
Glendale, AZ 85318

Exhibit B

Contract # 2005-001-COS

NOTICES - CONT'D

In the case of City:

City of Scottsdale
Karl Pape
9312 N. 94th St.
Scottsdale, AZ 85258

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.

4.13 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, or power failures.

4.14 TAXES

Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The City shall have no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without prior written approval of such advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

During the performance of the Contract, the Consultant may engage such additional Subcontractors as may be required for the timely completion of this Contract. The addition of any Subcontractors shall be subject to the prior approval of the City.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Consultant.

Exhibit B

Contract # 2005-001-COS

4.19 INDEMNIFICATION

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.20 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.21 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Agreement may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

5.0 INSURANCE

This contract contains two samples of Certificates of Insurance, the Standard Acoed Certificate and the Certificate developed by the City of Scottsdale

The City Certificate is preferred, however, the Acoed Certificate is acceptable provided it is identical to the sample attached and contains the additional language and deleted language as reflected on the sample.

Exhibit B

Contract # 2005-001-COS

INSURANCE - CONT'D

Failure to provide a Certificate of Insurance with the appropriate verbiage as indicated on the attached samples, will result in rejection of your certificate and delay in contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

5.1.1 General: Consultant agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City of Scottsdale. Failure to maintain insurance as specified may result in termination of this Contract at City of Scottsdale's option.

5.1.2 No Representation of Coverage Adequacy: By requiring insurance herein, City of Scottsdale does not represent that coverage and limits will be adequate to protect Consultant. City of Scottsdale reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

5.1.3 Coverage Term: 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 subject contract are satisfactorily performed, completed and formally accepted by the City of Scottsdale, unless specified otherwise in this Contract.

5.1.4 Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

5.1.5 Policy Deductibles and or Self Insured Retentions: The policies set forth in these requirements may provide coverage which contain deductibles or self insured retention amounts. Such deductibles or self insured retention shall not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant shall be solely responsible for any such deductible or self insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of such deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

Exhibit B

Contract # 2005-001-COS

Insurance Representations and Requirements - Cont'd

- 5.1.6 Use of Subcontractors:** If any work under this agreement is subcontracted in any way, Consultant shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting City of Scottsdale and Consultant. Consultant shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Prior to commencing any work or services under this Contract, Consultant shall furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage and that such coverage and provisions are in full force and effect.

If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it shall be Consultant's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. Consultant's insurance shall be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
4. Certificate shall cite 30 day advance notice of cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

5.2 Required Coverage

- 5.2.1 Commercial General Liability:** Consultant shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.

Exhibit B

Contract # 2005-001-COS

Required Coverage – Cont'd

5.2.2 Professional Liability: If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$2,000,000 each claim and \$2,000,000 all claims.

5.2.3 Vehicle Liability: Consultant shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof.

If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.

5.2.4 Workers Compensation Insurance: Consultant shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and shall also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

6.2 AUTHORITY

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

Exhibit B

Contract # 2005-001-COS

IN WITNESS WHEREOF, the City of Scottsdale by its Mayor and City Clerk have hereunto subscribed their names this 25th day of January, 2005.

CITY OF SCOTTSDALE

By: Mary Manross
Mary Manross, Mayor

ATTEST:

CONSULTANT:

KUV Consultants

By: Kaf Raman
Kaf Raman, Principal

By: Carolyn Jagger
Carolyn Jagger, City Clerk

CITY OF SCOTTSDALE REVIEW:

CITY CONTRACT ADMINISTRATOR

By: Karl Pape
Karl Pape
Water Operations Coordinator

Monroe C. Warren
Monroe C. Warren
Purchasing Director

Myrae M. Kuklok
Myrae M. Kuklok
Risk Management Director

David Mansfield
David Mansfield
Water Resources General Manager

APPROVED AS TO FORM:

Joseph Bertoldo
Joseph Bertoldo
City Attorney