

AGREEMENT TO PERFORM ENGINEERING SERVICES
FOR THE CITY OF REDLANDS' CAPITAL IMPROVEMENT PROGRAM – SEWER
PIPELINE REPLACEMENT PROJECT

This agreement for engineering services for the City of Redlands' Capital Improvement Program – Sewer Pipeline Replacement Project ("Agreement") is made and entered into this 6th day of May, 2008 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and MDS Consulting ("Consultant"). City and Consultant are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

In consideration of the mutual promises contained herein, City and Consultant agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant to perform engineering services for City's Capital Improvement Program – Sewer Pipeline Replacement Project (the "Services").
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing like and similar types of Services.

ARTICLE 2 - SERVICES OF CONSULTANT

- 2.1 The Services which Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by this reference.
- 2.2 Consultant shall comply with all applicable Federal, State and local laws and regulations in the performance of this Agreement including, but not limited to, the Americans with Disabilities Act, the Fair Employment and Housing Act and prevailing wage laws commencing at Labor Code section 1770 *et seq.* and non-discrimination laws including the Americans with Disabilities Act. Pursuant to Labor Code section 1773.2, copies of the prevailing rates of per diem wages as determined by the Director of the California Department of Industrial Relations for each craft, classification, or type of worker associated with the performance of the Services are on file at the City of Redlands Municipal Utilities and Engineering Department, Civic Center, 35 Cajon Street, Suite 15A (P.O. Box 3005 mailing), Redlands, California 92373.
- 2.3 Consultant acknowledges that if it violates the Labor Code provisions relating to prevailing wage, City may enforce those provisions by issuing a notice of the withholding of contract payments to Consultant pursuant to Labor Code section 1771.6.

- 2.4 If Consultant executes an agreement with a subcontractor to perform any of the Services, Consultant shall comply with Labor Code sections 1775 and 1777.7, and shall provide the subcontractor with copies of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Consultant acknowledges that the statutory provisions imposing penalties for the failure to comply with state wage and hour laws and to pay prevailing wages may be enforced by City pursuant to Labor Code sections 1775 and 1813.
- 2.5 Consultant and its subcontractors shall comply with the provisions of Labor Code section 1776 regarding payroll records' maintenance, certifications, retention and inspection.
- 2.6 Consultant acknowledges that eight (8) hours constitutes a legal day's work pursuant to Labor Code section 1810.
- 2.7 If applicable, Consultant shall comply with the provisions of Labor Code section 1777.5 relating to apprenticeships, and Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815.

ARTICLE 3 - RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City will make reasonable provision for Consultant to enter upon City-owned property, as required by Consultant, to perform the Services.
- 3.3 City designates Eric Weck as City's representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to performance of the Services.

ARTICLE 4 - PERFORMANCE OF SERVICES

- 4.1 Consultant shall perform the Services in a prompt and diligent manner and in accordance with the schedule set forth in Exhibit "B," entitled "Project Schedule."
- 4.2 At any time during the term of this Agreement, City may request that Consultant perform Extra Services. As used herein, "Extra Services" means any work which is determined necessary by City for the proper completion of the project or work for which the Services are being performed, but which the Parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Provided the Extra Work does not exceed twenty percent (20%) of the compensation to be paid by City to Consultant for the Services, such Extra Work may be agreed to by the Parties by written amendment to this Agreement,

executed by City's City Manager. Consultant shall not perform, nor be compensated for, Extra Work without such written authorization from City.

ARTICLE 5 - PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of One Hundred Eight Thousand Nine Hundred Seventy Dollars (\$108,970.00). City shall pay Consultant on a time and materials basis up to the not to exceed amount, in accordance with Exhibit "C" entitled "Project Costs," and based upon the hourly rates shown in Exhibit "D," entitled "Rate Schedule." Both Exhibits "C" and "D" are attached hereto and incorporated herein by this reference.
- 5.2 Consultant shall submit monthly invoices to City describing the work performed during the preceding month. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses, if any. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice, provided (1) the Services reflected in the invoice were performed to the reasonable satisfaction of City in accordance with the terms of this Agreement, (2) that the number of hours of Services set forth in the invoice reflects the amount of time ordinarily expended for such Services by members of the profession currently practicing in the same locality under similar conditions, and (3) that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of the Agreement.
- 5.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Eric Weck
Municipal Utilities and Engineering Dept.
City of Redlands
35 Cajon Street, Suite 15A
PO Box 3005 (mailing)
Redlands, CA 92373

Consultant

Eric Spangler
MDS Consulting
17320 Redhill Avenue
Suite 300
Irvine, CA 92614

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to who notices and payments are to be given by giving notice pursuant to this section 5.3.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

- 6.1 All insurance required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform any Services unless and until all required insurance listed below is obtained by Consultant. Consultant shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. All insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.
- 6.2 **Workers' Compensation and Employer's Liability.**
- Consultant shall secure and maintain Worker's Compensation and Employer's Liability insurance throughout the duration of its performance of the Services in accordance with the laws of the State of California, with an insurance carrier acceptable to City.
- 6.3 **Hold Harmless and Indemnification.** Consultant shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by Consultant's and its officers', employees' and agents' sole negligent acts or omissions in performing the Services.
- 6.4 **Assignment.** Consultant is expressly prohibited from assigning any of the Services without the express prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Consultant shall add the assignee as an additional insured and provide City with the insurance endorsements required by this Agreement prior to the performance of any Services by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.
- 6.5 **Comprehensive General Liability Insurance.** Consultant shall secure and maintain in force throughout the term of this Agreement comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. City shall be named as an additional insured. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.6 **Professional Liability Insurance.** Consultant shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.

- 6.7 Business Auto Liability Insurance. Consultant shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Consultant owned vehicles used in connection with Consultant's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City. City shall be named as an additional insured.

ARTICLE 7 - CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in real property that may be the subject of this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's Services. Consultant further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
- A. Does not make or participate in:
- (i) the making or any governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
 - (ii) the issuance, denial, suspension or revocation of permits, licenses, applications, certifications, approvals, orders or similar authorizations or entitlements;
 - (iii) authorizing City to enter into, modify or renew a contract;
 - (iv) granting City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
 - (v) granting City approval to a plan, design, report, study or similar item;
 - (vi) adopting, or granting City approval of, policies, standards or guidelines for City or for any subdivision thereof.
- B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially all the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of Interest Code under Government Code section 87302.

- 7.3 In the event City officially determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file the subject Form 700 with the City Clerk's office pursuant to the written instructions provided by the Office of the City Clerk.

ARTICLE 8 - GENERAL CONSIDERATIONS

- 8.1 **Attorneys' Fees.** In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 8.2 **Prohibition Against Assignment.** Consultant shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms, and conditions of this Agreement.
- 8.3 **Documents and Records.** All documents, records, drawings, designs, cost estimates, electronic data files, databases and other documents developed by Consultant in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.
- 8.4 **Independent Contractor Status.** Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Consultant shall supply all tools and instrumentalities required to perform the Services. All personnel employed by Consultant are for its account only, and in no event shall Consultant or any personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind City to any obligation.
- 8.5 **Termination.**
- A. Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.
- B. This Agreement may be terminated by City, in its sole discretion, by providing thirty (30) days' prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate.

C. If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant.

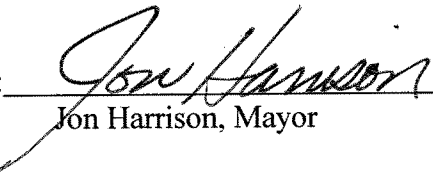
D. Upon receipt of a termination notice, Consultant shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of any data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services. Consultant shall be compensated on a pro-rata basis for Services completed up to the date of termination.

- 8.6 Books and Records. Consultant shall maintain any and all books, ledgers, invoices, accounts and all other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement. Such books shall be available at all reasonable times for examination by City at the office of Consultant.
- 8.7 Entire Agreement/Amendment. This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, any amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.9 Severability. If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

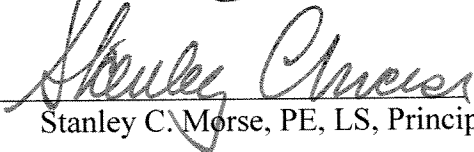
IN WITNESS WHEREOF, duly authorized representatives of the City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS

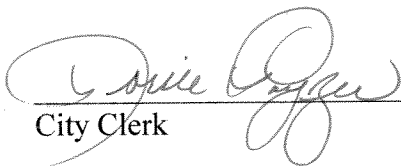
MDS CONSULTING

By: 
Jon Harrison, Mayor

By: 
Eric Spangler, Project Manager

By: 
Stanley C. Morse, PE, LS, Principal

Attest:


City Clerk

“Attachment A”
Scope of Services & Project Understanding

Scope of Services

We propose to accomplish the following:

1. **Kick off Meeting** with City Municipal Utilities and Engineering Staff to discuss scope, cost, schedule, and other pertinent details of the project.

2. **Project Research and Scoping:** MDS will acquire and review Water and Sewer Atlas Maps and As-Built plans from the City, will acquire applicable benchmarks and locations to commence design and survey work.

3. **Utility Research and Data Collection:** MDS will research existing dry and wet utility sizes and locations in the construction areas. We will draft letters to Utility Companies requesting facility maps in the subject areas, and propose that the City of Redlands send these letters to the Utility Companies, with the applicable fees, in order that the Utility Companies are more responsive to these requests. Available As-Built plans will also be used to locate approximate locations of underground utilities.

MDS will call Underground Service Alert to have the Utility Companies mark approximate locations of their underground facilities, so our Field Surveyors can shoot these markings.

4. **Walk Proposed Construction Sites** and take photos to aid in design and locating surface and underground facilities.

5. **Field Topographic Surveys** at the thirteen Remove-and-Replace construction locations, using localized horizontal and vertical survey control. The 10” concrete sewer abandonment section in Texas Street will not be included in the field survey. Existing sewer manholes will be removed (dipped) to shoot flowline invert elevations of perimeter manholes, including one manhole upstream and downstream of the construction area. Field cross-sections will be taken of the existing surface, features, and appurtenances along the proposed reconstruction route, including 100’ beyond each end.

MDS would request that the City maintenance staff open and close all existing manholes prior to our Surveyors arriving on-site, in order to loosen the lids of what might be some very old manholes.

6. **Create Base Map** in CAD compiling field topo linework, results of utility research, City's GIS linework, photos, As-Built plans.
7. **Prepare Construction Plans** including plan view at 1"=40' and profile view at 1"=4' on Standard City of Redlands 24"x36" title block, using the current Municipal Utilities Design standards, and APWA standards where necessary. The Texas Street Sewer Abandonment sheet will be a 60-scale (1"=60') plan view sheet with no profile view. We propose to create one single set of plans of about seventeen sheets. Three additional sheets may be necessary for the street improvement construction within the alleys, for a total of twenty sheets.

We have assumed Traffic Control plans will be the Contractor's responsibility.

8. **Prepare Technical Specifications** and bidding documents for the project, including the Bidding Schedule, Special Provisions, and Technical Specifications referencing City Standards. We have assumed that the City will be responsible for inviting and distributing this information to Contractors, and preparing the Construction Contract.
9. **Prepare Opinion of Probable Cost** with the 95% and Final Submittals to the City.
10. **Prepare Project Schedule** at the request of the City, including design and construction, based upon the City's desired timelines.
11. **Deliverables** to the City will include three copies of construction plans at 50% complete, three copies of the plans at 95% complete and draft specifications. The Final submittal will include one set of reproducible mylars, two bond copies, and the Technical Specification. MDS will send a copy of the construction plans to Utility Companies/Agencies if necessary and requested by the City.

It is our assumption that the Texas Street concrete sewer abandonment at the intersection of Lugonia Ave is not within Caltrans R/W, and will not require a Caltrans encroachment permit. We have been informed by City Staff that this portion of Lugonia Ave is not a Caltrans State Highway. Traffic Control plans will be the responsibility of the Contractor. No additional R/W or sewer easements are included in this proposal.

12. **Project Meetings:** Appropriate staff members of MDS will attend up to 4 meetings with City Staff and other parties over the life of the project.
13. **As-Built Drawings:** At the end of construction, the original mylars will be modified to reflect the as-built condition. Updated CAD files will be submitted to the City, if

requested.

Optional Tasks that MDS can perform include:

- Potholing at approximately \$4,500 per location. The City may be able to contract this service directly with a potholing contractor for a better rate. It is our hope that potholing will not be necessary since sewer lines currently exist in most of the proposed alignments and sewer is typically the deepest utility. If necessary, MDS will sub-contract the potholing work to a qualified contractor.
- SWPPP/NOI/Erosion Control plans: Cost contingent upon scope.

Tasks that are not included in this proposal include:

- Structural Engineering Plans or Calculations
- Geotechnical Reports or Studies
- Traffic Control Plans
- Vacation/Quitclaiming of existing sewer easements based on possible realignments.

Project Understanding

Pursuant to your request, we have prepared the following civil engineering and land surveying proposal to prepare construction plans for sewer pipeline replacement at fourteen locations within the City. Based on our understanding, the following sewer lines will be included in our scope to design:

<i>Location Number</i>	<i>Location of Line</i>	<i>Sewer line construction</i>	<i>Approx length of sewer line (LF)</i>
1	La Feliz Drive	Upsize existing 6" to 8", try to lower line	650
2	Kansas Street	Upsize existing 15" to 24"	390
3	Crescent Ave	Upsize existing 6" to 8"	300
4	Grove Street	Remove & Replace 8"	1300
5	Olive Street	Upsize existing 6" to 8"	930
6	Cypress Ave	Remove & Replace 8"	600
7	Church & Clark Streets	Upsize existing 6" to 8", realign sewer in Clark St.	570

8	Brockton Ave	Remove & Replace 12"	165
9	Alley between Western & Brockton	Remove & Replace 8"	665
10	Alley s/o Sun Ave	Remove & Replace 8"	280
11	Alley between Brockton & Sun	Remove & Replace 8"	845
12	Tennessee Street	Remove & Replace 10"	650
13	Texas Street between Lugonia & Brockton	Abandon 10" Conc. Sewer, reconnect 1 lateral to adjacent 8" VCP	1315 LF to be abandoned
14	Crown Street	Remove & Replace 8"	531

City of Redlands Sewer Replacement Project - Phase III
Manhour Estimate & Fee Breakdown for Civil Engineering Design Services

		Principal	Project Manager	Project Engineer	Designer	Survey Analyst	Draftsperson	Plan Processor /Office Administrator	Total Hours	Two-Man Survey Party (Days)	Total Labor	Non-Labor: plotting (\$1.25/sf), copies (\$0.25/sf), deliveries	Total
	Hourly Rates	\$165	\$145	\$130	\$120	\$120	\$90	\$90		\$2,200 (Daily)			
	Task Description												
1	Kick off meeting		4						4		\$ 580		\$ 580
2	Project Research & Scoping	2	5	8							\$ 2,095	\$ 250	\$ 2,345
3	Utility Research & Data collection										\$ -		\$ -
	Utility letters & USA markings prior to field survey			16					16		\$ 2,080		\$ 2,080
4	Walk Construction Sites, photos			8					8		\$ 1,040		\$ 1,040
5	Field Topo Surveys					40			40	13.5	\$ 34,500	\$ 75	\$ 34,575
6	Create Base map in cad including wet & dry utilities from As-built plans, City's GIS linework, Field Survey, and Photos			40	12				52		\$ 6,640		\$ 6,640
7	Prepare Construction Plans	2	36	160	36		170		404		\$ 45,970		\$ 45,970
8	Prepare Technical Specifications		4	20					24		\$ 3,180		\$ 3,180
9	Prepare Opinion of Probable Cost Estimate		2	16					18		\$ 2,370		\$ 2,370
10	Prepare Project Schedule		4	4					8		\$ 1,100		\$ 1,100
11	Deliverables								-		\$ -		\$ -
	50% Design Submittal		2	1			1	2	6		\$ 690	\$ 400	\$ 1,090
	95% Design Submittal		2	1			1	2	6		\$ 690	\$ 400	\$ 1,090
	Plan Sets to Utility Companies			2				5	7		\$ 710	\$ 100	\$ 810
	Final Design Submittal		2						2		\$ 290	\$ 400	\$ 690
12	Project Meetings (4)		16	8					24		\$ 3,360		\$ 3,360
13	As-Built Drawings		2	2	4				8		\$ 1,030		\$ 1,030
	Delivery of Electronic Files and Mylars			2	3				5		\$ 620	\$ 400	\$ 1,020
	Subtotal	4	79	288	55	40	172	9	632	13.5 days	106,945	2,025	108,970
	Total Cost	\$660	\$11,455	\$37,440	\$6,600	\$4,800	\$15,480	\$810		\$29,700	\$ 106,945	\$ 2,025	\$ 108,970

EXHIBIT C – "PROJECT COSTS"

EXHIBIT D – "RATE SCHEDULE"

STANDARD FEE SCHEDULE

The Client agrees to pay Consultant as compensation for all authorized contract extension or additional work not included in the Scope of Services heretofore stated at the hourly rates below.

PRINCIPAL	\$165 / Hour
PROJECT MANAGER	\$145 / Hour
SENIOR PLANNER	\$145 / Hour
LICENSED LAND SURVEYOR	\$130 / Hour
REGISTERED CIVIL ENGINEER	\$130 / Hour
DESIGNER	\$120 / Hour
PLANNER	\$120 / Hour
DRAFTSPERSON	\$90 / Hour
PLAN PROCESSOR	\$90 / Hour
TWO-MAN SURVEY PARTY	\$220 / Hour
THREE-MAN SURVEY PARTY	\$252 / Hour
FIELD SUPERVISOR / 1-MAN CREW	\$130 / Hour

Invoices may be submitted biweekly and are due and payable upon receipt. In the event any invoices are not paid within (30) days after rendering of the invoices, it shall commence bearing interest on the date the invoice was rendered and Client agrees to pay all accrued interest, together with the charges for services rendered unless special arrangements are made.

Reimbursable items such as fees, permits, title company charges, delivery charges, reproductions, and related expenses will be invoiced directly by the vendors to you. Should we incur reimbursable expenses we will invoice them to you at direct cost plus 15% for handling, unless other arrangements have been made.

Client understands and agrees that the fees quoted for the services to be performed as set forth above and as outlined in the attached Standard Fee Schedule are subject to adjustments in accordance with any increase in the Consumer's Price Index or other mutually agreed upon cost index. If in the event of such increase, the fee provided above and on the Standard Fee Schedule shall increase by a like percentage. This increase shall apply to that portion of the work yet to be performed as of the date of increase. The first date of any escalation for this agreement will be October 2007 and may be escalated each year thereafter.