Chandler - Arizona

PURCHASING ITEM
FOR
COUNCIL AGENDA
CS11-148

1. Agenda Item Number: 21

2. Council Meeting Date: April 28, 2011

TO: MAYOR & COUNCIL

THROUGH: CITY MANAGER

3. Date Prepared: April 4, 2011

4. Requesting Department: Management Services

5. SUBJECT: Approve Agreement CS1-910-2967 with Frontier Mechanical Inc. dba FMI Heating & Cooling, Inc., Trane, Inc. and Chandler Air Inc., for HVAC Repairs, Maintenance and Service in a total amount not to exceed $300,000.00.

6. RECOMMENDATION: Recommend approval of Agreement CS1-910-2967 with Frontier Mechanical Inc. dba FMI Heating & Cooling, Inc., Trane Inc. and Chandler Air Inc., for HVAC Repairs, Maintenance and Service in a total amount not to exceed $300,000.00.

7. HISTORICAL BACKGROUND/DISCUSSION: The City frequently uses outside vendors for repairs and maintenance of HVAC equipment. These agreements will provide the City with three (3) contractors for scheduled, preventative and emergency HVAC repairs throughout the City. Buildings and Facilities will specifically use these contracts for preventative and unscheduled maintenance on seven (7) water and air cooled chillers. Work on these chillers requires factory trained technicians for the servicing of the large compressors, pumps and chiller tubes and sophisticated control systems. Municipal Utilities Department will utilize these contracts for maintenance and repair of packaged and small HVAC units at various MUD operated buildings.

8. EVALUATION PROCESS: Bids were advertised and all registered vendors were notified. Eight responses were received. After evaluating the responses, City staff is recommending award to three (3) contractors to ensure rapid response for safety and health concerns as well as ensuring coverage for City-owned equipment. In the past, the City has experienced difficulty with Contractors responding to emergency call outs during the summer months due to the increase in demand for this type of service. Having multiple agreements should eliminate past problems in acquiring emergency services.
The initial term of this Agreement will be for May 1, 2011 through April 30, 2012 with provisions to extend for four (4) additional one-year periods.

9. FINANCIAL IMPLICATIONS:

Costs	$300,000.00
Savings	N/A
Long Term Costs	N/A
Fund Source	

Account Name	Fund Name	Program Name	CIP Funded	Funds
101.3200.0000.5219	General Fund, Building & Facilities	Other Prof./Contract Svcs	Non-CIP	$150,000
605.3800.0000.5410	Water Operating, Water Distribution	Buildings & Grounds R&M	Non-CIP	$ 10,000
605.3830.0000.5410	Water Operating, Water Treatment Plant	Buildings & Grounds R&M	Non-CIP	$ 20,000
605.3840.0000.5410	Water Operating, Environmental Resources	Buildings & Grounds R&M	Non-CIP	$ 10,000
605.3860.0000.5410	Water Operating, Water Production Facilities	Buildings & Grounds R&M	Non-CIP	$ 50,000
605.3880.0000.5410	Water Operating, Meter Services	Buildings & Grounds R&M	Non-CIP	$ 10,000
615.3900.0000.5410	Wastewater Operating, Wastewater Collection	Buildings & Grounds R&M	Non-CIP	$ 20,000
615.3960.0000.5410	Wastewater Operating, Airport WRF	Buildings & Grounds R&M	Non-CIP	$ 10,000
616.3930.0000.5410	Industrial Wastewater Operating, RO Facility	Buildings & Grounds R&M	Non-CIP	$ 10,000
625.3700.0000.5410	Solid Waste Operating, Solid Waste Services	Buildings & Grounds R&M	Non-CIP	$ 10,000

10. PROPOSED MOTION: Move to award Agreement CS1-910-2967 with Frontier Mechanical Inc. dba FMI Heating & Cooling, Inc., Trane Inc. and Chandler Air Inc., for HVAC Repairs, Maintenance and Service in a total amount not to exceed $300,000.00.

ATTACHMENT: Agreements (3); spreadsheet

APPROVALS

11. Requesting Department
Mike Mandt, Acting Purchasing Supervisor

12. Procurement Officer
Sharon Brause, CPPB, CPCP

13. Department Head
Dennis Strachota, Management Services Director

14. Acting City Manager
Rich Dlugas

CC Form 10 - 02/95

HVAC Repair, Maintenance and Service
Bid No. CS1-910-2967

Group 1	Uni-Tech	Chandler Air	FMI Heating & Cooling	Trane	Pueblo Mechanical	Absolute Air	Delta BAP	Emcor Services of Arizona
1. Labor/Regular Hours:	$50.00/HR	$50.00/HR	$55.00/HR	$99.11/HR	$74.50/HR	$64.00/HR	$75.00/HR	$89.00/HR
Trip Charge/Flat Rate:	$25.00	$0	$0	$50.00	$35.00	$64.00	$75.00	$55.00
2. Labor, After hours/Emergency:	$60.00/HR	$62.50/HR	$82.50/HR	$148.66/HR	$106.00/HR	$96.00/HR	$110.00/HR	$133.50/HR
Trip Charge/Flat Rate:	$25.00	$0	$0	$50.00	$35.00	$96.00	$110.00	$55.00
3. Labor/Weekend & Holiday:	$60.00/HR	$62.50/HR	$82.50/HR	$198.22/HR	$117.00/HR	$128.00/HR	$110.00/HR	$133.50/HR
Trip Charge/Flat Rate:	$25.00	$0	$0	$50.00	$35.00	$128.00	$110.00	$55.00
4. Parts - Components, Units, etc.:	20%	20%	30%	25% - Trane Parts Only	11%	18%	20%	22%
5. Labor, for services outside the scope of contract:	$60.00/HR	$65.00/HR	$55.00/HR	$107.00/HR	$74.00/HR	$64.00/HR	$75.00/HR	$89.00/HR
6. Training City Staff (if required)	$60.00/HR	$50.00/HR	$55.00/HR	$107.00/HR	$74.00/HR	$64.00/HR	$75.00/HR	$95.00/HR
Group 2	No Bid	No Bid				No Bid		
1. Labor/Regular Hours:			$70.00/HR	$107.79/HR	$78.50/HR		$80.00/HR	$95.00/HR
Trip Charge/Flat Rate:			$0	$50.00	$35.00		$80.00	$55.00
2. Labor, After hours/Emergency:			$105.00/HR	$161.68/HR	$106.00/HR		$120.00/HR	$142.50/HR
Trip Charge/Flat Rate:			$0	$50.00	$35.00		$120.00	$55.00
3. Labor/Weekend & Holiday:			$105.00/HR	$215.58/HR	$117.00/HR		$120.00/HR	$142.50/HR
Trip Charge/Flat Rate:			$0	$50.00	$35.00		$120.00	$55.00
4. Parts - Components, Units, etc.:			30%	25% - Trane Parts Only	11%		20%	22%
5. Labor, for services outside the scope of contract:			$70.00/HR	$122.00/HR	$78.50/HR		$80.00/HR	$95.00/HR
6. Training City Staff (if required)			$70.00/HR	$122.00/HR	$74.00/HR		$80.00/HR	$95.00/HR
Group 3								
1. Labor/Regular Hours:			$70.00/HR	No Bid	$74.00/HR		$75.00/HR	No Bid
Trip Charge/Flat Rate:			$0		$35.00		$75.00	
2. Labor, After hours/Emergency:			$105.00/HR		$106.00/HR		$110.00/HR	
Trip Charge/Flat Rate:			$0		$35.00		$110.00	
3. Labor/Weekend & Holiday:			$105.00/HR		$117.00/HR		$110./HR	
Trip Charge/Flat Rate:			$0		$35.00		$110.00	
4. Parts - Components, Units, etc.:			30%		12%		20%	
5. Labor, for services outside the scope of contract:			$70.00/HR		$74.00/HR		$75.00/HR	
6. Training City Staff (if required)			$70.00/HR		$74.00/HR		$75.00/HR	

CITY OF CHANDLER SERVICES AGREEMENT
HVAC REPAIRS, MAINTENANCE & SERVICE
AGREEMENT NO.: CS1-910-2967

THIS AGREEMENT is made and entered into this day of , 2011, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **FRONTIER MECHANICAL, INC dba FMI Heating & Cooling Inc.**, a Corporation of the States of Arizona & Colorado, 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 Building Maintenance Supervisor/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.

1.3 Subcontractors. During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

1.4 Subcontracts. CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2 SCOPE OF WORK: CONTRACTOR shall provide services all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included 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 Licenses. CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.

2.3 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.

2.4 Compliance With Applicable Laws. CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.

2.4.1 Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

2.4.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.

2.4.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

2.4.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.

2.4.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.

2.5 Warranties.

2.6 One-Year Warranty. CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.

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.

3.3 New/Current Products. All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

3.4 Property of CITY. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

3.5 PRICE: CITY shall pay to CONTRACTOR an amount not to exceed **Three Hundred Thousand Dollars ($300,000)**, including all companion Agreements, for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.

4 TAXES

4.1. CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.

4.2 **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.

4.3 **Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.

4.4 **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.

4.5 **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.

4.6 **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.

4.7 **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.

5. **TERM:** The term of the Contract is **one (1) year** (s), commencing on the **1st day of May, 2011** and terminating on **April 30, 2012** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **four (4)** additional terms of one year each. CITY reserves the right, at its sole discretion, to extend the Contract for up to sixty (60) days.

6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. 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.

6.1 **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. 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.

6.2 **Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. CITY'S CONTRACTUAL REMEDIES:

7.1 **Right to Assurance.** If the City 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 City 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.

7.3 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.

7.4 **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.

7.5 **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.

7.6 **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 thirty (30) 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 under 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 terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
2) If CONTRACTOR is adjudged a bankrupt or insolvent;
3) If CONTRACTOR makes a general assignment for the benefit of creditors;
4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

8.3. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, CITY may cancel this Contract 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.

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.

8.8. Availability of Funds for the next Fiscal Year. Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

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. Dispute Resolution

10.1 Alternative Dispute Resolution. The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.

10.2 Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of

Arizona.

10.3 Jurisdiction and Venue. The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

10.4 Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

11. INDEMNIFICATION: To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, 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 of Chandler, 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 of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, 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:

12.1 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 of Chandler, 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.

12.2 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 of Chandler 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.

12.3 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 there from;

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.

12.4 Commercial General Liability - Minimum Coverage Limits. The Commercial General Liability insurance required herein shall be written for not less than $1,000,000 limits of liability. 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.

12.5 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).

12.6. 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.

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

Contract Administrator:	Parks & Facilities
Contact:	Larry LaMay
Mailing Address:	PO Box 4008–MS 906
Physical Address:	650 E Ryan Rd
City, State, Zip	Chandler, AZ 85244
Phone:	480-782-2501
FAX:	480-782-2560

In the case of the CONTRACTOR

Firm Name:	FMI Heating & Cooling
Contact:	John Fullford
Address:	1721 W 10th Pl, #4-B
City, State, Zip	Tempe , AZ 85281
Phone:	480-656-3800
FAX:	480-446-0640
EMAIL:	JFullford@FMIHeatingandCooling.com

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. CONFLICT OF INTEREST:

14.1 No Kickback. CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.

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

14.3 No Conflict: 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.

15 GENERAL TERMS:

15.1 Performance & Payment Bonds. This requirement applies to project quotes only and *may* be required at the time of project award. A Performance bond equal to the full project amount conditioned upon the faithful performance of the contract in accordance with specifications and conditions thereof. Such bond shall be solely for the protection of the CITY. A payment bond equal to the full project amount solely for the protection of the claimants supplying labor and materials to the Contractor or his sub-contractors in the prosecution of the work provided for under such project. Each bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of his judgment such reasonable attorney's fees as may be fixed by a judge of the court. Within fifteen (15) days from the time a Contract is awarded, CONTRACTOR shall furnish fully executed Performance and Payment Bond (Labor and Materials) in such form and context as determined by CITY from a surety approved by CITY. Said bonds shall be in a sum no less than one hundred (100%) of the Contract price.

CITY has the option to forfeit said bonds if the Contract is terminated by the default of CONTRACTOR or if CITY determines that CONTRACTOR is unable or unwilling to complete the work as specified in the Contract Documents.

If the Contract schedule is not adhered to, and CITY determines that the work is unlikely to be completed within a reasonable time after the original target date, then CITY may terminate the Contract and collect the Performance Bond.

The Performance Bond will be reviewed annually and any increases in the contract amount will require bond to be increased and reissued.

15.2 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.

15.3 Entire Agreement. This Agreement, including Exhibits A and B 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.

15.4 Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

15.5 Assignment: Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

15.6 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.

15.7 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.

15.8 **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.

15.9 **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 2011.

FOR THE CITY OF CHANDLER

MAYOR

ATTEST:

City Clerk

Approved as to form:

City Attorney

FOR THE CONTRACTOR

By: Signature

ATTEST: If Corporation

SEAL

Secretary

EXHIBIT A

Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:	**CS1-910-2967**		
Name (as listed in the contract):	**FMI Heating & Cooling Inc.**		
Street Name and Number:	**1721 W 10th Pl #4-B**		
City: Tempe	**State:** AZ	**Zip Code:** 85281	

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;

2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

Printed Name: Robert F. Scmar

Title: Vice President

Date (month/day/year): 4/11/11

EXHIBIT B
SCOPE OF WORK

CONTRACTOR(s) shall provide emergency repair, maintenance, installation, and retrofit for heating, ventilation, and air conditioning (HVAC) equipment. CONRACTOR(s) shall supply all labor, supervision, materials, tools, equipment, and effort necessary to repair, retrofit, or replacement of HVAC systems and products used in the commercial and industrial environments.

CONTRACTOR, when submitting a price quote to perform work, shall use the quote as an "estimate" and no work shall be performed without prior approval from Contract Administrator/designee. The Contract Administrator/designee will monitor CONTRACTOR's time and materials, ensuring hours spent on each job is verifiable. Only actual hours on the job shall be billed. The only exception will be "special projects", wherein one price is all-inclusive to perform an entire job. CONTRACTOR shall be compensated for additional work requested that is not detailed in this scope of work based on the labor rates listed in Exhibit C.

The work shall consist of, but not be limited to: repairs, maintenance, retrofitting for the following HVAC groups:

Group 1: 3/4 ton through 20-ton units:

Package air conditioning units / split systems / heat pumps
Include all associated equipment
Exhaust Fans
Evaporative Coolers

Group 2: 20 ton through 250 ton:

Package air conditioning units
Computer room a/c equipment
Air Washers
Fan fired heating systems
Chilled water/chilled water pumps
- Centrifugal, Submersible, Vertical, Turbine

Cooling Towers:
- Drift Eliminators
- Spray Nozzles
- Float mechanisms
- Drive motors, shafts, and bearings

Chillers, up to 250 tons
- Reciprocating
- Scroll
- Screw
- Boilers

Variable Air Volume (VAV) units
Fan Coil Units
Associated support components:
- Distribution piping/plumbing including component parts and pipe insulation

Electrical distribution:
- 120 volts through 600 volts, single and three phase
- Wiring
- DDC controls

Contactors, magnetic starters:
- Conduit
- Thermostats

Velocity controllers
Transmitters

Duct:

Fabrication, design, and installation
Repair

Pneumatic controls:

Calibrations
Repairs to the pneumatic system
Repairs/replacement to air compressors
Air/dirt separator units

Group 3: Commercial Low Temperature Equipment

Ice Machines
Freezers
Refrigerators

1. **QUALIFICATIONS.** CONTRACTOR must have been in the HVAC service business for a minimum of three (3) years, and shall be completely familiar with the specified requirements and methods needed for proper performance of this agreement. CONTRACTOR shall have a fully stocked service vehicle. CONTRACTOR shall possess an L-39 license for Air Conditioning and Refrigeration. A copy of all licenses and certifications must accompany bid response.

   CONTRACTOR's technical staff shall be CFC certified. Technicians shall be thoroughly trained with a minimum of three (3) years' experience in the field of air conditioning and heating as well as have factory certified training. Proof of certification must accompany bid response.

   Repair work for HVAC service shall be performed with the use of one (1) HVAC technician. If needed, CONTRACTOR may dispatch a laborer to aid the technician. Any additional technicians or laborers needed for a specific job must be pre-approved Contract Administrator/designee. Please note that one (1) HVAC technician may complete repair work. However, depending upon the work being requested and the requirements, the job may necessitate having more than one person.

2. **SERVICE HOURS.** Due to the nature of some City facilities operating on a seven/twenty-four schedule, CONTRACTOR shall make available to CITY services 365 days per year, 24 hours per day.

   a. Regular Service shall be work performed between 8:00 am to 5:00 pm Monday through Friday, excluding City holidays.
   b. After Hours shall be work performed after 5:00 pm and before 8:00 am the next morning and Saturday work.
   c. Sunday & Holidays shall be work performed during Sundays or during any City holiday.

3. **RESPONSE TIMES.** Response time to all *REGULAR* service work shall be within four (4) hours on-site after CONTRACTOR receives request from CITY, with the exception of an emergency request that occurs during regular hours, which shall be two (2) hours. AFTER HOURS and SUNDAY &HOLIDAY requests shall have a two (2) hour response time. CONTRACTOR shall provide twenty-four (24) hour access to their staff and shall respond back to a request within thirty (30 minutes) of receiving such request.

4. **REQUIREMENTS.** CONTRACTOR shall obtain CITY authorization before using machinery/equipment that will be considered as additional cost to CITY and used indirectly to the HVAC industry for the performance of normal services. After CITY approval of needed machinery/equipment, items shall be line item priced and allowed at administrative mark-up cost of five (5%).

   CONTRACTOR shall perform work in accordance with all applicable laws, codes, and regulations required by authorities having jurisdiction over such work and provide for all inspections and permits

required by federal, state, and local authorities in furnishing, transporting and installing materials as shown or for completing the work identified herein.

Repair work for HVAC services shall be performed with the use of one (1) HVAC technician. If deemed necessary, CONTRACTOR may dispatch a laborer to aid the technician. Additional technicians or laborers needed for a specific job shall be pre-approved by the Contract Administrator/designee. The CITY will not permit "on the job" training of technicians.

CONTRACTOR shall meet all Federal EPA and OSHA guidelines in the proper handling and disposal of refrigerant, refrigerant oils, and refrigerant filters/dryers. CONTRACTOR shall pay for all fees and /or charges, permits and licenses. Costs may to be billed back to CITY without mark-up.

All vehicles used by CONTRACTOR shall be clearly identified with the name of the company, address of local office and phone number of local office on each side of the equipment, including personal transportation vehicles. CONTRACTOR's service truck shall carry sufficient supply to repair and equipment to perform routine HVAC service and repairs, and hot water boiler service repair.

CONTRACTOR shall perform the work in such a way as to minimize disruption to the normal operation of CITY staff. Upon completion of work, CONTRACTOR shall be responsible for cleaning and removing from the job site all debris; materials and equipment associated with the work performed, and shall obtain sign-off of work by CITY staff.

CONTRACTOR shall make necessary repairs to HVAC units in such a manner that does not damage CITY property. In the event damage occurs to CITY property, or any adjacent property by reason of any repairs or installations performed under the contract, CONTRACTOR shall replace or repair the same at no cost to the CITY or adjacent property owner. If damage caused by CONTRACTOR has to be repaired or replaced by CITY, the cost of such work shall be deducted from the monies due CONTRACTOR.

In the event CONTRACTOR's work performance is unsatisfactory, CONTRACTOR will be notified by Contract Administrator/designee and given a four (4) hour period to correct the work. Labor for all re-work shall be at no cost to CITY. Additional parts replaced shall be billed at contract pricing.

5. **CONTRACTOR EMPLOYEES.** CONTRACTOR shall be required to provide as many personnel as needed to meet the scope of work, with the approval of the Contract Administrator/designee. In addition, CONTRACTOR's employees shall wear identification badges and a uniform shirt or vest bearing the CONTRACTOR 's name and/or logo while on CITY's premises. The badge shall have the CONTRACTOR's employees picture, name, and signature. CONTRACTOR's employees shall be required to wear a clean uniform bearing the Contractor's company name and/or logo. All employees shall conduct themselves in a professional and courteous manner.

CONTRACTOR employees are not to be accompanied in the work area by acquaintances, family members, or any other person unless said person is an authorized CONTRACTOR employee.

CONTRACTOR shall carry on the operation in such a manner that damage is not inflicted to existing facilities, grounds, utilities or other structures. In the event CONTRACTOR causes damage to CITY property, CONTRACTOR shall replace or repair the same at no cost to CITY as directed by the Contract Administrator/designee. If damage caused by CONTRACTOR has to be repaired or replaced by the Contract Administrator/designee, the cost of such work shall be deducted from the CONTRACTOR's monthly payments.

CONTRACTOR shall keep maintenance and repair records on each individual HVAC unit. CONTRACTOR shall keep City officials advised of each HVAC's condition and recommend necessary work needed to insure the equipment's reliability.

A Police background check will be required for all employees of CONTRACTOR. This is required due to the need to access restricted areas within the CITY.

6. **MAINTENANCE REQUIREMENTS.** The specifications listed herein are the minimum requirements and are intended to govern, in general, the requirements desired. The CITY reserves the right to make variations from these specifications. CONTRACTOR may be asked from time-to-time to change filters for Municipal Utilities Department.

7. **TIME & MATERIALS / LABOR HOURS.** CONTRACTOR, when submitting a quote to perform a time and materials task, shall use quote as an "estimate". The Contract Administrator/designee will monitor the CONTRACTOR's time. Only actual hours on the job shall be billed. Exceptions are "job quotes" wherein one price is all-inclusive to perform an entire job.

   CONTRACTOR shall be responsible for sourcing all HVAC parts/components/units necessary to repair/replace HVAC systems, unless it is deemed in the best interest of the CITY to use their own HVAC contracts to source said parts/supplies.

   Trip charges may be allowed when CONTRACTOR arrives on-site at the scheduled time and is unable to locate someone who knows about the call, or the technician examines and is unable to locate the problem, and therefore actual labor is not initiated. Should this be the case, *only the trip charge* will be allowed. Combination trip charges and labor rates shall not be allowed if the service call is legitimate and actual HVAC work is initiated.

8. **TRAINING.** CONTRACTOR may be required to provide technical expertise training in HVAC services to CITY staff. The training may be for old or new technology and will be held at a CITY facility, or if deemed necessary, at CONTRACTOR's facility. Training aides (e.g. service manuals, mock-up equipment, etc.) shall be provided by CONTRACTOR. CONTRACTOR shall be given advance notice to prepare research and schedule staff in order to provide an adequate presentation. The cost of this service will be line item priced in Exhibit C. All technical training shall be performed during regular business hours.

EXHIBIT C
PRICING

All billable rates after the first hour shall be in increments of one-quarter hour. Service rates shall start when CONTRACTOR's employee arrives on-site. Mileage charges and fuel surcharges are not allowed.

Group 1

1.	Labor, REGULAR business hours:	$55.99 per hr
	Trip charge (See Section 7)	$ n/a /flat rate
2.	Labor, AFTER hours/EMERGENCY:	$82.50 /per hr
	Trip charge (See Section 7)	$ n/a /flat rate
3.	Labor, WEEKEND AND HOLIDAY:	$82.50 /per hr
	Trip charge (See Section 7)	$ n/a /flat rate
4.	PARTS - COMPONENTS, UNITS, ETC., COST PLUS	30 %
5.	LABOR, FOR SERVICES OUTSIDE THE SCOPE OF CONTRACT:	$55.00 /per hr
6.	Training City staff (if required, to be conducted at CITY facility)	$55.00 /per hr

Group 2

1.	Labor, REGULAR business hours:	$70.00 /per hr
	Trip charge (See Section 7)	$ n/a /flat rate
2.	Labor, AFTER hours/EMERGENCY:	$105.00/per hr
	Trip charge (See Section 7)	$ n/a /flat rate
3.	Labor, WEEKEND AND HOLIDAY:	$105.00/per hr
	Trip charge (See Section 7)	$ n/a /flat rate
4.	PARTS - COMPONENTS, UNITS, ETC., COST PLUS	30 %
5.	LABOR, FOR SERVICES OUTSIDE THE SCOPE OF CONTRACT:	$70.00 /per hr
6.	Training City staff (if required, to be conducted at CITY facility)	$70.00 /per hr

Group 3

1.	Labor, REGULAR business hours:	$70.00 /per hr
	Trip charge (See Section 7)	$ n/a /flat rate
2.	Labor, AFTER hours/EMERGENCY:	$105.00/per hr
	Trip charge (See Section 7)	$ n/a /flat rate
3.	Labor, WEEKEND AND HOLIDAY:	$105.00/per hr
	Trip charge (See Section 7)	$ n/a /flat rate
4.	PARTS - COMPONENTS, UNITS, ETC., COST PLUS	30 %
5.	LABOR, FOR SERVICES OUTSIDE THE SCOPE OF CONTRACT:	$70.00 /per hr
6.	Training City staff (if required, to be conducted at CITY facility)	$70.00 /per hr

*Note: CONTRACTOR shall bill at no more than a 2-hr minimum

CITY OF CHANDLER SERVICES AGREEMENT
HVAC REPAIRS, MAINTENANCE & SERVICE
AGREEMENT NO.: CS1-910-2967

THIS AGREEMENT is made and entered into this [illegible] day of [illegible], 2011, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **TRANE, INC**, a Corporation of the State of Delaware, 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 Building Maintenance Supervisor/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.

1.3 Subcontractors. During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

1.4 Subcontracts. CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2 SCOPE OF WORK: CONTRACTOR shall provide services all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included 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 Licenses. CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.

2.3 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.

2.4 Compliance With Applicable Laws. CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.

2.4.1 Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use

E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

2.4.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.

2.4.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

2.4.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.

2.4.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.

2.5 Warranties.

2.6 One-Year Warranty. CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.

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.

3.3 New/Current Products. All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

3.4 Property of CITY. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

3.5 PRICE: CITY shall pay to CONTRACTOR an amount not to exceed **Three Hundred Thousand Dollars ($300,000)**, including all companion Agreements, for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as

set forth in Exhibit C, attached hereto and made a part hereof by reference.

4 **TAXES**

4.1. CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.

4.2 **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.

4.3 **Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.

4.4 **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.

4.5 **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.

4.6 **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.

4.7 **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.

5. **TERM:** The term of the Contract is **one (1) year** (s), commencing on the **1st day of May, 2011** and terminating on **April 30, 2012** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **four (4)** additional terms of one year each. CITY reserves the right, at its sole discretion, to extend the Contract for up to sixty (60) days.

6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. 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.

6.1 **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. 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.

6.2 **Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. **CITY'S CONTRACTUAL REMEDIES:**

7.1 **Right to Assurance.** If the City 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 City 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.

7.3 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.

7.4 **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.

7.5 **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.

7.6 **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 thirty (30) 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 under 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 terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
2) If CONTRACTOR is adjudged a bankrupt or insolvent;
3) If CONTRACTOR makes a general assignment for the benefit of creditors;
4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract 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.

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.

8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

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. **Dispute Resolution**

10.1 **Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.

10.2 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of

Arizona.

10.3 **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

10.4 Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, 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 of Chandler, 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 of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, 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:**

12.1 **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 of Chandler, 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.

12.2 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 of Chandler 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.

12.3 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 there from;

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.

12.4 Commercial General Liability - Minimum Coverage Limits. The Commercial General Liability insurance required herein shall be written for not less than $1,000,000 limits of liability. 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.

12.5 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).

12.6. 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.

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 CITY		In the case of the CONTRACTOR	
Department:	Parks & Facilities	Firm Name:	Trane Inc
Contact:	Kris Kircher	Contact:	Rocky Tarcola
Mailing Address:	PO Box 4008 MS 906	Address:	850 W Southern Ave
Physical Address:	650 E Ryan Rd	City, State, Zip	Tempe AZ 85282
City, State, Zip	Chandler AZ 85244	Phone:	602-258-9600
Phone:	480-782-2759	FAX:	602-253-3801
FAX:	480-782-2560	EMAIL:	RRTarcola@Trane.com

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. CONFLICT OF INTEREST:

14.1 No Kickback. CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.

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

14.3 No Conflict: 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.

15 GENERAL TERMS:

15.1 **Performance & Payment Bonds.** This requirement applies to project quotes only and *may* be required at the time of project award. A Performance bond equal to the full project amount conditioned upon the faithful performance of the contract in accordance with specifications and conditions thereof. Such bond shall be solely for the protection of the CITY. A payment bond equal to the full project amount solely for the protection of the claimants supplying labor and materials to the Contractor or his sub-contractors in the prosecution of the work provided for under such project. Each bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of his judgment such reasonable attorney's fees as may be fixed by a judge of the court. Within fifteen (15) days from the time a Contract is awarded, CONTRACTOR shall furnish fully executed Performance and Payment Bond (Labor and Materials) in such form and context as determined by CITY from a surety approved by CITY. Said bonds shall be in a sum no less than one hundred (100%) of the Contract price.

CITY has the option to forfeit said bonds if the Contract is terminated by the default of CONTRACTOR or if CITY determines that CONTRACTOR is unable or unwilling to complete the work as specified in the Contract Documents.

If the Contract schedule is not adhered to, and CITY determines that the work is unlikely to be completed within a reasonable time after the original target date, then CITY may terminate the Contract and collect the Performance Bond.

The Performance Bond will be reviewed annually and any increases in the contract amount will require bond to be increased and reissued.

15.2 **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.

15.3 **Entire Agreement.** This Agreement, including Exhibits A and B 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.

15.4 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

15.5 **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

15.6 **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.

15.7 **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.

15.8 **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.

15.9 **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 2011.

FOR THE CITY OF CHANDLER		FOR THE CONTRACTOR
_____		By: _____
MAYOR		Signature
ATTEST:		ATTEST: If Corporation
	SEAL	
_____		_____
City Clerk		Secretary

Approved as to form:

_____

City Attorney

EXHIBIT A

Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:	**CS1-910-2967**				
Name (as listed in the contract):	**TRANE INC**				
Street Name and Number:	**850 W Southern Ave**				
City:	**Tempe**	**State:**	**AZ**	**Zip Code:**	**85282**

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;

2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

Terry R Stevens

Printed Name: TERRY R STEVENS

Title: DISTRICT MANAGER

Date (month/day/year): _____

EXHIBIT B
SCOPE OF WORK

CONTRACTOR(s) shall provide emergency repair, maintenance, installation, and retrofit for heating, ventilation, and air conditioning (HVAC) equipment. CONRACTOR(s) shall supply all labor, supervision, materials, tools, equipment, and effort necessary to repair, retrofit, or replacement of HVAC systems and products used in the commercial and industrial environments.

CONTRACTOR, when submitting a price quote to perform work, shall use the quote as an "estimate" and no work shall be performed without prior approval from Contract Administrator/designee. The Contract Administrator/designee will monitor CONTRACTOR's time and materials, ensuring hours spent on each job is verifiable. Only actual hours on the job shall be billed. The only exception will be "special projects", wherein one price is all-inclusive to perform an entire job. CONTRACTOR shall be compensated for additional work requested that is not detailed in this scope of work based on the labor rates listed in Exhibit C.

The work shall consist of, but not be limited to: repairs, maintenance, retrofitting for the following HVAC groups:

Group 1: 3/4 ton through 20-ton units:

Package air conditioning units / split systems / heat pumps
Include all associated equipment
Exhaust Fans
Evaporative Coolers

Group 2: 20 ton through 250 ton:

Package air conditioning units
Computer room a/c equipment
Air Washers
Fan fired heating systems
Chilled water/chilled water pumps
- Centrifugal, Submersible, Vertical, Turbine

Cooling Towers:
- Drift Eliminators
- Spray Nozzles
- Float mechanisms
- Drive motors, shafts, and bearings

Chillers, up to 250 tons
- Reciprocating
- Scroll
- Screw
- Boilers

Variable Air Volume (VAV) units
Fan Coil Units
Associated support components:
- Distribution piping/plumbing including component parts and pipe insulation

Electrical distribution:
- 120 volts through 600 volts, single and three phase
- Wiring
- DDC controls

Contactors, magnetic starters:
- Conduit
- Thermostats

Velocity controllers
Transmitters

Duct:

Fabrication, design, and installation
Repair

Pneumatic controls:

Calibrations
Repairs to the pneumatic system
Repairs/replacement to air compressors
Air/dirt separator units

Group 3: Commercial Low Temperature Equipment

Ice Machines
Freezers
Refrigerators

1. **QUALIFICATIONS.** CONTRACTOR must have been in the HVAC service business for a minimum of three (3) years, and shall be completely familiar with the specified requirements and methods needed for proper performance of this agreement. CONTRACTOR shall have a fully stocked service vehicle. CONTRACTOR shall possess an L-39 license for Air Conditioning and Refrigeration. A copy of all licenses and certifications must accompany bid response.

   CONTRACTOR's technical staff shall be CFC certified. Technicians shall be thoroughly trained with a minimum of three (3) years' experience in the field of air conditioning and heating as well as have factory certified training. Proof of certification must accompany bid response.

   Repair work for HVAC service shall be performed with the use of one (1) HVAC technician. If needed, CONTRACTOR may dispatch a laborer to aid the technician. Any additional technicians or laborers needed for a specific job must be pre-approved Contract Administrator/designee. Please note that one (1) HVAC technician may complete repair work. However, depending upon the work being requested and the requirements, the job may necessitate having more than one person.

2. **SERVICE HOURS.** Due to the nature of some City facilities operating on a seven/twenty-four schedule, CONTRACTOR shall make available to CITY services 365 days per year, 24 hours per day.

   a. Regular Service shall be work performed between 8:00 am to 5:00 pm Monday through Friday, excluding City holidays.
   b. After Hours shall be work performed after 5:00 pm and before 8:00 am the next morning and Saturday work.
   c. Sunday & Holidays shall be work performed during Sundays or during any City holiday.

3. **RESPONSE TIMES.** Response time to all *REGULAR* service work shall be within four (4) hours on-site after CONTRACTOR receives request from CITY, with the exception of an emergency request that occurs during regular hours, which shall be two (2) hours. AFTER HOURS and SUNDAY &HOLIDAY requests shall have a two (2) hour response time. CONTRACTOR shall provide twenty-four (24) hour access to their staff and shall respond back to a request within thirty (30 minutes) of receiving such request.

4. **REQUIREMENTS.** CONTRACTOR shall obtain CITY authorization before using machinery/equipment that will be considered as additional cost to CITY and used indirectly to the HVAC industry for the performance of normal services. After CITY approval of needed machinery/equipment, items shall be line item priced and allowed at administrative mark-up cost of five (5%).

   CONTRACTOR shall perform work in accordance with all applicable laws, codes, and regulations required by authorities having jurisdiction over such work and provide for all inspections and permits

required by federal, state, and local authorities in furnishing, transporting and installing materials as shown or for completing the work identified herein.

Repair work for HVAC services shall be performed with the use of one (1) HVAC technician. If deemed necessary, CONTRACTOR may dispatch a laborer to aid the technician. Additional technicians or laborers needed for a specific job shall be pre-approved by the Contract Administrator/designee. The CITY will not permit "on the job" training of technicians.

CONTRACTOR shall meet all Federal EPA and OSHA guidelines in the proper handling and disposal of refrigerant, refrigerant oils, and refrigerant filters/dryers. CONTRACTOR shall pay for all fees and /or charges, permits and licenses. Costs may to be billed back to CITY without mark-up.

All vehicles used by CONTRACTOR shall be clearly identified with the name of the company, address of local office and phone number of local office on each side of the equipment, including personal transportation vehicles. CONTRACTOR's service truck shall carry sufficient supply to repair and equipment to perform routine HVAC service and repairs, and hot water boiler service repair.

CONTRACTOR shall perform the work in such a way as to minimize disruption to the normal operation of CITY staff. Upon completion of work, CONTRACTOR shall be responsible for cleaning and removing from the job site all debris; materials and equipment associated with the work performed, and shall obtain sign-off of work by CITY staff.

CONTRACTOR shall make necessary repairs to HVAC units in such a manner that does not damage CITY property. In the event damage occurs to CITY property, or any adjacent property by reason of any repairs or installations performed under the contract, CONTRACTOR shall replace or repair the same at no cost to the CITY or adjacent property owner. If damage caused by CONTRACTOR has to be repaired or replaced by CITY, the cost of such work shall be deducted from the monies due CONTRACTOR.

In the event CONTRACTOR's work performance is unsatisfactory, CONTRACTOR will be notified by Contract Administrator/designee and given a four (4) hour period to correct the work. Labor for all re-work shall be at no cost to CITY. Additional parts replaced shall be billed at contract pricing.

5. **CONTRACTOR EMPLOYEES.** CONTRACTOR shall be required to provide as many personnel as needed to meet the scope of work, with the approval of the Contract Administrator/designee. In addition, CONTRACTOR's employees shall wear identification badges and a uniform shirt or vest bearing the CONTRACTOR 's name and/or logo while on CITY's premises. The badge shall have the CONTRACTOR's employees picture, name, and signature. CONTRACTOR's employees shall be required to wear a clean uniform bearing the Contractor's company name and/or logo. All employees shall conduct themselves in a professional and courteous manner.

CONTRACTOR employees are not to be accompanied in the work area by acquaintances, family members, or any other person unless said person is an authorized CONTRACTOR employee.

CONTRACTOR shall carry on the operation in such a manner that damage is not inflicted to existing facilities, grounds, utilities or other structures. In the event CONTRACTOR causes damage to CITY property, CONTRACTOR shall replace or repair the same at no cost to CITY as directed by the Contract Administrator/designee. If damage caused by CONTRACTOR has to be repaired or replaced by the Contract Administrator/designee, the cost of such work shall be deducted from the CONTRACTOR's monthly payments.

CONTRACTOR shall keep maintenance and repair records on each individual HVAC unit. CONTRACTOR shall keep City officials advised of each HVAC's condition and recommend necessary work needed to insure the equipment's reliability.

A Police background check will be required for all employees of CONTRACTOR. This is required due to the need to access restricted areas within the CITY.

6. **MAINTENANCE REQUIREMENTS.** The specifications listed herein are the minimum requirements and are intended to govern, in general, the requirements desired. The CITY reserves the right to make variations from these specifications. CONTRACTOR may be asked from time-to-time to change filters for Municipal Utilities Department.

7. **TIME & MATERIALS / LABOR HOURS.** CONTRACTOR, when submitting a quote to perform a time and materials task, shall use quote as an "estimate". The Contract Administrator/designee will monitor the CONTRACTOR's time. Only actual hours on the job shall be billed. Exceptions are "job quotes" wherein one price is all-inclusive to perform an entire job.

   CONTRACTOR shall be responsible for sourcing all HVAC parts/components/units necessary to repair/replace HVAC systems, unless it is deemed in the best interest of the CITY to use their own HVAC contracts to source said parts/supplies.

   Trip charges may be allowed when CONTRACTOR arrives on-site at the scheduled time and is unable to locate someone who knows about the call, or the technician examines and is unable to locate the problem, and therefore actual labor is not initiated. Should this be the case, *only the trip charge* will be allowed. Combination trip charges and labor rates shall not be allowed if the service call is legitimate and actual HVAC work is initiated.

8. **TRAINING.** CONTRACTOR may be required to provide technical expertise training in HVAC services to CITY staff. The training may be for old or new technology and will be held at a CITY facility, or if deemed necessary, at CONTRACTOR's facility. Training aides (e.g. service manuals, mock-up equipment, etc.) shall be provided by CONTRACTOR. CONTRACTOR shall be given advance notice to prepare research and schedule staff in order to provide an adequate presentation. The cost of this service will be line item priced in Exhibit C. All technical training shall be performed during regular business hours.

EXHIBIT C
PRICING

All billable rates after the first hour shall be in increments of one-quarter hour. Service rates shall start when CONTRACTOR's employee arrives on-site. Mileage charges and fuel surcharges are not allowed.

Group 1

1.	Labor, REGULAR business hours: Trip charge (See Section 7)	$99.11 per hr $ 50.00/flat rate
2.	Labor, AFTER hours/EMERGENCY: Trip charge (See Section 7)	$148.66/per hr $ 50.00/flat rate
3.	Labor, WEEKEND AND HOLIDAY: Trip charge (See Section 7)	$198.22/per hr $ 50.00/flat rate
4.	PARTS - COMPONENTS, UNITS, ETC., COST PLUS	25** %
5.	LABOR, FOR SERVICES OUTSIDE THE SCOPE OF CONTRACT:	$107.00/per hr
6.	Training City staff (if required, to be conducted at CITY facility)	$107.00/per hr

Group 2

1.	Labor, REGULAR business hours: Trip charge (See Section 7)	$107.79/per hr $ 50.00/flat rate
2.	Labor, AFTER hours/EMERGENCY: Trip charge (See Section 7)	$161.68/per hr $ 50.00/flat rate
3.	Labor, WEEKEND AND HOLIDAY: Trip charge (See Section 7)	$215.58/per hr $ 50.00/flat rate
4.	PARTS - COMPONENTS, UNITS, ETC., COST PLUS	25** %
5.	LABOR, FOR SERVICES OUTSIDE THE SCOPE OF CONTRACT:	$122.00/per hr
6.	Training City staff (if required, to be conducted at CITY facility)	$122.00/per hr

**DISCOUNT IS OFF TRANE PARTS ONLY

*Note: CONTRACTOR shall bill at no more than a 2-hr minimum

CITY OF CHANDLER SERVICES AGREEMENT
HVAC REPAIRS, MAINTENANCE & SERVICE
AGREEMENT NO.: CS1-910-2967

THIS AGREEMENT is made and entered into this day of , 2011, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **CHANDLER AIR, INC**, a Corporation of the State of Arizona, 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 Building Maintenance Supervisor/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.

1.3 Subcontractors. During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

1.4 Subcontracts. CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2 SCOPE OF WORK: CONTRACTOR shall provide services all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included 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 Licenses. CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.

2.3 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.

2.4 Compliance With Applicable Laws. CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.

2.4.1 Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use

E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

2.4.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.

2.4.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

2.4.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.

2.4.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.

2.5 Warranties.

2.6 One-Year Warranty. CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.

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.

3.3 New/Current Products. All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

3.4 Property of CITY. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

3.5 PRICE: CITY shall pay to CONTRACTOR an amount not to exceed **Three Hundred Thousand Dollars ($300,000)**, including all companion Agreements, for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as

set forth in Exhibit C, attached hereto and made a part hereof by reference.

4 TAXES

4.1. CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.

4.2 **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.

4.3 **Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.

4.4 **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.

4.5 **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.

4.6 **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.

4.7 **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.

5. **TERM:** The term of the Contract is **one (1) year** (s), commencing on the **1st day of May, 2011** and terminating on **April 30, 2012** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **four (4)** additional terms of one year each. CITY reserves the right, at its sole discretion, to extend the Contract for up to sixty (60) days.

6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. 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.

6.1 **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. 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.

6.2 **Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. **CITY'S CONTRACTUAL REMEDIES:**

7.1 **Right to Assurance.** If the City 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 City 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.

7.3 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.

7.4 **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.

7.5 **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.

7.6 **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 thirty (30) 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 under 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 terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
2) If CONTRACTOR is adjudged a bankrupt or insolvent;
3) If CONTRACTOR makes a general assignment for the benefit of creditors;
4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract 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.

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.

8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

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. **Dispute Resolution**

10.1 **Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.

10.2 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of

Arizona.

10.3 Jurisdiction and Venue. The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

10.4 Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

11. INDEMNIFICATION: To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, 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 of Chandler, 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 of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, 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:

12.1 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 of Chandler, 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.

12.2 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 of Chandler 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.

12.3 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 there from;

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.

12.4 Commercial General Liability - Minimum Coverage Limits. The Commercial General Liability insurance required herein shall be written for not less than $1,000,000 limits of liability. 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.

12.5 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).

12.6. 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.

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 CITY		In the case of the CONTRACTOR	
Department:	Parks & Facilities	Firm Name:	Chandler Air Inc
Contact:	Kris Kircher	Contact:	Bob Burnes
Mailing Address:	PO Box 4008 MS 906	Address:	100 W Boston St #8
Physical Address:	650 E Ryan Rd	City, State, Zip	Chandler AZ 85225
City, State, Zip	Chandler AZ 85244	Phone:	480-899-0267
Phone:	480-782-2759	FAX:	480-899-5556
FAX:	480-782-2560	EMAIL:	ChandlerAir@mingspring.com

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. CONFLICT OF INTEREST:

14.1 No Kickback. CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.

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

14.3 No Conflict: 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.

15 GENERAL TERMS:

15.1 Performance & Payment Bonds. This requirement applies to project quotes only and *may* be required at the time of project award. A Performance bond equal to the full project amount conditioned upon the faithful performance of the contract in accordance with specifications and conditions thereof. Such bond shall be solely for the protection of the CITY. A payment bond equal to the full project amount solely for the protection of the claimants supplying labor and materials to the Contractor or his sub-contractors in the prosecution of the work provided for under such project. Each bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of his judgment such reasonable attorney's fees as may be fixed by a judge of the court. Within fifteen (15) days from the time a Contract is awarded, CONTRACTOR shall furnish fully executed Performance and Payment Bond (Labor and Materials) in such form and context as determined by CITY from a surety approved by CITY. Said bonds shall be in a sum no less than one hundred (100%) of the Contract price.

CITY has the option to forfeit said bonds if the Contract is terminated by the default of CONTRACTOR or if CITY determines that CONTRACTOR is unable or unwilling to complete the work as specified in the Contract Documents.

If the Contract schedule is not adhered to, and CITY determines that the work is unlikely to be completed within a reasonable time after the original target date, then CITY may terminate the Contract and collect the Performance Bond.

The Performance Bond will be reviewed annually and any increases in the contract amount will require bond to be increased and reissued.

15.2 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.

15.3 Entire Agreement. This Agreement, including Exhibits A and B 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.

15.4 Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

15.5 Assignment: Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

15.6 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.

15.7 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.

15.8 **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.

15.9 **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 2011.

FOR THE CITY OF CHANDLER		FOR THE CONTRACTOR
_____ MAYOR		By: _____ Signature
ATTEST:	SEAL	ATTEST: If Corporation
_____ City Clerk		_____ Secretary
Approved as to form:		
_____ City Attorney		

EXHIBIT A

Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:	**CS1-910-2967**		
Name (as listed in the contract):	**Chandler Air Inc.**		
Street Name and Number:	**100 W Boston St #8**		
City: **Chandler**	**State:**	**AZ**	**Zip Code: 85244**

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;

2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

_____

Printed Name: Suzanne K. Borges

Title: Secretary

Date (month/day/year): _____

EXHIBIT B
SCOPE OF WORK

CONTRACTOR(s) shall provide emergency repair, maintenance, installation, and retrofit for heating, ventilation, and air conditioning (HVAC) equipment. CONRACTOR(s) shall supply all labor, supervision, materials, tools, equipment, and effort necessary to repair, retrofit, or replacement of HVAC systems and products used in the commercial and industrial environments.

CONTRACTOR, when submitting a price quote to perform work, shall use the quote as an "estimate" and no work shall be performed without prior approval from Contract Administrator/designee. The Contract Administrator/designee will monitor CONTRACTOR's time and materials, ensuring hours spent on each job is verifiable. Only actual hours on the job shall be billed. The only exception will be "special projects", wherein one price is all-inclusive to perform an entire job. CONTRACTOR shall be compensated for additional work requested that is not detailed in this scope of work based on the labor rates listed in Exhibit C.

The work shall consist of, but not be limited to: repairs, maintenance, retrofitting for the following HVAC groups:

Group 1: 3/4 ton through 20-ton units:

Package air conditioning units / split systems / heat pumps
Include all associated equipment
Exhaust Fans
Evaporative Coolers

Group 2: 20 ton through 250 ton:

Package air conditioning units
Computer room a/c equipment
Air Washers
Fan fired heating systems
Chilled water/chilled water pumps
- Centrifugal, Submersible, Vertical, Turbine

Cooling Towers:
- Drift Eliminators
- Spray Nozzles
- Float mechanisms
- Drive motors, shafts, and bearings

Chillers, up to 250 tons
- Reciprocating
- Scroll
- Screw
- Boilers

Variable Air Volume (VAV) units
Fan Coil Units
Associated support components:
- Distribution piping/plumbing including component parts and pipe insulation

Electrical distribution:
- 120 volts through 600 volts, single and three phase
- Wiring
- DDC controls

Contactors, magnetic starters:
- Conduit
- Thermostats

Velocity controllers
Transmitters

Duct:

Fabrication, design, and installation
Repair

Pneumatic controls:

Calibrations
Repairs to the pneumatic system
Repairs/replacement to air compressors
Air/dirt separator units.

Group 3: Commercial Low Temperature Equipment

Ice Machines
Freezers
Refrigerators

1. **QUALIFICATIONS.** CONTRACTOR must have been in the HVAC service business for a minimum of three (3) years, and shall be completely familiar with the specified requirements and methods needed for proper performance of this agreement. CONTRACTOR shall have a fully stocked service vehicle. CONTRACTOR shall possess an L-39 license for Air Conditioning and Refrigeration. A copy of all licenses and certifications must accompany bid response.

   CONTRACTOR's technical staff shall be CFC certified. Technicians shall be thoroughly trained with a minimum of three (3) years' experience in the field of air conditioning and heating as well as have factory certified training. Proof of certification must accompany bid response.

   Repair work for HVAC service shall be performed with the use of one (1) HVAC technician. If needed, CONTRACTOR may dispatch a laborer to aid the technician. Any additional technicians or laborers needed for a specific job must be pre-approved Contract Administrator/designee. Please note that one (1) HVAC technician may complete repair work. However, depending upon the work being requested and the requirements, the job may necessitate having more than one person.

2. **SERVICE HOURS.** Due to the nature of some City facilities operating on a seven/twenty-four schedule, CONTRACTOR shall make available to CITY services 365 days per year, 24 hours per day.

   a. Regular Service shall be work performed between 8:00 am to 5:00 pm Monday through Friday, excluding City holidays.
   b. After Hours shall be work performed after 5:00 pm and before 8:00 am the next morning and Saturday work.
   c. Sunday & Holidays shall be work performed during Sundays or during any City holiday.

3. **RESPONSE TIMES.** Response time to all *REGULAR* service work shall be within four (4) hours on-site after CONTRACTOR receives request from CITY, with the exception of an emergency request that occurs during regular hours, which shall be two (2) hours. AFTER HOURS and SUNDAY &HOLIDAY requests shall have a two (2) hour response time. CONTRACTOR shall provide twenty-four (24) hour access to their staff and shall respond back to a request within thirty (30 minutes) of receiving such request.

4. **REQUIREMENTS.** CONTRACTOR shall obtain CITY authorization before using machinery/equipment that will be considered as additional cost to CITY and used indirectly to the HVAC industry for the performance of normal services. After CITY approval of needed machinery/equipment, items shall be line item priced and allowed at administrative mark-up cost of five (5%).

   CONTRACTOR shall perform work in accordance with all applicable laws, codes, and regulations required by authorities having jurisdiction over such work and provide for all inspections and permits

required by federal, state, and local authorities in furnishing, transporting and installing materials as shown or for completing the work identified herein.

Repair work for HVAC services shall be performed with the use of one (1) HVAC technician. If deemed necessary, CONTRACTOR may dispatch a laborer to aid the technician. Additional technicians or laborers needed for a specific job shall be pre-approved by the Contract Administrator/designee. The CITY will not permit "on the job" training of technicians.

CONTRACTOR shall meet all Federal EPA and OSHA guidelines in the proper handling and disposal of refrigerant, refrigerant oils, and refrigerant filters/dryers. CONTRACTOR shall pay for all fees and /or charges, permits and licenses. Costs may to be billed back to CITY without mark-up.

All vehicles used by CONTRACTOR shall be clearly identified with the name of the company, address of local office and phone number of local office on each side of the equipment, including personal transportation vehicles. CONTRACTOR's service truck shall carry sufficient supply to repair and equipment to perform routine HVAC service and repairs, and hot water boiler service repair.

CONTRACTOR shall perform the work in such a way as to minimize disruption to the normal operation of CITY staff. Upon completion of work, CONTRACTOR shall be responsible for cleaning and removing from the job site all debris; materials and equipment associated with the work performed, and shall obtain sign-off of work by CITY staff.

CONTRACTOR shall make necessary repairs to HVAC units in such a manner that does not damage CITY property. In the event damage occurs to CITY property, or any adjacent property by reason of any repairs or installations performed under the contract, CONTRACTOR shall replace or repair the same at no cost to the CITY or adjacent property owner. If damage caused by CONTRACTOR has to be repaired or replaced by CITY, the cost of such work shall be deducted from the monies due CONTRACTOR.

In the event CONTRACTOR's work performance is unsatisfactory, CONTRACTOR will be notified by Contract Administrator/designee and given a four (4) hour period to correct the work. Labor for all re-work shall be at no cost to CITY. Additional parts replaced shall be billed at contract pricing.

5. **CONTRACTOR EMPLOYEES**. CONTRACTOR shall be required to provide as many personnel as needed to meet the scope of work, with the approval of the Contract Administrator/designee. In addition, CONTRACTOR's employees shall wear identification badges and a uniform shirt or vest bearing the CONTRACTOR 's name and/or logo while on CITY's premises. The badge shall have the CONTRACTOR's employees picture, name, and signature. CONTRACTOR's employees shall be required to wear a clean uniform bearing the Contractor's company name and/or logo. All employees shall conduct themselves in a professional and courteous manner.

CONTRACTOR employees are not to be accompanied in the work area by acquaintances, family members, or any other person unless said person is an authorized CONTRACTOR employee.

CONTRACTOR shall carry on the operation in such a manner that damage is not inflicted to existing facilities, grounds, utilities or other structures. In the event CONTRACTOR causes damage to CITY property, CONTRACTOR shall replace or repair the same at no cost to CITY as directed by the Contract Administrator/designee. If damage caused by CONTRACTOR has to be repaired or replaced by the Contract Administrator/designee, the cost of such work shall be deducted from the CONTRACTOR's monthly payments.

CONTRACTOR shall keep maintenance and repair records on each individual HVAC unit. CONTRACTOR shall keep City officials advised of each HVAC's condition and recommend necessary work needed to insure the equipment's reliability.

A Police background check will be required for all employees of CONTRACTOR. This is required due to the need to access restricted areas within the CITY.

6. **MAINTENANCE REQUIREMENTS.** The specifications listed herein are the minimum requirements and are intended to govern, in general, the requirements desired. The CITY reserves the right to make variations from these specifications. CONTRACTOR may be asked from time-to-time to change filters for Municipal Utilities Department.

7. **TIME & MATERIALS / LABOR HOURS.** CONTRACTOR, when submitting a quote to perform a time and materials task, shall use quote as an "estimate". The Contract Administrator/designee will monitor the CONTRACTOR's time. Only actual hours on the job shall be billed. Exceptions are "job quotes" wherein one price is all-inclusive to perform an entire job.

   CONTRACTOR shall be responsible for sourcing all HVAC parts/components/units necessary to repair/replace HVAC systems, unless it is deemed in the best interest of the CITY to use their own HVAC contracts to source said parts/supplies.

   Trip charges may be allowed when CONTRACTOR arrives on-site at the scheduled time and is unable to locate someone who knows about the call, or the technician examines and is unable to locate the problem, and therefore actual labor is not initiated. Should this be the case, *only the trip charge* will be allowed. Combination trip charges and labor rates shall not be allowed if the service call is legitimate and actual HVAC work is initiated.

8. **TRAINING.** CONTRACTOR may be required to provide technical expertise training in HVAC services to CITY staff. The training may be for old or new technology and will be held at a CITY facility, or if deemed necessary, at CONTRACTOR's facility. Training aides (e.g. service manuals, mock-up equipment, etc.) shall be provided by CONTRACTOR. CONTRACTOR shall be given advance notice to prepare research and schedule staff in order to provide an adequate presentation. The cost of this service will be line item priced in Exhibit C. All technical training shall be performed during regular business hours.

EXHIBIT C
PRICING

All billable rates after the first hour shall be in increments of one-quarter hour. Service rates shall start when CONTRACTOR's employee arrives on-site. Mileage charges and fuel surcharges are not allowed.

Group 1

1.	Labor, REGULAR business hours: Trip charge (See Section 7)	$50.00 per hr $ n/a /flat rate
2.	Labor, AFTER hours/EMERGENCY: Trip charge (See Section 7)	$62.50 /per hr $ n/a /flat rate
3.	Labor, WEEKEND AND HOLIDAY: Trip charge (See Section 7)	$62.50 /per hr $ n/a /flat rate
4.	PARTS - COMPONENTS, UNITS, ETC., COST PLUS	20 %
5.	LABOR, FOR SERVICES OUTSIDE THE SCOPE OF CONTRACT:	$65.00 /per hr
6.	Training City staff (if required, to be conducted at CITY facility)	$50.00 /per hr

*Note: CONTRACTOR shall bill at no more than a 2-hr minimum