



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

1. Agenda Item Number:

24

2. Council Meeting Date:  
December 15, 2011

TO: **MAYOR & COUNCIL**

3. Date Prepared: December 2, 2011

THROUGH: **CITY MANAGER**

4. Requesting Department: City Managers Office

5. **SUBJECT:** Approve Agreement No. CM2-285-3038 for LED Roadway Lighting Luminaires – DOE funding with Wesco Distribution dba Brown Wholesale in an amount not to exceed \$285,900.53.

6. **RECOMMENDATION:** Recommend approval of Agreement No. CM2-285-3038 for LED Roadway Lighting Luminaires – DOE funding with Wesco Distribution dba Brown Wholesale in an amount not to exceed \$285,900.53.

7. **HISTORICAL BACKGROUND/DISCUSSION:** The City of Chandler was awarded an Energy Efficiency and Conservation Block Grant (EECBG) from the Department of Energy (DOE) as a part of the American Recovery and Reinvestment Act (ARRA). The DOE approved a number of the City's energy efficiency projects, including upgrading a portion of Chandler's streetlights to LED fixtures which will improve the quality of lighting in downtown neighborhoods as well as save on future energy costs. This Agreement will be supplementing the Community Development Block Grant (CDBG) funding also being requested at this council meeting. The four square miles of residential and collector streets in the APS territory was selected to receive LED streetlight upgrades as a part of these projects. This Agreement is for the purchase of the LED luminaires only. Installation of the fixtures will be done by in-house staff. Due to one of the bidders raising a concern at the November 17, 2011 council meeting, the item was continued to allow staff to review the request. This process has now been completed and a copy of the response is attached.

8. **EVALUATION PROCESS:** On September 21, 2011 City staff issued a bid for LED Roadway Lighting Luminaires using Department of Energy (DOE) funding. This will be a one-time project, using the EECBG as a part of the ARRA stimulus funding. All registered contractors were notified and nineteen (19) responses were received and evaluated.

Staff is recommending award to Wesco Distribution dba Brown Wholesale Electric as the lowest responsible, responsive vendor that meet all the City's specifications.

9. **FINANCIAL IMPLICATIONS:** Funds for the requested supplies will come from EECBG as a part of the ARRA stimulus funding, account number 217.1040.0000.6211.3EE011.

10. **PROPOSED MOTION:** Move to approve Agreement No. CM2-285-3038 for LED Roadway Lighting Luminaires – DOE funding with Wesco Distribution dba Brown Wholesale in an amount not to exceed \$285,900.53.

**ATTACHMENT:** Agreements; map

**APPROVALS**

11. Requesting Department

Pat McDermott, Assistant City Manager

12. Department Head

Pat McDermott, Assistant City Manager

13. Procurement Officer

Sharon Brause, CPPB, CPCP

14. City Manager

Rich Dlugas



**Chandler Arizona**  
*Where Values Make The Difference*

December 1, 2011

Mr. Daniel Palmer – Manager  
CED  
4220 E. University Dr.  
Phoenix, AZ 85034

Re: Letter of 11/21/11 - *Protest to bid CM2-285-3037 and bid CM2-285-3038*

Dear Mr. Palmer:

This letter is in response to your protest letter dated November 21, 2011. Both of these matters were scheduled on the Council Agenda on November 17, 2011 (Items 13 and 14).

Both of the Invitations for Bids referred to above contain the following language:

## 9. PROTESTS

**“9.1 A Protest must be in writing and be filed with the Purchasing Office.** A protest of a Solicitation shall be received before the Solicitation opening date. **A protest of a proposed award must be filed before City Council meeting at which the recommendation will be presented.** If the award is less than \$50,000 or \$30,000 for Consultants, City Council approval is not needed and protests must be submitted within ten (10) days a after the protestor knows or should have known the basis of the protest. CITY shall determine whether to issue a written response or hold an administrative hearing.

### 9.2 A protest must include:

The name, address and telephone number of the protester;  
The signature of the protester or its representative;  
Identification of the project and the solicitation or contract number;  
A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and  
The form of relief requested.”

(Emphasis supplied.)



*Mailing Address*  
Mail Stop 901  
PO Box 4008  
Chandler, Arizona 85244-4008

**Purchasing Division**  
*Telephone* (480) 782-2400  
*Fax* (480) 782-2410  
*Web* www.chandleraz.gov

*Location*  
Third Floor  
175 South Arizona Avenue  
Chandler, Arizona 85225

In this case no protest regarding these awards was communicated to the City either in writing or verbally prior to the City Council meeting. At the Council meeting a representative from CED approached a City Staff member and indicated a desire to protest the awards identified above. As a courtesy and in an effort to protect the interests of the City of Chandler, the matter was continued so that staff could review the matter.

Upon review of the written protest filed November 21, 2011, there is no basis upon which to waive the requirement set forth in the Invitation for Bids that Protests to the award "must be filed before City Council meeting at which the recommendation will be awarded or presented". There is no irregularity or other assertion relating to the award process would justify the City ignoring the rules under which the award was made.

Please let us know if we can be of further assistance.

Very truly yours,

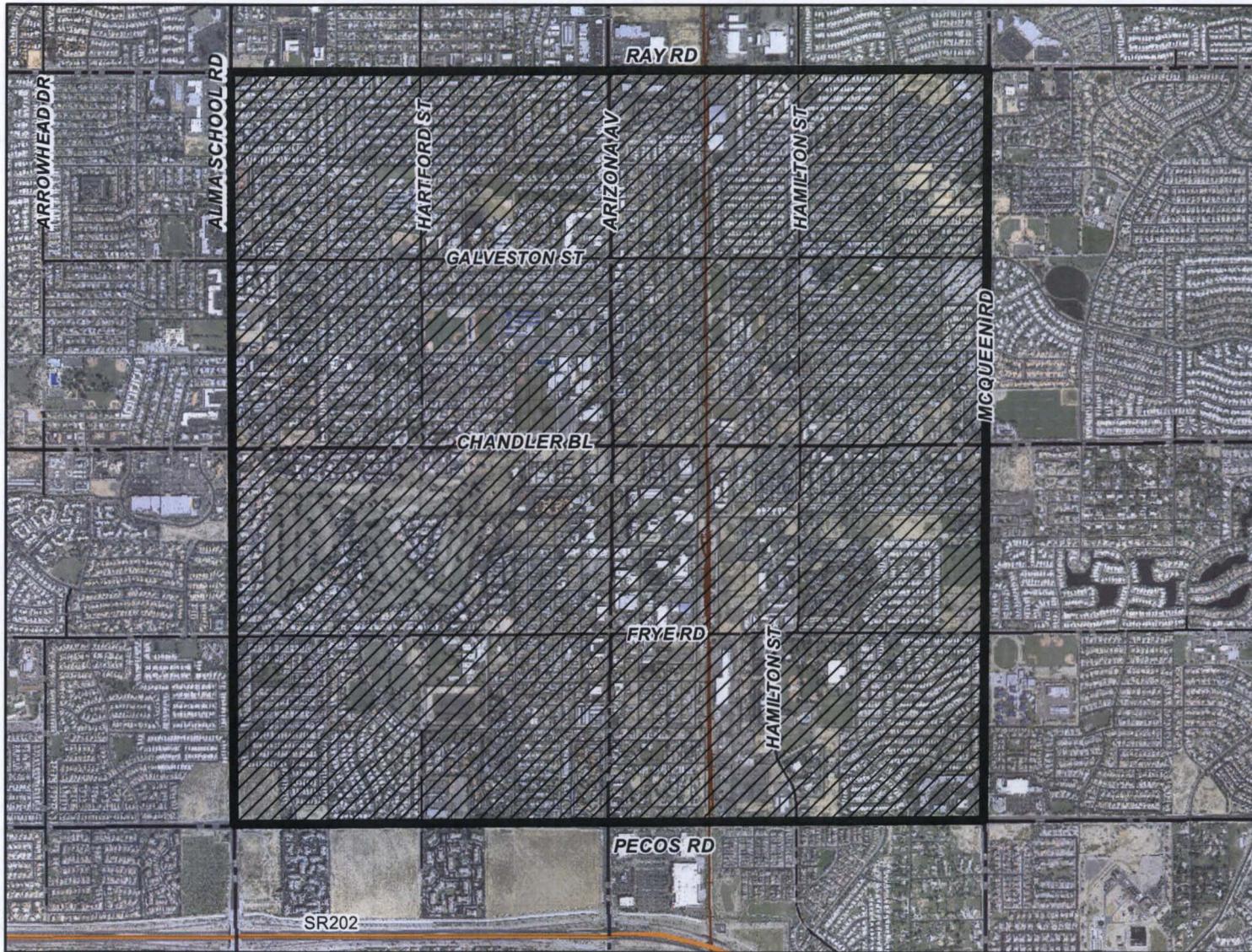
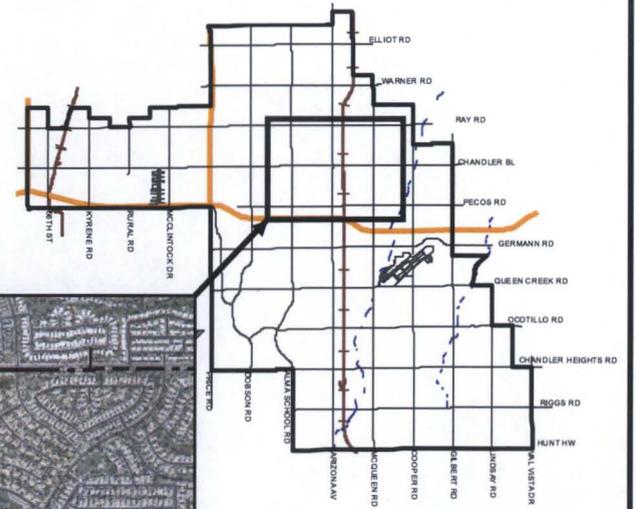


Mike Mandt  
Acting Purchasing and Materials Supervisor

cc. Sharon Brause, Procurement Officer  
Mike Mah, City Transportation Engineer



# DEPARTMENT OF ENERGY (DOE) LED STREET LIGHT RETROFIT AREA



 DOE RETROFIT AREA



**CITY OF CHANDLER PURCHASE CONTRACT  
LED ROADWAY LIGHTING LUMINAIRES  
AGREEMENT NO.: CM2-285-3038**

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 WESCO DISTRIBUTION dba Brown Wholesale Electric, 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 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 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. Usage Report.** CONTRACTOR shall furnish CITY a usage report 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 B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit C, all as more specifically set forth in the Specifications and details included therein. Federal Requirements (Exhibit A) and Whistle Blower information (Exhibit D) are hereby incorporated by reference.

- 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 C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 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. 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.** CONTRACTOR must provide a manufacturer's warranty on all goods or equipment supplied pursuant to this Contract.

**4. ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses is 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.** Final delivery shall be made within **sixty (60) calendar days** after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed **Three Hundred Forty Three Thousand Two Hundred Forty Nine Dollars 61/100 (\$343,249.61)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.
- 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. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 5.8. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is one (1) year (s), commencing on the **1<sup>st</sup> day of December, 2011** and terminating on **February 29, 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 one (1) additional

term of one year each. CITY reserves the right, at its sole discretion, to extend the Contract for up to 31 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. **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.
- 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

Department: Traffic Division  
Contact: Hector Peralta  
Mailing Address: PO Box 4008 – MS 910  
Physical Address: 975 E Armstrong Way #B  
City, State, Zip: Chandler AZ 85244  
Phone: 480-782-3456  
FAX: 480-782-3444

In the case of the CONTRACTOR

Firm Name: Brown Wholesale Electric  
Contact: Laura Sundberg  
Address: 3425 E Van Buren #140  
City, State, Zip: Phoenix AZ 85008  
Phone: 602-275-8521  
FAX: 602-275-9632  
EMAIL: LSundberg@wesco.com

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

**14. 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: *Paula Sundberg*

Signature

ATTEST:

SEAL

ATTEST: If Corporation *VRW*

\_\_\_\_\_

City Clerk

Secretary

Approved as to form:

\_\_\_\_\_

City Attorney *PK*

**EXHIBIT A  
FEDERAL REQUIREMENTS**

- 1. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 REQUIREMENTS:** On February 17, 2009 President Obama signed the American Reinvestment and Recovery Act of 2009 (ARRA, Act, or the "Recovery Act") as an economic stimulus.

By executing this Agreement, CONTRACTOR certifies to the CITY and in addition, agrees that it will comply with all requirements and applicable regulations specified in this bid and the American Reinvestment and Recovery Act of 2009.

This Agreement will be funded with funds appropriated by the American Reinvestment and Recovery Act of 2009. This procurement is subject to the Federal procurement rules, 24 CFR Part 85. All applicable federal rules and regulations are incorporated by reference herein notwithstanding the fact that they may not be specifically referenced in this solicitation.

Applicable federal laws, regulations and requirements include, but are not limited to the following:

**2. BUY AMERICAN. USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS.**

- (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- (b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that —
- (1) applying subsection (a) would be inconsistent with the public interest;
  - (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
- (c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.
- (d) This section shall be applied in a manner consistent with United States obligations under international agreements.

***CONTRACTOR may be required to submit certificates of compliance from all suppliers of iron, steel or manufactured goods certifying compliance with section 1605 of the American Reinvestment and Recovery Act of 2009.***

**3. WHISTLEBLOWER PROTECTIONS. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS.**

- (a) No employee of any non-Federal employer receiving covered funds may be discharged, demoted, or otherwise discriminated against as reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board (hereafter the "Board"), an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with

supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
  - (2) a gross waste of covered funds;
  - (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
  - (4) an abuse of authority related to the implementation or use of covered funds; or
  - (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.
- (b) The term "covered funds" means any contract, grant, or other payment received by any non-Federal employer if the Federal Government provides any portion of the money or property that is provided, requested, or demanded at least some of the funds are appropriated or otherwise made available by the Recovery Act.
- (c) The rights and remedies afforded to employees by this Article and Section 1553 of Division I of the Act may not be waived by any agreement, policy, form, or condition of employment. No dispute arising under this Article shall be subject to any pre-dispute requirement for arbitration, except that an arbitration requirement in a collective bargaining agreement shall be enforceable with respect to disputes arising under that agreement.
- (d) CONTRACTOR must post a notice of the employee rights and remedies under this Article and Section 1553 of Division I of the Act in a prominent and clearly visible location accessible to employees, and require each subcontractor at every tier to do so.  
**Employee Notice of Rights is attached**
- (e) This Article shall be included in all subcontracts at every tier.
- a. Any confirmed incident of reprisal under this Article or Section 1553 of the Act or any failure to comply with the requirements of this Article or Section 1553 of the Act may be justification for termination of the Contract for cause.

4. **LOBBYING RESTRICTIONS.** By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

5. **CERTIFICATION REGARDING DEBARMENT OR SUSPENSION.** By executing this Agreement, CONTRACTOR certifies to CITY and in addition, agrees that, in any proposal submitted to CITY in connection to this Agreement, CONTRACTOR shall further certify to CITY that neither CONTRACTOR nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction evidenced by this Agreement by any federal department or agency, and further agrees to comply with the requirements of Appendix B to 24 C.F.R. Part 24, and subpart C of the OMB guidance set forth in 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 2424.

No part of the contract shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

6. **REGISTRATION REQUIREMENTS.** CONTRACTOR shall ensure that they have a DUNS number and are registered in the Central CONTRACTOR Registration (CCR) no later than the date the first report is due under FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirement.

## **EXHIBIT B**

### **Specifications for LED Roadway Lighting Luminaire**

CONTRACTOR shall adhere to the following requirements:

1. The entire unit shall be warranted for five years.
2. Housing shall be primarily constructed of corrosion-resistant cast aluminum with a powder coated finish to a neutral color -- we will accept beige, white, gray or silver.
3. All mounting hardware shall be of non-corrosive or suitably protected metal.
4. Luminaire shall mount on a standard 2-3/8" outside diameter arm by means of a four-bolt single piece clamp with an adjustability of +/- 5° to allow for fixture leveling. Luminaire's are cobra-head style.
5. Luminaire shall have a minimum 3-lead terminal board mounted within the housing. Terminal board screws shall be of the captive type with wire grips that raise and lower with the terminal screw. Terminals shall be capable of accepting #8 to #14 AWG wire.
6. Luminaire shall have an LED Correlated Color Temperature (CCT) of between 5,000° K and 6,000° Kelvin.
7. Luminaires must be independently tested and comply with IESNA LM79-08 and LM80-08. A copy of all LM79 and LM80 independent test reports shall be provided to the City, if requested.
8. Luminaire housing shall be UL listed for wet locations. Optical assembly shall be minimum IP-65 rated per IEC. The unit shall have a minimum vibration rating of 2G per ANSI C136.31-2001.
9. Luminaire shall be provided with a universal voltage driver capable of accepting 120V through 277V.
10. Weight shall not exceed 28 lbs. EPA shall not exceed 1.1 Square Feet.
11. Luminaire shall conform to IESNA TM-15 BUG rating of B2-U1-G2 or better. Uplight shall be zero (0) light above 90-degrees.
12. Driver and LED modules shall be replaceable as separate units with tool-less plug-in electrical connections.
13. Cooling shall be done with heat sinks. No fans, pumps, or liquids shall be used.
14. Unit shall be tested and capable of normal operation in ambient temperatures of -10° C to +50° Celsius.

15. The replacement unit for local streets (currently using 100-watt HPS luminaires) shall deliver a minimum of 4,100 initial lumens and operate at no more than 70 watts @ 120V through 277V. Optical light distribution shall be Type II.
16. Color Rendering Index (CRI) shall be a minimum of 70.
17. Maximum LED drive current shall be 525 mA.
18. L70 (30% lumen loss) shall not occur prior to 90,000 hours at 25° C operating temperature. L85 (15% lumen loss) shall not occur prior to 50,000 hours. Documentation of independent test results supporting the L70/L85 projections shall be provided to the City, if requested.
19. Driver power factor shall be a .90 minimum.
20. Driver shall have a minimum life rating of 90,000 hours.
21. Power supplies shall meet applicable FCC guidelines for interference, with a Total Harmonic Distortion of less than 20%.
22. Documentation showing compliance with all performance, mechanical, and photometric requirements as detailed above shall be provided to the city, if requested.

Fixtures shall be a NEMA type photo-control receptacle conforming to ANSI C136.10.

No bird guard is required.

A field replaceable surge protection device is needed to withstand high repetition noise transients as a result of utility line switching, nearby lightning strikes and other interference.

CONTRACTOR shall be aware that expediency is a factor. CITY will be asking for a minimum of 15% of the products to be delivered within two (2) weeks, 45% within four (4) weeks of placing order, with the balance of the order no later than six (6) weeks after placing the order.

No credit can be given for a product that exceeds the minimum specifications identified here.

**EXHIBIT C  
PRICING**

| <b>Item #</b>  | <b>Description</b> | <b>Quantity</b> | <b>Unit Cost</b>   | <b>Total Cost</b>   |
|----------------|--------------------|-----------------|--------------------|---------------------|
| <b>PHASE 1</b> | LED Lights         | 1,348           | \$232.97           | \$314,043.56        |
|                |                    |                 | Sales Tax – 9.3%   | \$ 29,206.05        |
|                |                    |                 | <b>Grand Total</b> | <b>\$343,249.61</b> |

EXHIBIT D  
WHISTLE BLOWER POSTER

## Know Your Rights Under the Recovery Act!

### *Did you know?*

The American Recovery and Reinvestment Act of 2009<sup>1</sup> provides protections for certain employees of non-federal employers who make specified disclosures relating to possible fraud, waste and/or abuse of Recovery Act funds.

### *Who is protected?*

Employees of non-federal employers receiving recovery funds. This includes State and local governments, contractors, subcontractors, grantees or professional membership organizations acting in the interest of recovery fund recipients.

### *How are Whistleblowers Protected?*

You cannot be discharged, demoted or otherwise discriminated against as a reprisal for making a protected disclosure.

### *What types of disclosures are protected?*

The disclosure must be made by the employee to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, or the head of a federal agency or his/her representatives.

The disclosure must involve information that the employee believes is evidence of:

- gross mismanagement of an agency contract or grant relating to recovery funds;
- a gross waste of recovery funds;
- a substantial and specific danger to public health or safety related to the implementation or use of recovery funds;
- an abuse of authority related to the implementation or use of recovery funds; or
- a violation of law, rule, or regulation related to an agency contract or grant awarded or issued relating to recovery funds.

### *Take Action!*

Log on to [Recovery.gov](http://Recovery.gov) for more information about your rights and details on how to report at: [www.recovery.gov](http://www.recovery.gov).

<sup>1</sup> Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5