



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

**MEMO NO. TE12-025**

**1. Agenda Item Number:**

**13**

**2. Council Meeting Date:**

September 8, 2011

**TO: MAYOR & COUNCIL**

**3. Date Prepared:** August 22, 2011

**THROUGH: CITY MANAGER**

**4. Requesting Department:**  
Transportation & Development

**5. SUBJECT:** Agreement No. TE2-550-2975 for Traffic Signal Poles & Misc. Hardware to Valmont Industries, Inc., Southwest Fabrication, LLC, Leotek Electronics USA Corp, and Phoenix Highway Products Inc. for a total not to exceed \$100,000.00, with options to renew for up to three (3) additional one-year periods.

**6. RECOMMENDATION:** Recommend approval of Agreement No. TE2-550-2975 for Traffic Signal Poles & Misc. Hardware to Valmont Industries, Inc., Southwest Fabrication, LLC, Leotek Electronics USA Corp, and Phoenix Highway Products Inc. for a total not to exceed \$100,000.00, with options to renew for up to three (3) additional one-year periods.

**7. BACKGROUND/DISCUSSION:** Traffic Engineering requires traffic signal poles, support equipment and street lighting poles for replacements, new installations and upgrades to existing intersections. Typically three new signals and four upgrades to intersections are constructed each year. In addition, Traffic Engineering supplies the traffic signal poles and mast arms on various intersection improvement projects on both Capital Improvement Projects and development projects. The purchase of this equipment through this agreement will reduce the cost of construction and accelerate the completion of the improvements. The use of this agreement will be on an as needed basis throughout the year.

**8. EVALUATION PROCESS:** On July 13, 2011 staff issued a bid for Traffic Signal Poles & Misc. Hardware at various locations within the City. This bid was issued as a cooperative contract with the City of Avondale, City of Peoria, City of Apache Junction, Town of Gilbert, Town of Queen Creek, and Maricopa County Department of Transportation. The bid was advertised and all registered vendors were notified and eight (8) responses were received and evaluated. The award of this contract does not lock the City into purchases or specific dollar amounts with any one vendor. Attached is a spreadsheet listing a summary of the bids received.

The term of this agreement will be September 1, 2011 through August 31, 2012.

**9. FINANCIAL IMPLICATIONS:**

Cost: \$100,000.00  
Savings: \$0  
Long Term Costs: N/A  
Funding Source:

Acct No.:                      Fund:                      Program Name:                      CIP Funded:      Funds:

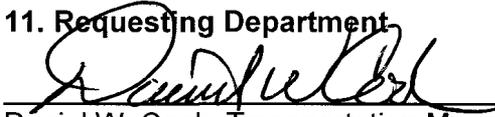
411.3310.00.6516.12T322      GO BONDS                      NEW TRAFFIC SIGNALS                      FY11/12      100,000.00

**10. PROPOSED MOTION:** Move to approve Agreement No. TE2-550-2975 for Traffic Signal Poles & Misc. Hardware to Valmont Industries, Inc., Southwest Fabrication, LLC, Leotek Electronics USA Corp, and Phoenix Highway Products Inc. for a total not to exceed \$100,000.00, with options to renew for up to three (3) additional one-year periods.

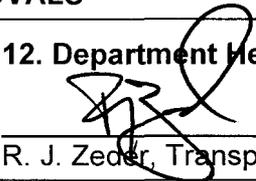
**ATTACHMENTS: Agreements (4)**

APPROVALS

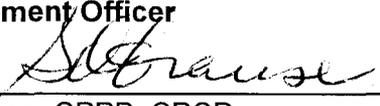
11. Requesting Department

  
Daniel W. Cook, Transportation Manager

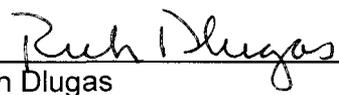
12. Department Head

  
R. J. Zeder, Transportation & Development Director

13. Procurement Officer

  
Sharon Brause, CPPB, CPCP

14. City Manager

  
Rich Dlugas

**CITY OF CHANDLER PURCHASE CONTRACT  
TRAFFIC SIGNAL POLES & MISC. HARDWARE  
AGREEMENT NO.: TE2-550-2975**

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 VALMONT INDUSTRIES, 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 City Transportation Engineer/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.
- 1.4. **Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report, on an annual basis, delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

**2. GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, 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. **Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

- 2.4. **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.
- 2.5. **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.
- 2.6. **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.
- 2.7. **Compliance with Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. **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.
- 2.10. **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.
- 2.11. **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.
- 2.12. **Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.
- 2.13. **Current Models.** It is CITY's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.14. **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.

- 2.15. **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.
- 2.16. **New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.17. **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. **Warranty.** All equipment supplied under this Contract must have a manufacturer's warranty from defects in workmanship and materials, which inhibit normal use. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department
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, inspections, 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 seventy seven (77) calendar days after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR a total amount, including all companion Agreements, not to exceed **One Hundred Thousand Dollars (\$100,000)** 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:** All prices are F.O.B. Destination and include all delivery and unloading 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 legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 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. **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.

- 5.8. 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.
- 5.9. Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
- 6. TERM:** The term of the Contract is **one (1) year** (s), commencing on the **1<sup>st</sup> day of September, 2011** and terminating on **August 31, 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 **three (3)** additional terms of one year each. CITY reserves the right, at its sole discretion, to extend the Contract for up to sixty (60) days.
- 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.** CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.
- 7.2. Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
- 7.3. 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](http://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.
- 9.9. 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.
- 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. 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: <u>Traffic Division</u>	Firm Name: <u>Valmont Industries, Inc.</u>
Contact: <u>Hector Peralta</u>	Contact: <u>Matt Burke</u>
Mailing Address: <u>PO Box 4008, MS 910</u>	Address: <u>7002 N 288<sup>th</sup> St</u>
Physical Address: <u>975 E Armstrong Way Bldg. B</u>	City, State, Zip: <u>Valley, NE 68064</u>
City, State, Zip: <u>Chandler AZ 85244</u>	Phone: <u>1-800-345-6825 x 3748</u>
Phone: <u>480-782-3456</u>	FAX: <u>1-402-359-4025</u>
FAX: <u>480-782-3444</u>	EMAIL: <u>MTB@Valmont.com</u>

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

- 14. GENERAL TERMS:**
- 14.1. Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person

who is not specifically authorized by 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.

**14.5. Conflict of Interest:**

**14.5.1 No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.

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

**14.5.3 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.

**14.6. 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.

**14.7. 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.

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



**EXHIBIT A**

CONTRACTOR shall supply CITY with signal poles, mast arms and streetlight mast arms as identified in these specifications. Equipment and hardware shall be of sufficient type and quantity to enable CITY to assemble complete signal and streetlight units as identified herein. CONTRACTOR shall be responsible for obtaining a current copy of CITY’s Streetlight Manual and/or Construction Standards Book.

Items listed herein shall be considered an estimated annual usage only.

1. **GENERAL.** All items submitted with the offer may be purchased under this contract at the discounts listed on the manufacturers price list/catalog. CONTRACTOR shall provide a comprehensive selection of products and price list and/or catalog. Pricing for these items shall be based upon a single discount percentage (%) for each item. CONTRACTOR shall provide a unit price and an extended price for all items listed on the price sheet. Quantities listed on pricing sheet are for evaluation purposes only and not a guarantee of a purchase.

CONTRACTOR shall be responsible for adhering to the requirements of each agency if their requirements vary from that of the City of Chandler.

CONTRACTOR shall be responsible for off-loading all material in Groups 1 and Group 2 only.

For the City of Avondale, a metal tag shall be permanently attached to the pole above the hand hole stating the manufacturer’s name, pole type, and pole drawing number, shaft length, and gauge number.

**2. TRAFFIC SIGNAL POLES, SIGNAL MAST ARMS, AND STREETLIGHT MAST ARMS.**

Any product provided to CITY shall be in accordance with Arizona Department of Transportation (ADOT), Division of Highways Standard Specifications for Road and Bridge Construction, 2000 (or newer), and the Arizona Department of Transportation (ADOT), Division of Highway Standard Drawings for Traffic Signals and Lighting, 2004.

CONTRACTOR shall submit show drawings and specifications with their response for type “A”, “J”, “K”, “Q”, and “R” poles and all mast arm poles and accessories for items being offered. The CITY currently uses black polycarbonate heads; however, CONTRACTOR is welcome to provide pricing for both polycarbonate and aluminum. All items shall be ITE compliant.

All signal poles shall be supplied completed with 1-1/4” – 7ASTM A 325 high strength bolts for mounting signal mast arms. All “Q” and “R” signal poles shall be supplied completed with 3/4” – 7 ASTM A 325 high strength bolts for mounting streetlight mast arms. All “J” and “K” poles shall be modified in accordance to the CITY detail 110A. All signal poles, signal mast arms, and streetlight mast arms shall be galvanized in accordance with the requirements of ASTM A 123. The visual appearance of the finish shall be uniform. Discoloration of the galvanized finish such as dark areas, dark streaks, dark rings or any transportation handling marks, which are considered excessive by the Contract Administrator/designee, will not be allowed.

All signal poles shall be supplied with anchor bolts as per ADOT specifications and standard drawing T.S. 4-20. All poles shall include anchor bolts and mast arms unless otherwise noted. The number of tenons installed on each signal mast arm shall correspond to the following schedule:

<u>Pole length</u>	<u># of Tenons</u>
<20 ft.	1
20-30 ft.	2
35-40 ft.	3
≥ 45 ft.	4

Multiple tenons shall be placed 12’ apart with the first tenon located 4” from the tip of the arm.

**EXHIBIT B - PRICING**

**GROUP 1 - Signal Poles & Mast Arms:**

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE
1	12	EA	R-Pole; Manufacturer:	\$4,260.00
2	1	EA	K-Pole; Manufacturer:	\$3,579.00
3	2	EA	Q-Pole; Manufacturer:	\$3,147.00
4	1	EA	J-Pole; Manufacturer:	\$2,980.00
5	1	EA	F-Pole; Manufacturer:	\$1,610.00
6	1	EA	G-Pole; Manufacturer:	\$1,203.00
7	2	EA	A-Pole; Manufacturer:	\$560.00
8	2	EA	R-pole powder-coated cocoa brown (Avondale)	\$4,215.00
9	2	EA	K-pole powder-coated cocoa brown (Avondale)	\$3,559.00
10	2	EA	Q-pole powder-coated cocoa brown (Avondale)	\$3,080.00
11	2	EA	J-pole powder-coated cocoa brown (Avondale)	\$2,910.00
12	2	EA	A-pole powder-coated cocoa brown (Avondale)	\$575.00

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE
13	5	EA	55' Mast Arms; Manufacturer:	\$2,466.00
14	2	EA	50' Mast Arms; Manufacturer:	\$1,572.00
15	5	EA	45' Mast Arms; Manufacturer:	\$1,622.00
16	2	EA	40' Mast Arms; Manufacturer:	\$1,456.00
17	2	EA	35' Mast Arms; Manufacturer:	\$1,450.00
18	2	EA	30' Mast Arms; Manufacturer:	\$808.00
19	2	EA	25' Mast Arms; Manufacturer:	\$670.00
20	2	EA	55' Mast Arm powder-coated cocoa brown (Avondale)	\$2,633.00
21	2	EA	50' Mast Arm powder-coated cocoa brown (Avondale)	\$1,602.00
22	2	EA	45' Mast Arm powder-coated cocoa brown (Avondale)	\$1,582.00
23	2	EA	40' Mast Arm powder-coated cocoa brown (Avondale)	\$1,439.00
24	4	EA	35' Mast Arm powder-coated cocoa brown (Avondale)	\$1,433.00
25	2	EA	30' Mast Arm powder-coated cocoa brown (Avondale)	\$817.00
26	2	EA	25' Mast Arm powder-coated cocoa brown (Avondale)	\$679.00

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE
27	2	EA	20' Luminaire Arms; Manufacturer:	\$466.00
28	1	EA	15' Luminaire Arms; Manufacturer:	\$254.00
29	1	EA	8' Luminaire Arms; Manufacturer:	\$152.00
30	2	EA	20' Luminaire Mast Arm powder-coated cocoa brown (Avondale)	\$482.00
31	2	EA	15' Luminaire Mast Arm powder-coated cocoa brown (Avondale)	\$280.00
32	2	EA	8' Luminaire Mast Arm powder-coated cocoa brown (Avondale)	\$171.00

**CONTRACTOR states that all items will be delivered within 77 calendar days for poles / arms and 21 days for anchor bolts after receiving order.**

Group 1 – 0 % discount off like items

**CITY OF CHANDLER PURCHASE CONTRACT  
TRAFFIC SIGNAL POLES & MISC. HARDWARE  
AGREEMENT NO.: TE2-550-2975**

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 SOUTHWEST FABRICATION, LLC, 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 City Transportation Engineer/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.
- 1.4. Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report, on an annual basis, delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

**2. GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, 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. Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

- 2.4. **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.
- 2.5. **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.
- 2.6. **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.
- 2.7. **Compliance with Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. **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.
- 2.10. **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.
- 2.11. **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.
- 2.12. **Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.
- 2.13. **Current Models.** It is CITY's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.14. **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.

- 2.15. **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.
  - 2.16. **New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
  - 2.17. **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. **Warranty.** All equipment supplied under this Contract must have a manufacturer's warranty from defects in workmanship and materials, which inhibit normal use. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department
- 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, inspections, 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 forty (40) calendar days after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR a total amount, including all companion Agreements, not to exceed **One Hundred Thousand Dollars (\$100,000)** 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:** All prices are F.O.B. Destination and include all delivery and unloading 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 legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
  - 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. **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.

- 5.8. **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.
- 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is **one (1) year** (s), commencing on the **1<sup>st</sup> day of September, 2011** and terminating on **August 31, 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 **three (3)** additional terms of one year each. CITY reserves the right, at its sole discretion, to extend the Contract for up to sixty (60) days.
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. CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.
  - 7.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
  - 7.3. **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](http://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.
- 9.9. 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.
- 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. 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: <u>Traffic Division</u>	Firm Name: <u>Southwest Fabrication LLC</u>
Contact: <u>Hector Peralta</u>	Contact: <u>Kyle Presler</u>
Mailing Address: <u>PO Box 4008, MS 910</u>	Address: <u>22233 N 23<sup>rd</sup> Ave</u>
Physical Address: <u>975 E Armstrong Way Bldg. B</u>	City, State, Zip: <u>Phoenix AZ 85027</u>
City, State, Zip: <u>Chandler AZ 85244</u>	Phone: <u>623-587-4648 x 109</u>
Phone: <u>480-782-3456</u>	FAX: <u>623-492-0393</u>
FAX: <u>480-782-3444</u>	EMAIL: <u>Kyle@SW-Fab.com</u>

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

- 14. GENERAL TERMS:**
- 14.1. Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person

who is not specifically authorized by 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.

**14.5. Conflict of Interest:**

**14.5.1 No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.

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

**14.5.3 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.

**14.6. 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.

**14.7. 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.

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

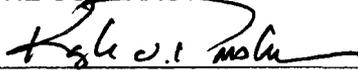
**14.9. Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive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

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 shall supply CITY with signal poles, mast arms and streetlight mast arms as identified in these specifications. Equipment and hardware shall be of sufficient type and quantity to enable CITY to assemble complete signal and streetlight units as identified herein. CONTRACTOR shall be responsible for obtaining a current copy of CITY's Streetlight Manual and/or Construction Standards Book.

Items listed herein shall be considered an estimated annual usage only.

- 1. GENERAL.** All items submitted with the offer may be purchased under this contract at the discounts listed on the manufacturers price list/catalog. CONTRACTOR shall provide a comprehensive selection of products and price list and/or catalog. Pricing for these items shall be based upon a single discount percentage (%) for each item. CONTRACTOR shall provide a unit price and an extended price for all items listed on the price sheet. Quantities listed on pricing sheet are for evaluation purposes only and not a guarantee of a purchase.

CONTRACTOR shall be responsible for adhering to the requirements of each agency if their requirements vary from that of the City of Chandler.

CONTRACTOR shall be responsible for off-loading all material in Groups 1 and Group 2 only. Items 33 and 35 ARE to be the old Chandler specifications for direct burial style SL-1 poles. Item 44 should read SL-17 (35' mounting height).

For the City of Avondale, a metal tag shall be permanently attached to the pole above the hand hole stating the manufacturer's name, pole type, and pole drawing number, shaft length, and gauge number.

- 2. TRAFFIC SIGNAL POLES, SIGNAL MAST ARMS, AND STREETLIGHT MAST ARMS.**

Any product provided to CITY shall be in accordance with Arizona Department of Transportation (ADOT), Division of Highways Standard Specifications for Road and Bridge Construction, 2000 (or newer), and the Arizona Department of Transportation (ADOT), Division of Highway Standard Drawings for Traffic Signals and Lighting, 2004.

CONTRACTOR shall submit show drawings and specifications with their response for type "A", "J", "K", "Q", and "R" poles and all mast arm poles and accessories for items being offered. The CITY currently uses black polycarbonate heads; however, CONTRACTOR is welcome to provide pricing for both polycarbonate and aluminum. All items shall be ITE compliant.

All signal poles shall be supplied completed with 1-1/4" – 7ASTM A 325 high strength bolts for mounting signal mast arms. All "Q" and "R" signal poles shall be supplied completed with 3/4" – 7 ASTM A 325 high strength bolts for mounting streetlight mast arms. All "J" and "K" poles shall be modified in accordance to the CITY detail 110A. All signal poles, signal mast arms, and streetlight mast arms shall be galvanized in accordance with the requirements of ASTM A 123. The visual appearance of the finish shall be uniform. Discoloration of the galvanized finish such as dark areas, dark streaks, dark rings or any transportation handling marks, which are considered excessive by the Contract Administrator/designee, will not be allowed.

All signal poles shall be supplied with anchor bolts as per ADOT specifications and standard drawing T.S. 4-20. All poles shall include anchor bolts and mast arms unless otherwise noted. The number of tenons installed on each signal mast arm shall correspond to the following schedule:

<u>Pole length</u>	<u># of Tenons</u>
<20 ft.	1
20-30 ft.	2
35-40 ft.	3
≥ 45 ft.	4

Multiple tenons shall be placed 12' apart with the first tenon located 4" from the tip of the arm.

**EXHIBIT B - PRICING**

**GROUP 2 – Streetlight Poles:**

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE
33	12	EA	SL-1 35' Pole; Manufacturer:	\$488.00
34	12	EA	SL-1 "F" 35' Pole (Foundation); Manufacturer:	\$516.00
35	10	EA	SL-1 30' Pole; Manufacturer:	\$420.00
36	10	EA	SL-1 "F" 30' Pole; (Foundation) Manufacturer:	\$475.00
37	2	EA	SL-6 Pole; Manufacturer:	\$530.00
38	2	EA	SL-8 Pole; Manufacturer:	\$619.00
39	1	EA	SL-10 30' Pole; Manufacturer:	\$1,715.00
40	1	EA	SL-10 40' Pole; Manufacturer:	\$1,880.00
41	10	EA	SL-16 35' "F" Single Pole; (Foundation) Manufacturer:	\$585.00
42	10	EA	SL-16 35' "F" Double Pole; (Foundation) Manufacturer:	\$590.00
43	1	EA	SL-16 22' Single Pole; (Foundation) Manufacturer:	\$415.00
44	1	EA	SL-1 17'; 35' pole (Foundation); Manufacturer:	\$750.00
45	1	EA	Single 6' Mast Arm for SL-1; Manufacturer:	\$83.00
46	1	EA	<b>Double 6' Mast Arm for SL-1; Manufacturer:</b>	<b>\$103.00</b>
47	1	EA	Single 4' Mast Arm for SL-1; Manufacturer:	\$65.00
48	2	EA	Shoe Box Style Street Light Pole (per Avondale Detail # A1084-2)	\$530.00
49	2	EA	Shoe Box Style Street Light Pole mast Arm, Single, (per Avondale Detail # A1084-3)	\$170.00
50	2	EA	Shoe Box Style Street Light Pole mast Arm, Dual, (per Avondale Detail # A1084-3)	\$260.00

**GROUP 6 – Anchor Bolts:**

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE
88	50	EA	Anchor Bolt, 1" x 36" x 4", fully-galvanized A-36	\$14.50

**CONTRACTOR states that all items will be delivered within 40 calendar days after receiving order**

Group 2 & 6 – 0 % discount off like items

**CITY OF CHANDLER PURCHASE CONTRACT  
TRAFFIC SIGNAL POLES & MISC. HARDWARE  
AGREEMENT NO.: TE2-550-2975**

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 **LEOTEK ELECTRONICS USA CORP**, 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 City Transportation Engineer/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.
- 1.4. Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report, on an annual basis, delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

**2. GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, 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. Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

- 2.4. **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.
- 2.5. **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.
- 2.6. **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.
- 2.7. **Compliance with Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. **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.
- 2.10. **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.
- 2.11. **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.
- 2.12. **Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.
- 2.13. **Current Models.** It is CITY's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.14. **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.

- 2.15. **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.
- 2.16. **New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.17. **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. **Warranty.** All equipment supplied under this Contract must have a manufacturer's warranty from defects in workmanship and materials, which inhibit normal use. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department
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, inspections, 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 sixty (60) calendar days after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR a total amount, including all companion Agreements, not to exceed **One Hundred Thousand Dollars (\$100,000)** 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:** All prices are F.O.B. Destination and include all delivery and unloading 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 legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
  - 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. **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.

- 5.8. **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.
- 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is **one (1) year (s)**, commencing on the **1<sup>st</sup> day of September, 2011** and terminating on **August 31, 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 **three (3)** additional terms of one year each. CITY reserves the right, at its sole discretion, to extend the Contract for up to sixty (60) days.
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. CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.
  - 7.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
  - 7.3. **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](http://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.
- 9.9. 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.
- 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. 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: Traffic Division	Firm Name: Leotek Electronics USA Corp
Contact: <u>Hector Peralta</u>	Contact: <u>Maria@leotek.com</u>
Mailing Address: <u>PO Box 4008, MS 910</u>	Address: <u>726 S Hillview Dr</u>
Physical Address: <u>975 E Armstrong Way Bldg. B</u>	City, State, Zip: <u>Milpitas CA 95035</u>
City, State, Zip: <u>Chandler AZ 85244</u>	Phone: <u>1-408-380-1788</u>
Phone: <u>480-782-3456</u>	FAX: <u>1-408-518-8128</u>
FAX: <u>480-782-3444</u>	EMAIL: <u>Maria@Leotek.com</u>

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

- 14. GENERAL TERMS:**
- 14.1. Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or

materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by 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.

**14.5. Conflict of Interest:**

**14.5.1 No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.

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

**14.5.3 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.

**14.6. 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.

**14.7. 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.

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

14.9. **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.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this \_\_\_\_ day of \_\_\_\_\_, 2011.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

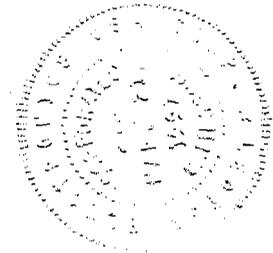
\_\_\_\_\_  
MAYOR

By: Maria Gonzalez  
Signature

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

SEAL ATTEST: If Corporation Mez Mey  
Secretary

Approved as to form:  
\_\_\_\_\_  
City Attorney [Signature]



## EXHIBIT A

CONTRACTOR shall supply CITY with signal poles, mast arms and streetlight mast arms as identified in these specifications. Equipment and hardware shall be of sufficient type and quantity to enable CITY to assemble complete signal and streetlight units as identified herein. CONTRACTOR shall be responsible for obtaining a current copy of CITY's Streetlight Manual and/or Construction Standards Book.

Items listed herein shall be considered an estimated annual usage only.

- 1. GENERAL.** All items submitted with the offer may be purchased under this contract at the discounts listed on the manufacturers price list/catalog. CONTRACTOR shall provide a comprehensive selection of products and price list and/or catalog. Pricing for these items shall be based upon a single discount percentage (%) for each item. CONTRACTOR shall provide a unit price and an extended price for all items listed on the price sheet. Quantities listed on pricing sheet are for evaluation purposes only and not a guarantee of a purchase.

CONTRACTOR shall be responsible for adhering to the requirements of each agency if their requirements vary from that of the City of Chandler.

CONTRACTOR shall be responsible for off-loading all material in Groups 1 and Group 2 only.

For the City of Avondale, a metal tag shall be permanently attached to the pole above the hand hole stating the manufacturer's name, pole type, and pole drawing number, shaft length, and gauge number.

## **2. TRAFFIC SIGNAL POLES, SIGNAL MAST ARMS, AND STREETLIGHT MAST ARMS.**

Any product provided to CITY shall be in accordance with Arizona Department of Transportation (ADOT), Division of Highways Standard Specifications for Road and Bridge Construction, 2000 (or newer), and the Arizona Department of Transportation (ADOT), Division of Highway Standard Drawings for Traffic Signals and Lighting, 2004.

CONTRACTOR shall submit show drawings and specifications with their response for type "A", "J", "K", "Q", and "R" poles and all mast arm poles and accessories for items being offered. The CITY currently uses black polycarbonate heads; however, CONTRACTOR is welcome to provide pricing for both polycarbonate and aluminum. All items shall be ITE compliant.

All signal poles shall be supplied completed with 1-1/4" – 7 ASTM A 325 high strength bolts for mounting signal mast arms. All "Q" and "R" signal poles shall be supplied completed with 3/4" – 7 ASTM A 325 high strength bolts for mounting streetlight mast arms. All "J" and "K" poles shall be modified in accordance to the CITY detail 110A. All signal poles, signal mast arms, and streetlight mast arms shall be galvanized in accordance with the requirements of ASTM A 123. The visual appearance of the finish shall be uniform. Discoloration of the galvanized finish such as dark areas, dark streaks, dark rings or any transportation handling marks, which are considered excessive by the Contract Administrator/designee, will not be allowed.

All signal poles shall be supplied with anchor bolts as per ADOT specifications and standard drawing T.S. 4-20. All poles shall include anchor bolts and mast arms unless otherwise noted. The number of tenons installed on each signal mast arm shall correspond to the following schedule:

<u>Pole length</u>	<u># of Tenons</u>
<20 ft.	1
20-30 ft.	2
35-40 ft.	3
≥ 45 ft.	4

Multiple tenons shall be placed 12' apart with the first tenon located 4" from the tip of the arm.

Note – signals are 12” and can be either poly or aluminum. Pedestrian (items 65 – 67) must be aluminum and do not require z-crate visors. These items shall have LED’s included but shall be without hardware. All other items listed in Group 3 shall be provided with all mounting hardware and backing plates attached

Hardware for signals and pedestrian signals can be either iron or aluminum but must be schedule 40. Pipe nipple lengths are per ADOT specs.

**(3) Design Qualification and Quality Assurance Testing by an Independent Lab.** Have ETL/Intertek or other approved OSHA recognized “Nationally Recognized Testing Laboratory’ do the following:

- a. Perform an initial assessment of the manufacturer’s factory, engineering and manufacturing systems, and procedures to confirm compliance with ISO 9000.
- b. Perform initial Design Qualification Testing as specified in Section 6.4 of the PTCSI-04.
- c. Every 6 months, conduct a factory inspection and perform Quality Assurance Tests on two samples of each certified LED module in accordance with the following sections of PTCSI-04;

- 6.4.2 Conditioning
- 6.4.4.1 – 6.4.4.4 Luminous Intensity
- 6.4.4.6 Chromaticity
- 6.4.6.1 Current Consumption
- 6.4.6.6 Power Factor
- 6.4.6.7 Total Harmonic Distortion

- d. Provide a certification label on each certified LED Traffic signal module verifying the manufacturer’s factory and modules passed the tests listed in a-c- above.

**EXHIBIT B - PRICING**

**GROUP 5 – Indications:**

<b>ITEM No.</b>	<b>EST. QTY</b>	<b>U.O.M.</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE</b>
72	10	EA	Count Down; Manufacturer : Leotek TSL-PED-16-CIL-9	\$130.00
73	20	EA	LED; Manufacturer: Leotek TSL-PED-16-DIL	\$77.00
78	100	EA	Red – LED; 12"; Manufacturer: Leotek TSL-12R-LX-IL3-A1	\$30.00
79	10	EA	Red – LED; 8"; Manufacturer: Leotek TSL-08R-LX-IL3-A1	\$26.58
80	100	EA	Green – LED; 12"; Manufacturer: Leotek TSL-12G-LX-IL3-A1	\$35.20
81	10	EA	Green – LED; 8"; Manufacturer: Leotek TSL-08G-LX-IL3-A1	\$26.60
82	200	EA	Yellow – LED; 12"; Manufacturer: Leotek TSL-12Y-LX-IL3-A1-C	\$36.30
83	10	EA	Yellow – LED; 8"; Manufacturer: Leotek TSL-08Y-LX-IL3-A1	\$28.10
84	10	EA	Red – A; Manufacturer: Leotek TSL-12RA-LD-A1	\$30.00
85	10	EA	Green – A; Manufacturer: Leotek TSL-12GA-LD-A1	\$35.00
86	10	EA	Yellow – A; Manufacturer: Leotek TSL-12YA-LD-A1	\$30.00

**CONTRACTOR states that all items will be delivered within 45 calendar days**

Group 5 – 10 % discount off like items

**CITY OF CHANDLER PURCHASE CONTRACT  
TRAFFIC SIGNAL POLES & MISC. HARDWARE  
AGREEMENT NO.: TE2-550-2975**

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 PHOENIX HIGHWAY PRODUCTS 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 City Transportation Engineer/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.
- 1.4. **Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report, on an annual basis, delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

**2. GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, 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. **Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

- 2.4. 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.
- 2.5. 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.
- 2.6. 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.
- 2.7. Compliance with Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. 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.
- 2.10. 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.
- 2.11. 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.
- 2.12. Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.
- 2.13. Current Models.** It is CITY's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.14. 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.

- 2.15. **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.
- 2.16. **New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.17. **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. **Warranty.** All equipment supplied under this Contract must have a manufacturer's warranty from defects in workmanship and materials, which inhibit normal use. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department
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, inspections, 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 sixty (60) calendar days after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR a total amount, including all companion Agreements, not to exceed **One Hundred Thousand Dollars (\$100,000)** 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:** All prices are F.O.B. Destination and include all delivery and unloading 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 legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
  - 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. **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.

- 5.8. **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.
- 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is **one (1) year** (s), commencing on the **1<sup>st</sup> day of September, 2011** and terminating on **August 31, 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 **three (3)** additional terms of one year each. CITY reserves the right, at its sole discretion, to extend the Contract for up to sixty (60) days.
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. CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.
  - 7.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
  - 7.3. **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](http://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.
- 9.9. 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.
- 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. 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: <u>Traffic Division</u>	Firm Name: <u>Phoenix Highway Products</u>
Contact: <u>Hector Peralta</u>	Contact: <u>Tom McGovern</u>
Mailing Address: <u>PO Box 4008, MS 910</u>	Address: <u>2631 N 37<sup>th</sup> Dr</u>
Physical Address: <u>975 E Armstrong Way Bldg. B</u>	City, State, Zip: <u>Phoenix AZ 85009</u>
City, State, Zip: <u>Chandler AZ 85244</u>	Phone: <u>602-344-7770</u>
Phone: <u>480-782-3456</u>	FAX: <u>602-344-7771</u>
FAX: <u>480-782-3444</u>	EMAIL: <u>Tom@PhoenixHighwayProducts.com</u>

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

**14. GENERAL TERMS:**

- 14.1. Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person

who is not specifically authorized by 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.

**14.5. Conflict of Interest:**

**14.5.1 No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.

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

**14.5.3 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.

**14.6. 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.

**14.7. 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.

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

14.9. **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.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this \_\_\_\_ day of \_\_\_\_\_, 2011.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

\_\_\_\_\_

By: Bill R. Weber  
Signature

MAYOR

ATTEST:

SEAL

ATTEST: If Corporation

\_\_\_\_\_

[Signature]  
Secretary

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney [Signature]

## EXHIBIT A

CONTRACTOR shall supply CITY with signal poles, mast arms and streetlight mast arms as identified in these specifications. Equipment and hardware shall be of sufficient type and quantity to enable CITY to assemble complete signal and streetlight units as identified herein. CONTRACTOR shall be responsible for obtaining a current copy of CITY's Streetlight Manual and/or Construction Standards Book.

Items listed herein shall be considered an estimated annual usage only.

- 1. GENERAL.** All items submitted with the offer may be purchased under this contract at the discounts listed on the manufacturers price list/catalog. CONTRACTOR shall provide a comprehensive selection of products and price list and/or catalog. Pricing for these items shall be based upon a single discount percentage (%) for each item. CONTRACTOR shall provide a unit price and an extended price for all items listed on the price sheet. Quantities listed on pricing sheet are for evaluation purposes only and not a guarantee of a purchase.

CONTRACTOR shall be responsible for adhering to the requirements of each agency if their requirements vary from that of the City of Chandler.

CONTRACTOR shall be responsible for off-loading all material in Groups 1 and Group 2 only.

For the City of Avondale, a metal tag shall be permanently attached to the pole above the hand hole stating the manufacturer's name, pole type, and pole drawing number, shaft length, and gauge number.

### **2. TRAFFIC SIGNAL POLES, SIGNAL MAST ARMS, AND STREETLIGHT MAST ARMS.**

Any product provided to CITY shall be in accordance with Arizona Department of Transportation (ADOT), Division of Highways Standard Specifications for Road and Bridge Construction, 2000 (or newer), and the Arizona Department of Transportation (ADOT), Division of Highway Standard Drawings for Traffic Signals and Lighting, 2004.

CONTRACTOR shall submit show drawings and specifications with their response for type "A", "J", "K", "Q", and "R" poles and all mast arm poles and accessories for items being offered. The CITY currently uses black polycarbonate heads; however, CONTRACTOR is welcome to provide pricing for both polycarbonate and aluminum. All items shall be ITE compliant.

All signal poles shall be supplied completed with 1-1/4" – 7 ASTM A 325 high strength bolts for mounting signal mast arms. All "Q" and "R" signal poles shall be supplied completed with 3/4" – 7 ASTM A 325 high strength bolts for mounting streetlight mast arms. All "J" and "K" poles shall be modified in accordance to the CITY detail 110A. All signal poles, signal mast arms, and streetlight mast arms shall be galvanized in accordance with the requirements of ASTM A 123. The visual appearance of the finish shall be uniform. Discoloration of the galvanized finish such as dark areas, dark streaks, dark rings or any transportation handling marks, which are considered excessive by the Contract Administrator/designee, will not be allowed.

All signal poles shall be supplied with anchor bolts as per ADOT specifications and standard drawing T.S. 4-20. All poles shall include anchor bolts and mast arms unless otherwise noted. The number of tenons installed on each signal mast arm shall correspond to the following schedule:

<u>Pole length</u>	<u># of Tenons</u>
<20 ft.	1
20-30 ft.	2
35-40 ft.	3
≥ 45 ft.	4

Multiple tenons shall be placed 12' apart with the first tenon located 4" from the tip of the arm.

Note – signals are 12” and can be either poly or aluminum. Pedestrian (items 65 – 67) must be aluminum and do not require z-crate visors. All indications must be LED fully assembled **except items 55, 60, and 64**. These items shall have LED’s included but shall be without hardware. All other items listed in Group 3 shall be provided with all mounting hardware and backing plates attached

Hardware for signals and pedestrian signals can be either iron or aluminum but must be schedule 40. Pipe nipple lengths are per ADOT specs.

**EXHIBIT B - PRICING**

**GROUP 3 – Signal Heads & Pedestrian Signals:**

**\*\*All indications must be LED fully assembled except items 55, 60, and 64.**

ITEM No.	EST. QTY		DESCRIPTION	UNIT PRICE
51	10	EA	Q – Type II; Manufacturer: GE Lighting (Gelcore)	\$709.00
52	10	EA	Q – Type IV; Manufacturer: GE Lighting (Gelcore)	\$966.00
53	10	EA	Q – Type V; Manufacturer: GE Lighting (Gelcore)	\$897.00
54	2	EA	Q, F – Type VI; Manufacturer: GE Lighting (Gelcore)	\$1,339.00
<b>55</b>	<b>10</b>	<b>EA</b>	<b>Q – No mount; Manufacturer: GE Lighting (Gelcore)</b>	<b>\$603.00</b>
56	2	EA	R – Type II; Manufacturer: GE Lighting (Gelcore)	\$453.00
57	2	EA	R – Type IV; Manufacturer: GE Lighting (Gelcore)	\$710.00
58	2	EA	R – Type V; Manufacturer: GE Lighting (Gelcore)	\$641.00
59	2	EA	R, F – Type VII; Manufacturer: GE Lighting (Gelcore)	\$1,027.00
<b>60</b>	<b>1</b>	<b>EA</b>	<b>R – No mount; Manufacturer: GE Lighting (Gelcore)</b>	<b>\$348.00</b>
61	10	EA	F – Type II; Manufacturer: GE Lighting (Gelcore)	\$464.00
62	10	EA	F – Type IV; Manufacturer: GE Lighting (Gelcore)	\$721.00
63	10	EA	F – Type V; Manufacturer: GE Lighting (Gelcore)	\$652.00
<b>64</b>	<b>10</b>	<b>EA</b>	<b>F – No mount; Manufacturer: GE Lighting (Gelcore)</b>	<b>\$359.00</b>
65	1	EA	Pedestrian Signal countdown – No mount; Manufacturer: GE Lighting (Gelcore)	\$260.00
66	1	EA	Pedestrian Signal countdown – Type V; Manufacturer: GE Lighting (Gelcore)	\$553.00
67	1	EA	Pedestrian Signal countdown – Type VII; Manufacturer: GE Lighting (Gelcore)	\$840.00
68	2	EA	S – Type II	\$834.00
69	1	EA	S – No mount	\$729.00
70	1	EA	Vehicle Signal – Type V; McCain	\$293.00
71	1	EA	Vehicle Signal – Type VII; McCain	\$320.00

**GROUP 4 – Push Buttons:**

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE
74	20	EA	9 x 12 ADA Compliant Ped. Push Buttons; Manufacturer:	\$183.00
75	10	EA	Momentary Bulldog; retrofit for existing 9 x 12 push button assembly, including mounting plate; Manufacturer:	\$88.00
76	10	EA	Navigator/Audible – Tactile Push Button; Manufacturer:	\$325.00
77	10	EA	Navigator CCU Unit, control unit for cabinet; Manufacturer:	\$2,166.00

**CONTRACTOR states that all items will be delivered within sixty calendar days**

Groups 3 & 4 – 10 % discount off like items