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PURCHASING ITEM FOR COUNCIL AGENDA
CS12-037

1. Agenda Item Number: 11

2. Council Meeting Date: September 8, 2011

TO: MAYOR & COUNCIL

THROUGH: CITY MANAGER

3. Date Prepared: August 22, 2011

4. Requesting Department: Community Services

5. SUBJECT: Agreement No. CS2-988-3028 for the purchase and installation of engineered wood fiber at various city park playground locations to ELS Construction Inc. in an amount not to exceed $140,000.00.

6. RECOMMENDATION: Recommend awarding CS2-988-3028 for the purchase and installation of engineered wood fiber at various city park playground locations to ELS Construction Inc. in an amount not to exceed $140,000.00.

7. HISTORICAL BACKGROUND/DISCUSSION: The surfacing in a playground area is one of the most important factors in reducing fall related injuries. Engineered wood fiber is made from biodegradable virgin wood and must be certified by the International Play Equipment Manufacturers Association that it meets American Society of Testing and Materials standards for impact attenuation and wheelchair access. Through this Agreement, forty-three (43) playgrounds will receive the appropriate amount of certified engineered wood fiber to meet impact attenuation and wheelchair accessibility guidelines.

8. EVALUATION PROCESS: On June 29, 2011, staff issued an Invitation for Bids (IFB) for the purchase and installation of engineered wood fiber to be installed at various park playgrounds throughout the City. The IFB was advertised and all registered vendors were notified. Three responses were received with the following results:

ELS Construction Inc.	- $139,941.56
Dave Bang Associates	- $158,043.63
Jet Mulch Inc.	- $192,150.00

Staff is recommending award to ELS Construction Inc. as the lowest responsive, responsible bidder. The term of this Agreement will be September 1, 2011 through August 31, 2012.

9. FINANCIAL IMPLICATIONS: Funds for this service will be from

Acct. No.:	Fund Name:	Program Name:	CIP Funded:	Amount:
420.4580.0000.6611.12C049	Park Bonds Fund	Existing Neighborhood Park Impr	FY10/11	$94,704.10
420.4580.0000.6611.10C530	Park Bonds Fund	Existing Community Park Impr	FY10/11	$45,237.46

10. PROPOSED MOTION: Move to award CS2-988-3028 for the purchase and installation of engineered wood fiber at various city park playground locations to ELS Construction Inc. in an amount not to exceed $140,000.00.

APPROVALS

11. Requesting Department

by CAH

Mickey Ohland, Park Development & Operations Manager

13. Department Head

Rich Dlugas for

Mark M. Eynatten, Community Services Director

12. Procurement Officer

Kristy Garcia

Sharon Brause, CPPB, CPCP

14. City Manager

Rich Dlugas

Rich Dlugas

CITY OF CHANDLER PURCHASE AGREEMENT
PURCHASE & INSTALLATION OF ENGINEERED WOOD FIBER AT
VARIOUS CITY PARK PLAYGROUND LOCATIONS
AGREEMENT NO.: CS2-988-3028

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 **ELS CONSTRUCTION INC.**, hereinafter referred to as "CONTRACTOR".

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

1. CONTRACT ADMINISTRATION AND OPERATION:

1.1. Contract Administrator: CONTRACTOR shall act under the authority and approval of the Senior Management Assistant /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. Ordering Instructions: Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.

1.3. Ordering Process. Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B, all as more specifically set forth in the Specifications and details included therein.

2.1. Safety Standards: All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

2.2. 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.

2.3. Licenses: CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.

2.3.1. 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").

2.3.2. 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.

2.3.3. 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.

2.3.4. 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.

2.3.5. 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.

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

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

2.4. **Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

2.5. **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 Procurement Officer.

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

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

2.8. **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 CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes.

2.9. **Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.

2.10. **Estimated Quantities.** The quantities shown on Exhibit B (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.

2.11. **Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

2.12. **New/Current Products.** All goods, equipment, materials, parts and other components supplied

pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended.

2.13. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

3. **Warranties:**

3.1. **Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

3.2. **Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:

3.2.1. Of a quality to pass without objection in the trade under the Contract description;

3.2.2. Fit for the intended purposes for which the materials are used;

3.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

3.2.4. Adequately contained, packaged and marked as the Contract may require; and

3.2.5. Conform to the written promises or affirmations of fact made by CONTRACTOR.

3.3. **Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.

3.4. **Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.

3.5. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all goods or equipment supplied pursuant to this Contract.

4. **ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification

4.1. **Records.** The CONTRACTOR shall 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.

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

4.3. **Delivery.** Delivery shall be made within thirty (30) calendar days after receipt of a Contract Purchase

Order (ARO).

5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed **One Hundred Forty Thousand Dollars ($140,000)** 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 B, attached hereto and made a part hereof by reference.

5.1. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.

5.2. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.

5.3. **Delivery & Installation:** All prices are F.O.B. Destination and include all delivery, unloading and installation at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.

5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.

5.5. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.

5.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.

5.7. **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.

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

6. **TERM:** Following execution of this Agreement by CITY, CONTRACTOR shall immediately commence work and shall complete all services described herein within **one hundred eighty (180)** days from the date hereof.

7. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.

7.1. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items that are

required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7.2. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted 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.

8. CITY'S CONTRACTUAL REMEDIES:

8.1. **Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. **Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.

8.3. **Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

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

9. TERMINATION:

9.1 **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.

9.2 **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.

9.3. Termination for Misrepresentation. CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

9.4. 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 CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

9.5. 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 the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. 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 the CONTRACTOR.

9.6. Suspension or Debarment: CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the 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 Sub-CONTRACTOR 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 the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.

9.7. 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.

9.8. 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.

10. 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.

11. Dispute Resolution

11.1 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.

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

11.3 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.

11.4 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.

12. 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.

13. INSURANCE:

13.1. 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.

13.2. 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.

13.3. 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 offloading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

13.4. 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.

13.5. 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).

13.6. 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.

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

In the case of CITY		In the case of the CONTRACTOR	
Department:	Community Services	Firm Name:	ELS Construction Inc.
Contact:	Tyrone Allen	Contact:	Butch Garza
Mailing Address:	PO Box 4008 – MS 906	Address:	3329 E Southern Ave
Physical Address:	650 E Ryan Rd	City, State, Zip	Phoenix AZ 85040
City, State, Zip	Chandler, AZ 85244	Phone:	602-243-1106
Phone:	480-782-2667	FAX:	602-305-9437
FAX:	480-782-2713	EMAIL:	Butch@EvergreenEst.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. 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.

15.2. Entire Agreement. This Agreement, including Exhibits 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.

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

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

15.5. 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.

15.6. 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.

15.7. 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.

15.8. 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

SEAL

FOR THE CONTRACTOR

By: _____
Signature

ATTEST: If Corporation

_____
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: CS2-988-3028		
Name (as listed in the contract): ELS Construction Inc.		
Street Name and Number: 3329 E Southern Ave		
City: Phoenix	**State: AZ**	**Zip Code: 85040**

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: James Castine

Title: President

Date (month/day/year): 8-5-11

EXHIBIT B
SPECIFICATIONS / PRICING

CONTRACTOR shall provide and install 4,270 cubic yards of engineered wood fiber to various parks located within the CITY. Material shall be installed at 6"-8" depth in the playground area of the parks listed below. CONTRACTOR shall stockpile any excess engineered wood fiber at Tumbleweed Park. The engineered wood fiber shall be IPEMA certified to ASTM F2075 and ADA compliant. CONTRACTOR shall provide CITY with an IPEMA Certificate of Compliance for the engineered wood fiber. CONTRACTOR shall provide CITY with a sample of the engineered wood fiber for approval prior to installation. CONTRACTOR shall be responsible for providing all labor, materials and equipment necessary to complete installation of the engineered wood fiber. CONTRACTOR shall be responsible for ensuring no damage is done to any CITY property, up to and including landscaping, irrigation, structures and equipment.

Item	Park	Qty	Price (per cu. yd)	Labor	Extended Price
1.	Amberwood Park, 2327 W. Calle Del Norte	58 CY	$24.00	$406.00	$1,798.00
2.	Apache Park, 1300 N. Hartford	30 CY	$24.00	$210.00	$930.00
3.	Arbuckle Park, 1100 S. Norman Way	147 CY	$24.00	$1,029.00	$4,557.00
4.	Arrowhead Park, 1475 W. Erie	133 CY	$24.00	$931.00	$4,123.00
5.	Blue Heron Park, 1399 W. Lake Dr.	125 CY	$24.00	$875.00	$3,875.00
6.	Brooks Crossing Park,1345 W. Calle Del Norte	139 CY	$24.00	$973.00	$4,309.00
7.	Chuckwalla Park, 4600 E. Doral Dr.	148 CY	$24.00	$1,036.00	$4,588.00
8.	Chuparosa Park, 2400 S. Dobson Rd.	130 CY	$24.00	$910.00	$4,030.00
9.	Crossbow Park, 4520 S. Crossbow Way	139 CY	$24.00	$973.00	$4,309.00
10.	Desert Breeze (North) Park 660 N. Desert Breeze Blvd. East	181 CY	$24.00	$1,267.00	$5,611.00
11.	Desert Breeze (South) Park 660 N. Desert Breeze Blvd. East	167 CY	$24.00	$1,169.00	$5,177.00
12.	Dobson Park, 1625 W. Ryan	74 CY	$24.00	$518.00	$2,294.00
13.	East Mini Park, 605 E. Erie	13 CY	$24.00	$91.00	$403.00
14.	Espee Park, 450 E. Knox Rd.	111 CY	$24.00	$777.00	$3,441.00
15.	Folley Park, 601 E. Frye Rd.	129 CY	$24.00	$903.00	$3,999.00
16.	Fox Crossing Park, 3572 S. Sandpiper	98 CY	$24.00	$686.00	$3,038.00
17.	Gazelle Meadows Park, 500 N. Exeter St.	55 CY	$24.00	$385.00	$1,705.00
18.	Harter Park, 665 N. Country Club Way	74 CY	$24.00	$518.00	$2,294.00
19.	Hoopes Park, 601 W. Mesquite St.	144 CY	$24.00	$1,008.00	$4,464.00
20.	La Paloma Park, 6579 S. Amanda Blvd.	83 CY	$24.00	$581.00	$2,573.00
21.	Maggio Ranch Park, 1500 W. Magio Way	64 CY	$24.00	$448.00	$1,984.00
22.	Mountain View Park, 575 S. Twelve Oaks Blvd.	120 CY	$24.00	$840.00	$3,720.00
23.	Park Manors Park, 395 W. Erie St.	37 CY	$24.00	$259.00	$1,147.00
24.	Paseo Vista Park, 3850 S. McQueen Rd.	185 CY	$24.00	$1,295.00	$5,735.00
25.	Pecos Ranch Park, 1555 W. Maplewood St.	70 CY	$24.00	$490.00	$2,170.00
26.	Pequeno Park, 777 N. Coronado Rd.	90 CY	$24.00	$630.00	$2,790.00
27.	Pima Park, 625 N. McQueen Rd.	92 CY	$24.00	$644.00	$2,852.00
28.	Pinelake Park, 598 E. Crescent Way	193 CY	$24.00	$1,351.00	$5,983.00
29.	Pine Shadows Park, 5300 W. Galveston St.	55 CY	$24.00	$385.00	$1,705.00
30.	Price Park (South), 475 S. Kenwood Ln.	41 CY	$24.00	$287.00	$1,271.00
31.	Provinces Park, 1258 E. Orchid Ln.	64 CY	$24.00	$448.00	$1,984.00
32.	Pueblo Alto Park, 3948 W. Calle Segunda	66 CY	$24.00	$462.00	$2,046.00
33.	Quail Haven Park, 4675 S. Adams Ave.	44 CY	$24.00	$308.00	$1,364.00
34.	Ryan Park, 2450 S. Hartford	22 CY	$24.00	$154.00	$682.00
35.	San Marcos Park, 712 W. Fairview St.	102 CY	$24.00	$714.00	$3,162.00

36.	San Tan Park, 2301 E. Frye Rd.	69 CY	$24.00	$483.00	$2,139.00
37.	Snedigar (East) Park, 4500 S. Basha Rd.	144 CY	$24.00	$1,008.00	$4,464.00
38.	Snedigar (West) Park, 4500 S. Basha Rd.	111 CY	$24.00	$777.00	$3,441.00
39.	Stonegate Park, 1650 N. Ithica	157 CY	$24.00	$1,099.00	$4,867.00
40.	Summit Point Park, 528 W. Boxelder Pl.	37 CY	$24.00	$259.00	$1,147.00
41.	Sunset Park, 4700 W. Ray Rd.	70 CY	$24.00	$490.00	$2,170.00
42.	Tibshraeny Family Park, 270 N. Cottonwood	120 CY	$24.00	$840.00	$3,720.00
43.	Windmills West Park, 1233 N. Windmills Blvd.	139 CY	$24.00	$973.00	$4,309.00
				GRAND TOTAL (EXCLUDING TAX)	$132,370.00

Sales Tax $ 7,571.56

Price for additional material (if required) $24.00 material + $7.00 labor per cubic yard (excluding tax)

TOTAL AMOUNT OF THE AGREEMENT SHALL NOT EXCEED $140,000.00