



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

Memo No. ST13-008

1. Agenda Item Number:

19

2. Council Meeting Date:
September 13, 2012

TO: MAYOR & COUNCIL

3. Date Prepared: August 2, 2012

THROUGH: CITY MANAGER

4. Requesting Department:
Transportation & Development

5. SUBJECT: Agreement ST3-914-3126 for Wall Repairs at various locations to TSG Constructors, LLC in an amount not to exceed \$77,700.

6. RECOMMENDATION: Recommend award of Agreement ST3-914-3126 for Wall Repairs at various locations to TSG Constructors, LLC in an amount not to exceed \$77,700.

7. HISTORICAL BACKGROUND/DISCUSSION: There are various walls within the City, predominately adjacent to turf areas, with poor appearance and in disrepair. These walls are both privately owned and City owned. This contract will repair 940 linear feet of wall along Kyrene Road between Gila Springs Boulevard and Chicago Street, 990 linear feet along Warner Road east and west of Illinois Street, and both sides of the El Paso Easement from Oak Street west to the Crestview Chateaux condominiums (on Kyrene Road). This contract will also apply anti-graffiti coating to 2,320 linear feet of wall along Warner Road between Pennington Drive and Arrowhead Drive and 655 linear feet east of Arrowhead Drive.

8. EVALUATION PROCESS: On June 22, 2012, the City issued a bid for Wall Repairs at various locations throughout the City. The bid was advertised and all registered contractors were notified. Seven (7) responses were received and evaluated. The following is a listing of the responses:

TSG Constructors, LLC	- \$ 77,700.00
WL Emshoff	- \$ 96,173.00
Sand Dollar Construction	- \$109,420.20
Skyline Builders	- \$136,428.00
Caymus	- \$145,198.00
Jovos, Inc.	- \$149,478.56
Re-Create Companies	- \$231,102.86

After checking references on the apparent low bidders, staff is recommending award to TSG Constructors, LLC as the lowest responsible, responsive contractor.

9. FINANCIAL IMPLICATIONS:

Cost: \$77,700

Savings: n/a

Long Term Costs: n/a

Fund Source

<u>Acct No.</u>	<u>Fund:</u>	<u>Program Name</u>	<u>CIP Funded</u>	<u>Funds:</u>
401.3310.0000.6517.6ST652	General Fund	Wall Repairs	Yes	\$77,700

10. PROPOSED MOTION: Move to award Agreement ST3-914-3126 for Wall Repairs at various locations to TSG Constructors, LLC in an amount not to exceed \$77,700.

ATTACHMENT: Agreement

APPROVALS

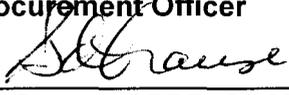
11. Requesting Department


Daniel W Cook, Transportation Manager

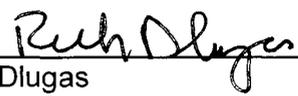
12. Department Head


R.J. Zeder, Transportation & Development Director

13. Procurement Officer


Sharon Brause, CPPB, CPCP

14. City Manager


Rich Dlugas

**CITY OF CHANDLER SERVICES AGREEMENT
WALL REPAIRS – VARIOUS LOCATIONS
AGREEMENT NO.: ST3-914-3126**

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **TSG CONSTRUCTORS LLC**, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

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

1. CONTRACT ADMINISTRATOR:

1.1 Contract Administrator. CONTRACTOR shall act under the authority and approval of the Streets Superintendent/designee (Contract Administrator), to provide the services required by this Agreement.

1.2 Key Staff. This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

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

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

2 SCOPE OF WORK: CONTRACTOR shall all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein. Bid Bond (Exhibit D1), Performance Bond (Exhibit D2), and Payment Bond (Exhibit D3) are attached and incorporated herein by reference.

2.1 Non-Discrimination. The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

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

2.3 Advertising, Publishing and Promotion of Contract. The CONTRACTOR shall not use, advertise or promote information for benefit concerning this Contract without the prior written approval of the CITY.

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

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

- 2.4.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.4.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.4.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.5 **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.
- 3 **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- 3.1 **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2 **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 3.3 **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
- 3.4 **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
- 4 **PRICE:**
- 4.1. CITY shall pay to CONTRACTOR the sum of **Seventy Seven Thousand Seven Hundred Dollars (\$77,700)** for the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.

- 4.2. 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.
- 4.3.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.4. Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.5. Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
- 4.6. IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
- 4.7. 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.
- 4.8. 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.
- 4.9. Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.
- 5. TERM:** The term of the Contract is **one (1) year (s)**, commencing on the **1st day of October, 2012** and terminating on **September 30, 2013** 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 **sixty (60) days**.
- 6. USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.
- 6.1. Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
- 7. CITY'S CONTRACTUAL REMEDIES:**
- 7.1 Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand

may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

- 7.2 Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4 Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5 Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6 Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8 TERMINATION:

- 8.1 Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and sub-CONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.
- 8.2 Termination for Cause:** City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:
- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
 - 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
 - 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
 - 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
 - 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
 - 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
 - 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.
- 8.3. Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in

initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

- 8.4. **Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.
- 8.5. **Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 8.6. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **DISPUTE RESOLUTION:**
 - 10.1. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
 - 10.2. **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
 - 10.3. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-

prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

11. INDEMNIFICATION: To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of A-6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. **All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.**
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and

employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.

- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance -- Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. **Coverage under the policy will be at least as broad as Insurance Services Office, Inc.,**

policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
 - C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
 - D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
 - E. Claims for damages insured by usual personal injury liability coverage;
 - F. Claims for damages, other than to work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
 - G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "1" "any auto" policy form CA00011293 or equivalent thereof.
 - H. Claims for bodily injury or property damage arising out of completed operations;
 - I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
 - J. Claims for injury or damages in connection with one's professional services;
 - K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off-loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.
- 12.4. Commercial General Liability - Minimum Coverage Limits.** The Commercial General Liability insurance required herein shall be written for not less than \$2,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$2,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$4,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.
- 12.5. Automobile Liability.** CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).
- 12.6. Worker's Compensation and Employer's Liability.** CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

If CONTRACTOR is a sole proprietor and has no employees, CITY will accept a Sole Proprietor's waiver of Workers' Compensation benefits in lieu of Workers' Compensation insurance

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

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

In the case of the CITY

Contract Administrator: Streets Division
Contact: Bart Brown
Mailing Address: PO Box 4008-MS 909
Physical Address: 975 E Armstrong Way #C
City, State, Zip: Chandler AZ 85244
Phone: 480-782-3428
FAX: 480-782-3495

In the case of the CONTRACTOR

Firm Name: TSG Constructors LLC
Contact: Stan Showalter
Address: PO Box 71640
City, State, Zip: Phoenix AZ 85050
Phone: 623-742-0161
FAX: 623-742-0320
EMAIL: S.Showalter@tsgconstructors.com

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

14. **CONFLICT OF INTEREST:**

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

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

- 14.3. **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. **GENERAL TERMS:**

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

- 15.2. **Performance and Payment Bonds.** Within fifteen (15) days from the time a Contract is awarded, CONTRACTOR shall furnish fully executed Performance and Payment Bond (Labor and Materials) in such form and context as determined by CITY from a surety approved by CITY. Said bonds shall be in a sum no less than one hundred (100%) of the Contract price.

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

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

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

- 15.3. Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.4. Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.5. Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.6. Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.
- 15.7. Independent CONTRACTOR.** The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.8. No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

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

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2012.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: 
Signature

ATTEST:

ATTEST: If Corporation

SEAL

City Clerk

Secretary

Approved as to form:

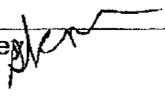
City Attorney 

EXHIBIT A

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

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

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

Contract Number: ST3-914-3126
Name (as listed in the contract): TSG CONSTRUCTORS LLC
Street Name and Number: 37905 N. 17 th Lane
City: Phoenix State: AZ Zip Code: 85086

I hereby attest that:

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

Signature of Contractor (Employer) or Authorized Designee:



Printed Name: Stanley S. Showalter

Title: Member

Date (month/day/year): August 3, 2012

EXHIBIT B SCOPE OF WORK

CONTRACTOR shall provide all labor, materials, dust mitigation, permits, equipment, and everything necessary to complete the work while adhering to applicable laws, specifications, and ordinances. This shall include all traffic control, if necessary.

1. **GENERAL.** There are various walls within the CITY, predominately adjacent to turf areas, in poor appearance and in rough shape. These walls are both publically and privately owned. CONTRACTOR shall repair these walls on the CITY side by completing the following:
 1. Excavate the wall to the existing footer.
 2. Score out horizontal joints to remove loose material, fill joints with sealant and glue.
 3. Cut out sections that may be required to be replaced or reset.
 4. Fill holes with concrete.
 5. Construct forms as required for concrete to set.
 6. Replace block with equal or better block in areas where necessary.
 7. Waterproof cement patch as required. Total Seal or approved equal.
 8. Apply a thick coat of stucco with bonder and glue.
 9. Apply two coats of paint (Paint shall be Dunn & Edwards, prior approval from Contract Administrator/designee required). Stucco shall be Portland cement based per ASTM C926. Each wall location may be a different color.
 10. Return grade and clean up around wall to pre-existing conditions or as directed by the Contract Administrator/designee.

2. **EXISTING CONDITIONS.** The wall on the south side of Warner Rd between Pennington and Arrowhead, and east of Arrowhead has been recently constructed and does not need repair. However, the CITY would like a separate line item quote for the application of an anti-graffiti coating on the tile section only of the wall. The CITY will provide Solutions MB MB4500G anti-graffiti coating. CONTRACTOR shall apply coating by first pressure washing the wall, then applying a water-based sealer to the tiles only, and then applying the anti-graffiti product to the tiled section per manufacturer's specifications.
 - 2.1 Each site and wall differ in condition and size. CONTRACTOR shall visit each site to identify existing conditions and to verify dimensions. The CITY will request permission from the homeowners of the privately owned wall to work on their wall and to make them aware of the project. CONTRACTOR shall contact the homeowner to make them aware of the work commencing on their section of the wall.
 - 2.2 The walls within this scope are located on both CITY owned and privately owned property. The repair of all the walls shall require patching, grouting, pressure washing, and painting on the CITY side of the wall. An anti-graffiti coating is to be applied per manufacturer recommendations only as specified and approved by the Contract Administrator/designee. No painting or work, other than that required to stabilize the integrity of the wall, shall be done on the private side of the wall unless prior arrangements have been made with the Contract Administrator/designee.
 - 2.3 CONTRACTOR shall be solely responsible for documenting existing conditions on each side of the existing wall prior to the start of any work, especially when working with private properties. This shall include, but not be limited to, videotaping / photography of existing conditions.
 - 2.4 CONTRACTOR shall coordinate schedules with Contract Administrator/designee to ensure irrigation is turned off by CITY for the required period.
 - 2.5 CONTRACTOR is to provide a minimum of three (3) days' notice to the private homeowners prior to commencing any work on their walls. CONTRACTOR shall take extra care to provide security to the

respective homeowners, including temporary screening, if necessary. CONTRACTOR shall take extra care to ensure minimum impact on private property, keeping pets secure, and having the site returned to the homeowner in an equal or better condition. If access to private property is required, CONTRACTOR shall notify the homeowner shall be notified and must be agreeable to property access.

- 2.6 CONTRACTOR shall be responsible for working with Contract Administrator/designee to ensure area is returned to its original state; e.g. replace irrigation, landscaping, DG, if required.
3. **INSPECTION, COORDINATION & SAFETY.** CONTRACTOR shall identify (Blue Stake) and coordinate all work with any and all solid waste, utility or communication companies, CITY departments and the CITY Utility Coordinator for scheduling and work conflicts. All utilities or communications shall be marked, protected, adjusted and repaired as needed and as supervised by CONTRACTOR. CONTRACTOR shall establish meetings with utility, communication companies (Cox, Qwest, SRP, APS etc...) CITY's Solid Waste Department shall be notified prior to the start of any work if it is foreseen that trash collection may be impeded by a blocked alley for any reason. CONTRACTOR shall be responsible for knowing garbage collection days within the area prior to start of work. If it is not possible for a garbage truck to access the area, CONTRACTOR may be required to bring receptacles to a nearby street for collection and will be responsible for returning them to their designated location after collection. CONTRACTOR shall be responsible for the repair of all damaged utilities resulting from this work and will coordinate with the appropriate utility companies and affected residents and businesses for the required outages and/or repairs.
4. **WASTE DISPOSAL.** Unless otherwise indicated, excess materials are CONTRACTOR's property. At completion of work, CONTRACTOR shall be responsible for removing and disposing of all excess materials from work site and cannot dispose of on CITY property.
5. **TRAFFIC CONTROL.** If required, CONTRACTOR shall have all traffic control, traffic control plans and project information signs submitted and approved by CITY's Traffic Department before any work shall progress. Uniformed Chandler Police Officers shall be required as determined by the CITY's Traffic Department and paid for by CONTRACTOR. CONTRACTOR will be paid the actual cost of hiring off duty police officer and squad car.

CONTRACTOR shall be responsible for working with City's Traffic Engineering Inspector with regards to a traffic control plan, if necessary.

6. Pricing provided is to be per area and totaled. The CITY reserves the right to have some or all of the areas done.

The walls to be completed are;

1. Kyrene Rd between Gila Springs & Chicago 940' +/-
2. Warner Rd, areas east and west of Illinois 990' +/-
3. Warner Rd between Pennington and Arrowhead 2320' +/- (cleaning, sealer, and anti-graffiti coating only as specified)
4. Warner Rd, newer wall section east of Arrowhead 655' +/- (cleaning, sealer, and anti-graffiti coating only as specified)
5. El Paso Easement each side from Oak St West to apartments (near Kyrene) 1610' +/-

**EXHIBIT C
PRICING**

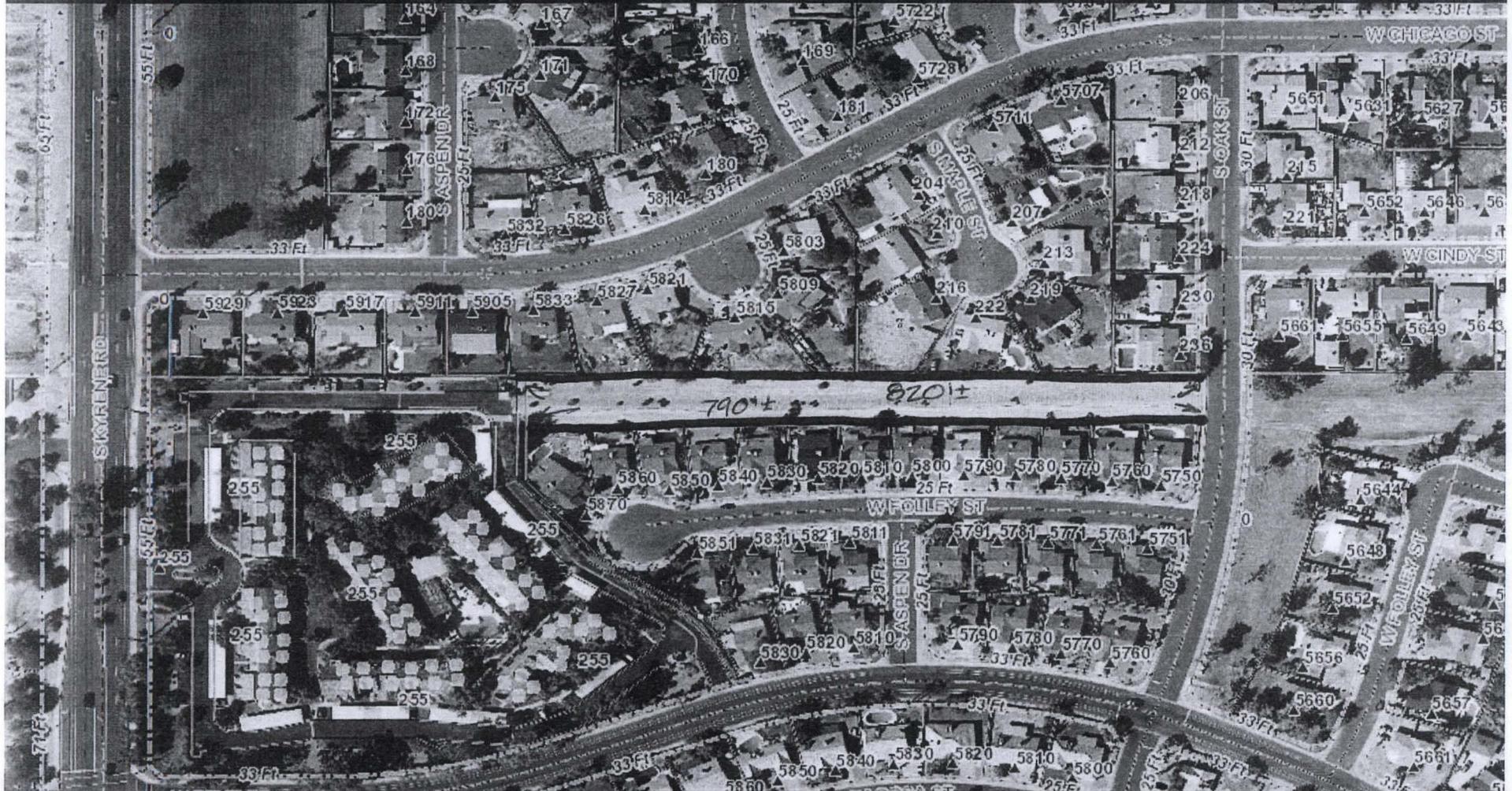
The quantities listed are estimates only, based upon available information. Payment shall be based on actual quantities provided by CONTRACTOR.

Item #	DESCRIPTION	PRICE
1.	Kyrene Rd between Gila Springs & Chicago (940' +/-)	\$19,864.00
2.	Warner Rd, areas east and west of Illinois (990' +/-)	\$20,526.00
3.	Warner Rd between Pennington and Arrowhead (2320' +/-)	\$4,730.00
4.	Warner Rd, newer wall section east of Arrowhead (655' +/-)	\$1,892.00
5.	El Paso Easement each side from Oak St West to apartments (near Kyrene) 1610' +/-	\$26,485.00
Sub-Total		\$73,497.00
Sales Tax (5.72 %)		\$ 4,204.02
GRAND TOTAL		\$77,701.02

The City reserves the right to repair some or all of the walls as part of this bid.



Map Title

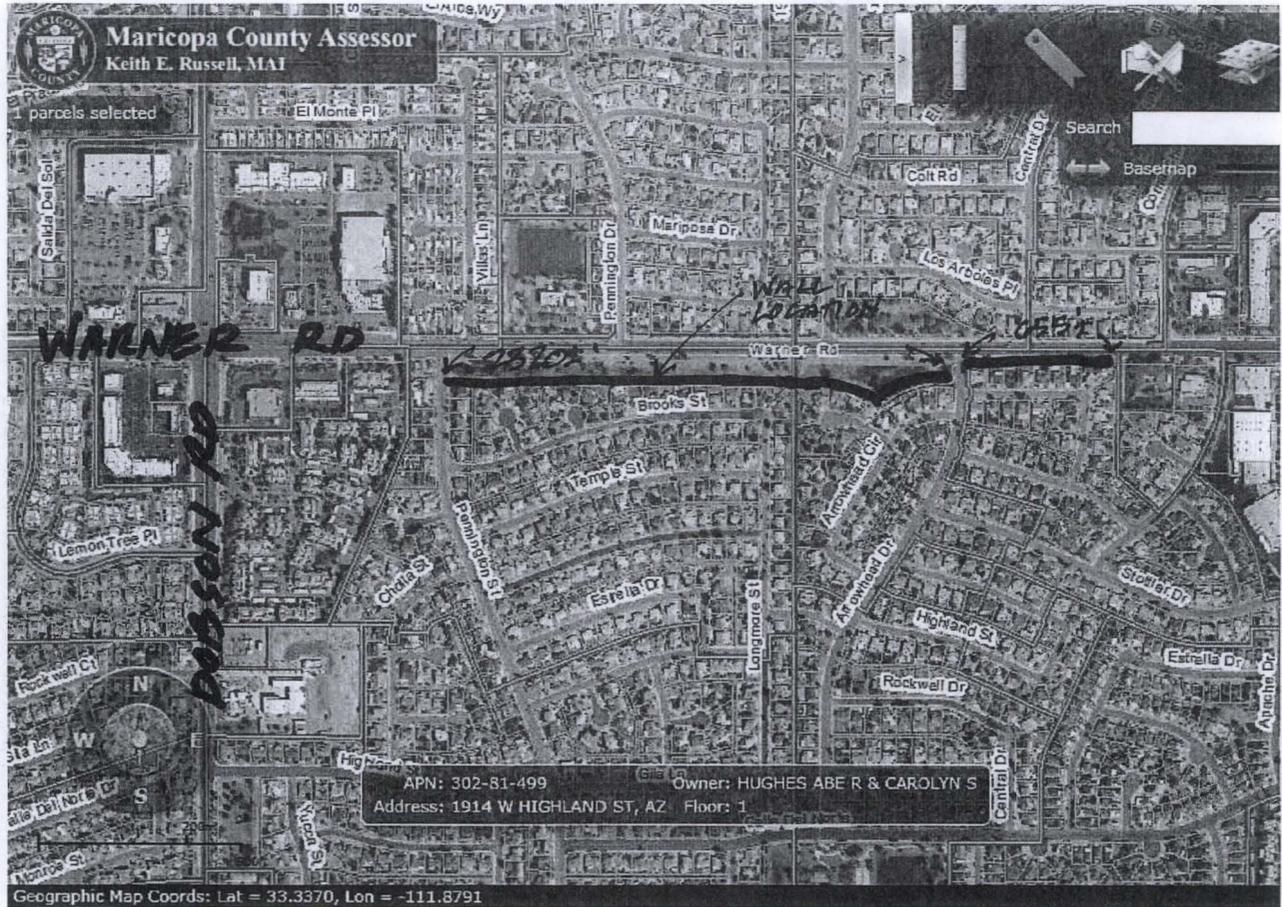


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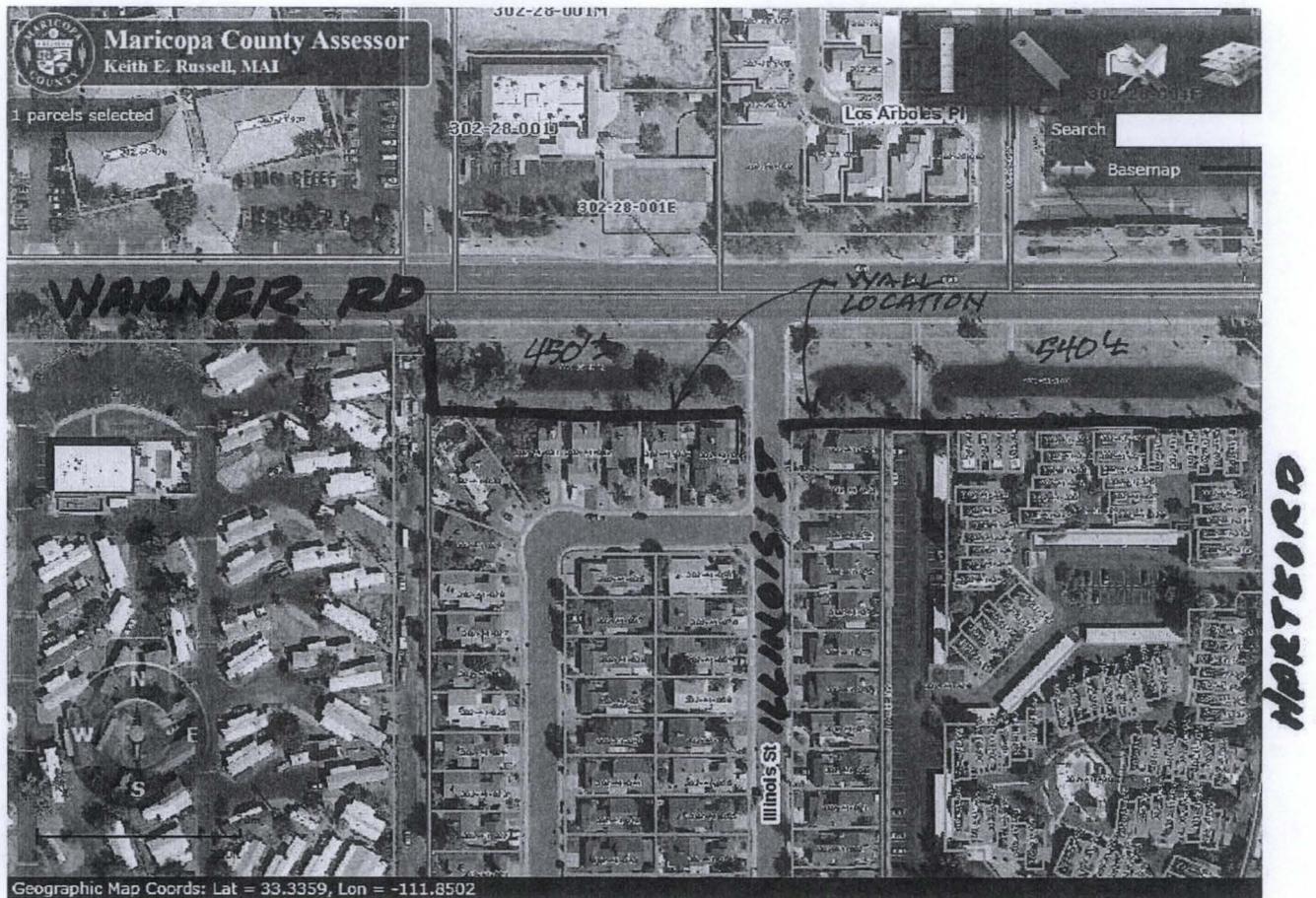
Type your comments here...



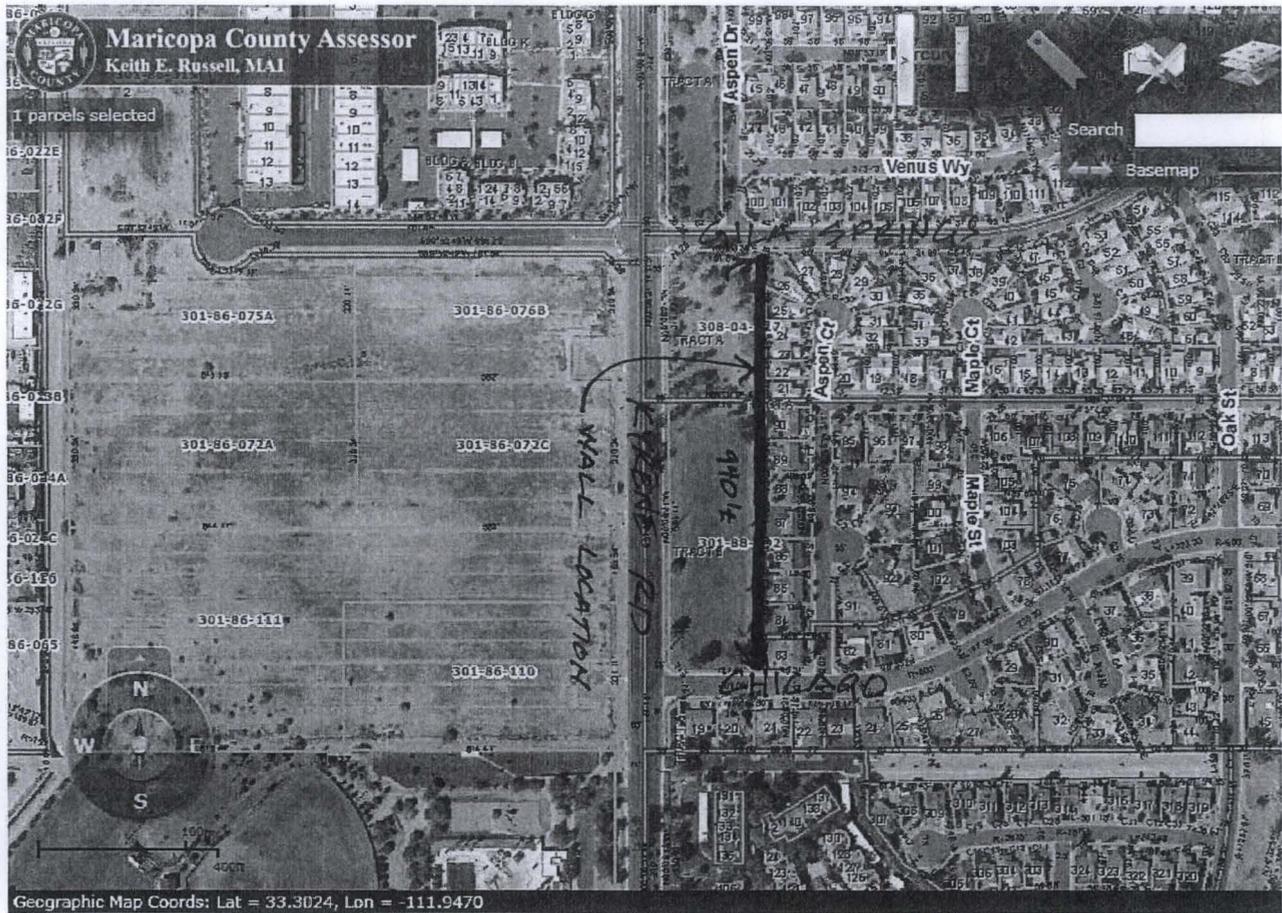
EL PASO EASEMENT



WARNER RD
BETWEEN PENNINGTON
& ARROWHEAD AND
EAST OF ARROWHEAD



WARNER ROAD
HARTFORD TO
ILLINOIS &
ILLINOIS WEST



KYLENE RD
GILIA SPRINGS
TO CHILLAGO