



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

**1. Agenda Item Number:**

6

**2. Council Meeting Date:**

November 8, 2012

**TO: MAYOR & COUNCIL**

**3. Date Prepared:** October 29, 2012

**THROUGH: CITY MANAGER**

**4. Requesting Department:**

City Manager

**5. SUBJECT:** Agreement #BF3-910-3153 for Painting & Related Services.

**6. RECOMMENDATION:** Approval of Agreement #BF3-910-3153 for Painting & Related Services with A&H Painting Inc., Ghaster Painting & Coatings Inc., and Hernandez Companies Inc., in an amount not to exceed \$150,000.00 per year for two-years with the option to renew for one (1) additional two-year period.

**7. BACKGROUND/DISCUSSION:** The City uses painting and drywall services in various city buildings. These agreements will provide the City with three (3) contractors who will be on call to accommodate various painting, drywall, and texturing services required throughout the City. By using this agreement, the City will eliminate the need to acquire written quotes each time a service or an emergency arises, while reducing the cost and length of response time per call.

**8. EVALUATION PROCESS:** Proposals were advertised and all registered vendors were notified. Nine (9) responses were received. After evaluating the responses, City staff is recommending award to three (3) Contractors to ensure prompt response. The pricing offered was compared with current market pricing for similar work in the Phoenix area. The results found the pricing to be fair and reasonable. City staff is recommending award to A&H Painting Inc., Ghaster Painting & Coatings Inc., and Hernandez Companies as the most responsive, responsible contractors.

The Agreement period will be for two-years: November 1, 2012 through October 31, 2014, with the option to renew for one (1) additional two-year period.

**9. FINANCIAL IMPLICATIONS:**

Costs	\$150,000 per year
Savings	N/A
Long Term Costs	N/A

<u>Account Name</u>	<u>Fund Number</u>	<u>Project #</u>	<u>Funds</u>
Bldg & Fac Paint and Painting	101.3200.0000.5327	N/A	\$50,000.00
Exist City Bldg Ren & Repair	401.3210.0000.6611	6GG628	\$100,000.00

**10. PROPOSED MOTION:** Move to approve Agreement #BF3-910-3153 for Painting & Related Services with A&H Painting Inc., Ghaster Painting & Coatings Inc., and Hernandez Companies Inc., in an amount not to exceed \$150,000.00 per year for two-years with the option to renew for one (1) additional two-year period.

**ATTACHMENT:** Agreements

**APPROVALS**

**11. Requesting Department**

*[Signature]*

Kris Kircher, Facilities Maintenance Manager

**12. Department Head**

*[Signature]*

Pat McDermott, Assistant City Manager

**13. Procurement Officer.**

*[Signature]*

Kristy Garcia, CPPB, CPCM

**14. City Manager**

*[Signature]*

Rich Dlugas

**CITY OF CHANDLER SERVICES AGREEMENT  
PAINTING & RELATED SERVICES  
AGREEMENT NO.: BF3-910-3153**

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 **A & H PAINTING INC**, 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 Facilities Maintenance Manager/designee (Contract Administrator), to provide the services required by this Agreement.

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

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

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

**2. SCOPE OF WORK:** CONTRACTOR shall provide painting services all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

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

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

**2.3 Background Checks and Security.** CONTRACTOR shall be required to have a background check for all employees providing testing, maintenance and inspection services to CITY in order to allow CONTRACTOR's employees access to all areas within CITY, including Police and Fire Departments, Administrative offices, detention facilities, court buildings, and other restricted areas. CITY will incur the cost of this service.

**2.4 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.

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

- 2.5.1 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").
- 2.5.2 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.
- 2.5.3 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.
- 2.5.4 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.
- 2.5.5 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.
- 2.5.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.5.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
3. **Warranties. One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.
4. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- 4.1. **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.
- 4.2. **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.
- 4.3. **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.
- 4.4. **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.
5. **PRICE:** CITY shall pay to CONTRACTOR an amount, including all companion Agreements, not to exceed **One hundred Fifty Thousand Dollars (\$150,000)** for the completion of all the work and

services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.

- 4.1. **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.
- 4.2. 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.
- 4.3. **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.
- 4.4. **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.
- 4.5. **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.
- 4.6. **Price Adjustment.** All prices offered herein shall be firm against any increase for the initial term 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.
- 4.7. **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.
- 4.8. **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 **two (2) year (s)**, commencing on the **1<sup>st</sup> day of November 1, 2012** and terminating on **October 31, 2014** 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 additional two (2) year term**.
6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.
- 6.1 **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at [www.maricopa.gov/materials](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.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

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

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

**7.1 Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

**7.2 Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

**7.3** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

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

**7.5 Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.

**7.6 Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

**8 TERMINATION:**

**8.1 Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and 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 its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.
12. **INSURANCE:**
  - 12.1. **Insurance Representations and Requirements:**
    1. General.
      - A. At the same time as execution of this Agreement, the CONTRACTOR shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
      - B. The CONTRACTOR and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.

- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect CONTRACTOR from liabilities that might arise out of the performance of the Agreement services under this Agreement by CONTRACTOR its agents, representatives, employees, subcontractors, sub-licensees or sub-consultants and the CONTRACTOR is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the CONTRACTOR from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of sub-contractors: If any work is subcontracted in any way, the CONTRACTOR shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the CONTRACTOR in this Agreement. The CONTRACTOR is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope And Limits Of Insurance. The CONTRACTOR shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* CONTRACTOR must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability.* CONTRACTOR must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on CONTRACTOR owned, hired, and non-owned vehicles assigned to or used in the performance of the CONTRACTOR's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. *Workers Compensation and Employers Liability Insurance:* CONTRACTOR must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

[Note: If there is no Professional Liability work or service to be performed as a part of this Agreement, the Professional Liability insurance language may not be necessary.]

- D. *Professional Liability.* If the Agreement is the subject of any professional services or work performed by the CONTRACTOR or if the CONTRACTOR engages in any professional services or work adjunct or residual to performing the work under this Agreement, the CONTRACTOR must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the CONTRACTOR or anyone employed by the CONTRACTOR or anyone whose acts, mistakes, errors and omissions the CONTRACTOR is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and the CONTRACTOR or its selected

Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

3. Additional Policy Provisions Required.

- A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
- B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:
1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CONTRACTOR including the City's general supervision of the CONTRACTOR; Products and Completed operations of the CONTRACTOR; and automobiles owned, leased, hired, or borrowed by the CONTRACTOR.
  2. The CONTRACTOR's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
  3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CONTRACTOR even if those limits of liability are in excess of those required by this Agreement.
  4. The CONTRACTOR's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CONTRACTOR and must not contribute to it.
  5. The CONTRACTOR's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  6. Coverage provided by the CONTRACTOR must not be limited to the liability assumed under the indemnification provisions of this Agreement.
  7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CONTRACTOR for the City.
  8. The CONTRACTOR its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The CONTRACTOR must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
  9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If

any of the required policies expire during the life of this Agreement, the CONTRACTOR must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

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: Building & Facilities  
Contact: Larry LaMay  
Mailing Address: PO Box 4008 – MS 906  
Physical Address: 650 E Ryan Rd  
City, State, Zip: Chandler AZ 85244  
Phone: 480-7872-2501  
FAX: 480-782-2560

In the case of the CONTRACTOR

Firm Name: A&H Painting Inc.  
Contact: Glenda Hernandez  
Address: PO Box 10126  
City, State, Zip: Glendale AZ 85318  
Phone: 602-439-1484  
FAX: 602-896-3057  
EMAIL: GlendaWH77@aol.com

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

14. **CONFLICT OF INTEREST:**

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

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

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

15. **GENERAL TERMS:**

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

- 15.2. **Entire Agreement.** This Agreement, including 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.

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

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

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

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

\_\_\_\_\_  
MAYOR

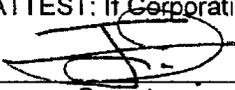
By: Shenda Hernandez  
Signature

ATTEST:

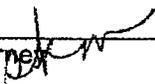
ATTEST: If Corporation

\_\_\_\_\_  
City Clerk

SEAL

  
\_\_\_\_\_  
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.

<b>Contract Number:</b> BF3-910-3153		
<b>Name (as listed in the contract):</b> A&H Painting Inc.		
<b>Street Name and Number:</b>		
<b>City:</b>	<b>State:</b>	<b>Zip Code:</b>

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:**

Glenda Hernandez

**Printed Name:** Glenda W. Hernandez

**Title:** President

**Date (month/day/year):** \_\_\_\_\_

**EXHIBIT B  
TECHNICAL SPECIFICATIONS**

1. **BACKGROUND.** Per CITY request, CONTRACTOR shall furnish qualified journeyman painter(s), painter's helper(s), drywall hanger(s), and texturer(s) from time to time to perform painting, drywall, texturing and/or special repair work on various CITY projects. All projects will require CONTRACTOR to supply paint. CONTRACTOR shall equip craftsman with the normal tools of his trade and transportation necessary to move between projects. CITY will provide, or make available at the jobsite, any tools which are not normal tools of the trade but are required in order to complete the task requested by Contract Administrator/designee.

1.1 CONTRACTOR shall supply all labor, supervision, materials, supplies, and equipment used in the painting industry, transportation, and all effort necessary to perform painting services including surface preparation. The cost of wear and tear on painting application equipment, such as: rollers, brushes, sprayers, hoses, taping tools, roller handles, etc. shall be included in the bid price and not billed to the CITY. Pricing shall be all-inclusive. The CITY will not entertain portal-to-portal charges. CONTRACTOR shall provide all personnel, labor, equipment and materials necessary to perform the requirements of the Agreement.

CONTRACTOR shall be responsible for the tape masking, where applicable, and for the use of drop cloths over furniture and floors.

Damage caused by spillage of paint or stains, or back-splatter of paint rollers, overspray from spray equipment, or brush drops, shall be the responsibility of CONTRACTOR to clean, repair and/or replace damaged items.

2. **HOURS.** CONTRACTOR shall provide painting & related services Monday thru Friday between the hours of 6:00 am – 2:30 pm.

3. **WORK AND TIME AND MATERIALS.** Work performed by CONTRACTOR shall be an all-inclusive price, not time and materials. CONTRACTOR shall meet with Contract Administrator/designee at the site to ascertain what work is to be performed. CONTRACTOR shall provide a written quote with a detailed scope of work when from requested by Contract Administrator/designee. All additional work/labor charges outside the original scope of work shall be approved by Contract Administrator/designee. Grade/sheen/color of paint shall be specified in the scope of work.

CONTRACTOR may be required to purchase materials necessary to perform routine maintenance and repairs. Pricing for hourly rate shall be for all costs required, including crew, truck, equipment operator, etc. CONTRACTOR will require authorization from Contract Administrator/designee prior to such purchases and will be required to submit receipts for reimbursement per the following guidelines:

1. Materials/supplies for a specific job may not be reimbursed without the consent of the Contract Administrator/designee.
2. CITY reserves the right to purchase and furnish the required materials when the Contract Administrator deems it is the CITY's best interest. The CITY may furnish CONTRACTOR with an inventory of commonly used materials and/or supplies that are to be used solely for CITY purposes.
3. CONTRACTOR will be accountable for all materials and/or supplies issued by CITY. Invoices for purchase of authorized items shall be turned in at the end of each project

3.1 CONTRACTOR's submitted price quote shall be all-inclusive. All additional fees shall be absorbed by CONTRACTOR unless prior approved by Contract Administrator/designee prior to commencing work and shall be paid at the price established on Exhibit C listed herein. Exceptions to this are

changes requested by Contract Administrator/designee that incur higher project cost and longer delays. All changes must be in writing and approved by the Contract Administrator/designee prior to any commencement of additional work. CONTRACTOR(s) failing to acquire prior approval in writing shall incur the additional cost without payment.

All work under this Agreement shall include everything CONTRACTOR anticipates is necessary to complete the job (i.e., rental equipment, materials, labor, supervision, subcontractor costs, mobilization costs, demobilization costs, etc.). These costs shall be part of the overall price and as such are not itemized.

- 3.2 **Rental Equipment.** If rental equipment is required, CONTRACTOR shall provide rented equipment charges (invoice) to Contract Administrator/designee. CONTRACTOR shall be allowed a mark-up for rental equipment but shall not add additional fees other than what the rental firm has posted. If rented equipment requires a supply of fuel, the cost of fuel is allowed but only at the prevailing rates.
4. **RESPONSE TIME.** CITY shall specify the work to be performed and the time within which it should normally be completed. The Contract Administrator/designee shall furnish the painter or drywall hanger such instructions and specifications (verbally or in writing) as are deemed necessary in order to accomplish the required task. The method of performing the work shall be the responsibility of CONTRACTOR after consultation with the Contract Administrator/designee. CONTRACTOR shall be available within 48-hours from the date of request for non-emergency situations. In the event of an emergency, CONTRACTOR shall be available within four (4).
5. **INSPECTION AND APPROVAL OF WORK.** All work performed by CONTRACTOR shall be subject to inspection and approval by the Contract Administrator/designee for quality and completeness to specifications and standards, prior to issuance of payment.

If results by CONTRACTOR show materials being used do not comply with requirements, CONTRACTOR may be directed to stop work, and remove non-complying materials, and re-coat surfaces if, upon re-re-coating with specified materials, the two coatings are not compatible.

6. **HEALTH AND SAFETY.** CONTRACTOR shall take all precautionary measures for the health and safety of CITY staff and citizens when work is being performed during normal business hours.
7. **MOVING FURNISHINGS.** CONTRACTOR shall not be responsible for moving furniture, file cabinets, desks, wall hangings, or other related office items.
8. **DISRUPTION TO BUSINESS.** CONTRACTOR shall perform work in such a way to minimize disruption to the normal operation of City business. Upon completion of work, CONTRACTOR shall be responsible for cleaning and removing from the job site all debris, materials, and equipment associated with work performed.
9. **DAMAGE TO CITY PROPERTY.** CONTRACTOR shall perform painting services in such a manner that does not damage CITY property. In the event damage occurs by reason of any painting, repairs, or other related painting services performed under this Agreement, CONTRACTOR shall replace or repair the same at no cost to the CITY. If damage caused by CONTRACTOR has to be repaired or replaced by CITY, the cost of such work shall be deducted from monies due CONTRACTOR.
10. **CONTRACTOR EMPLOYEES.** CONTRACTOR shall be responsible for maintaining satisfactory standards for CONTRACTOR's employees with regards to competency, conduct, integrity, and respect towards all CITY staff as well as the public. CONTRACTOR employees shall be required to wear a uniform bearing CONTRACTOR Company name and/or logo. All CONTRACTOR employees must speak English. CONTRACTOR shall be responsible for ensuring that all work is performed in accordance with the established practices of the industry.

While on City property conducting services outlined in this document, CONTRACTOR'S employees shall wear uniforms or other apparel to identify as their employees.

Each journeyman painter or drywall hanger who is assigned to work for CITY shall have a minimum of five (5) years documented experience with the ability to perform the tasks listed herein. CONTRACTOR shall submit written documentation of all potential employees with the bid for review.

The CITY reserves the right to require CONTRACTOR to remove any employee from the work area whom the Contract Administrator/designee has deemed incompetent, careless, insubordinate, or whose continued presence on the work site is deemed by Contract Administrator/designee to be contrary to Public's interest.

It shall be CONTRACTOR's responsibility to maintain all work areas to provide neat, attractive, and safe conditions during and upon completion of the required tasks. From time to time, CONTRACTOR may be asked to move existing furniture in the work area. It will be CONTRACTOR's responsibility to handle this task in a satisfactory manner and return furniture to where it was situated prior to the work being completed.

CONTRACTOR shall exercise precautions at all times for the protection of CITY staff, citizens, and property. Safety provisions for all applicable laws and ordinances shall be strictly observed. The Contract Administrator/designee may require CONTRACTOR to discontinue any potentially hazardous work practices upon notice.

**EXHIBIT C  
PRICING**

Pricing for hourly rate shall be for all costs required, including crew, truck, equipment operator, etc. It should be noted that CITY will calculate the hourly rate based on an average of the rates listed in order to determine the lowest responsible, responsive CONTRACTOR's rate.

ITEM #	DESCRIPTION	STRAIGHT TIME	OVER TIME
1.	Labor, brush and roller painting services	\$ .20 /per sq. ft.	\$ .20 /per sq. ft.
2.	Labor, spray painting services	\$ .15 /per sq. ft.	\$ .15 /per sq. ft.
3.	Drywall repair, plaster repair, texturing	\$ 22.00 /per hour	\$ 33.00 /per hour
4.	Paint, coatings, other paint materials, etc.	30% Discount Off of List Price	

Pricing shall include all materials to complete the work. Window sash, trim, base molding, doors, etc. shall be based on the brush and roller square foot pricing and not by the linear foot or an hourly rate. This pricing based on one coat of approved paint.

Item #	Description	Hourly Rate
1.	Journeyman Painter / Contractor. Straight time rate.	\$28.00
2.	Journeyman Painter / Contractor. Overtime rate.	\$35.00
3.	Painter's Helper. Straight time rate	\$20.00
4.	Painter's Helper. Overtime rate.	\$28.00
5.	Drywall Technician. Straight time rate.	\$28.00
6.	Drywall Technician, Overtime rate	\$35.00
7.	Labor for services performed outside scope of contract	\$35.00

Additional supplies, materials and/or misc. items, if required: Cost plus 7%

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

**\*CONTRACTOR to supply paint**

\*Straight time will be based upon an eight (8) hour day, Monday – Friday, inclusive. Overtime (if required and authorized by Contract Administrator/designee) will be based upon work in excess of eight (8) hours per day Monday – Friday, and for all work performed on Saturday, Sunday or CITY holidays. CONTRACTOR will be expected to comply with all applicable provisions of the Fair Labor Standards Act as amended and the Arizona Workers Compensation Law (ARS Title 23, Chapter 6) as amended.

**CITY OF CHANDLER SERVICES AGREEMENT  
PAINTING & RELATED SERVICES  
AGREEMENT NO.: BF3-910-3153**

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 **GHAster PAINTING & COATINGS INC** 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 Facilities Maintenance Manager/designee (Contract Administrator), to provide the services required by this Agreement.

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

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

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

**2. SCOPE OF WORK:** CONTRACTOR shall provide painting services all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

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

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

**2.3 Background Checks and Security.** CONTRACTOR shall be required to have a background check for all employees providing testing, maintenance and inspection services to CITY in order to allow CONTRACTOR's employees access to all areas within CITY, including Police and Fire Departments, Administrative offices, detention facilities, court buildings, and other restricted areas. CITY will incur the cost of this service.

**2.4 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.

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

- 2.5.1 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").
- 2.5.2 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.
- 2.5.3 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.
- 2.5.4 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.
- 2.5.5 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.
- 2.5.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.5.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.

**2.6 Warranties.**

2.6.1 **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:** CITY shall pay to CONTRACTOR an amount, including all companion Agreements, not to

exceed **One hundred Fifty Thousand Dollars (\$150,000)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.

- 4.1. **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.
- 4.2. 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.
- 4.3. **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.
- 4.4. **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.
- 4.5. **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.
- 4.6. **Price Adjustment.** All prices offered herein shall be firm against any increase for the initial term 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.
- 4.7. **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.
- 4.8. **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 **two (2) year (s)**, commencing on the **1<sup>st</sup> day of November, 2012** and terminating on **October 31, 2014** 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 additional two (2) year term**.
6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.
- 6.1 **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at [www.maricopa.gov/materials](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.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

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

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

**7.1 Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

**7.2 Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

**7.3** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

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

**7.5 Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.

**7.6 Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

## **8 TERMINATION:**

**8.1 Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and 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 its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.
12. **INSURANCE:**
  - 12.1. **Insurance Representations and Requirements:**
    1. General.
      - A. At the same time as execution of this Agreement, the CONTRACTOR shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
      - B. The CONTRACTOR and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
      - C. The insurance requirements set forth below are minimum requirements for this Agreement and

in no way limit the indemnity covenants contained in this Agreement.

- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect CONTRACTOR from liabilities that might arise out of the performance of the Agreement services under this Agreement by CONTRACTOR its agents, representatives, employees, subcontractors, sublicensees or subconsultants and the CONTRACTOR is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the CONTRACTOR from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of SubContractors: If any work is subcontracted in any way, the CONTRACTOR shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the CONTRACTOR in this Agreement. The CONTRACTOR is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope And Limits Of Insurance. The CONTRACTOR shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* CONTRACTOR must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability.* CONTRACTOR must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on CONTRACTOR owned, hired, and non-owned vehicles assigned to or used in the performance of the [Party contracting with City]'s work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. *Workers Compensation and Employers Liability Insurance:* CONTRACTOR must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

[Note: If there is no Professional Liability work or service to be performed as a part of this Agreement, the Professional Liability insurance language may not be necessary.]

- D. *Professional Liability.* If the Agreement is the subject of any professional services or work performed by the CONTRACTOR or if the CONTRACTOR engages in any professional services or work adjunct or residual to performing the work under this Agreement, the CONTRACTOR must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the CONTRACTOR or anyone employed by the CONTRACTOR or anyone whose acts, mistakes, errors and omissions the CONTRACTOR is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and the CONTRACTOR or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in

effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

3. Additional Policy Provisions Required.

- A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
- B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:
1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CONTRACTOR including the City's general supervision of the CONTRACTOR; Products and Completed operations of the CONTRACTOR; and automobiles owned, leased, hired, or borrowed by the CONTRACTOR.
  2. The CONTRACTOR's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
  3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CONTRACTOR even if those limits of liability are in excess of those required by this Agreement.
  4. The CONTRACTOR's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CONTRACTOR and must not contribute to it.
  5. The CONTRACTOR's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  6. Coverage provided by the CONTRACTOR must not be limited to the liability assumed under the indemnification provisions of this Agreement.
  7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CONTRACTOR for the City.
  8. The CONTRACTOR its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The CONTRACTOR must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
  9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the CONTRACTOR must

forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

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: Building & Facilities  
Contact: Larry LaMay  
Mailing Address: PO Box 4008  
MS 906  
Physical Address: 650 E Ryan Rd  
City, State, Zip: Chandler AZ 85244  
Phone: 480-7872-2501  
FAX: 480-782-2560

In the case of the CONTRACTOR

Firm Name: Ghaster Painting  
Contact: Brad Ghaster  
Address: 3120 W Carefree Hwy  
Ste 1, PMB 347  
City, State, Zip: Phoenix, AZ 85086  
Phone: 602-277-8541  
FAX: 602-277-8576  
EMAIL: info@ghasterpaintinginc.com

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

14. **CONFLICT OF INTEREST:**

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

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

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

15. **GENERAL TERMS:**

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

- 15.2. **Entire Agreement.** This Agreement, including 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.

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

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

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

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

\_\_\_\_\_  
MAYOR

By:   
Signature

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

SEAL

ATTEST: If Corporation  
  
Secretary

Approved as to form:  
\_\_\_\_\_  
City Attorney

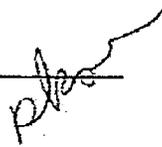


EXHIBIT A

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: BF3-910-3153			
Name (as listed in the contract): GHAster PAINTING & COATINGS INC.			
Street Name and Number: 3120 W CAREFREE HWY STE 1, PMB 347			
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: Brad A. Ghafter

Title: President

Date (month/day/year): \_\_\_\_\_

**EXHIBIT B  
TECHNICAL SPECIFICATIONS**

1. **BACKGROUND.** Per CITY request, CONTRACTOR shall furnish qualified journeyman painter(s), painter's helper(s), drywall hanger(s), and texturer(s) from time to time to perform painting, drywall, texturing and/or special repair work on various CITY projects. All projects will require CONTRACTOR to supply paint. CONTRACTOR shall equip craftsman with the normal tools of his trade and transportation necessary to move between projects. CITY will provide, or make available at the jobsite, any tools which are not normal tools of the trade but are required in order to complete the task requested by Contract Administrator/designee.

1.1 CONTRACTOR shall supply all labor, supervision, materials, supplies, and equipment used in the painting industry, transportation, and all effort necessary to perform painting services including surface preparation. The cost of wear and tear on painting application equipment, such as: rollers, brushes, sprayers, hoses, taping tools, roller handles, etc. shall be included in the bid price and not billed to the CITY. Pricing shall be all-inclusive. The CITY will not entertain portal-to-portal charges. CONTRACTOR shall provide all personnel, labor, equipment and materials necessary to perform the requirements of the Agreement.

CONTRACTOR shall be responsible for the tape masking, where applicable, and for the use of drop cloths over furniture and floors.

Damage caused by spillage of paint or stains, or back-splatter of paint rollers, overspray from spray equipment, or brush drops, shall be the responsibility of CONTRACTOR to clean, repair and/or replace damaged items.

2. **HOURS.** CONTRACTOR shall provide painting & related services Monday thru Friday between the hours of 6:00 am – 2:30 pm.

3. **WORK AND TIME AND MATERIALS.** Work performed by CONTRACTOR shall be an all-inclusive price, not time and materials. CONTRACTOR shall meet with Contract Administrator/designee at the site to ascertain what work is to be performed. CONTRACTOR shall provide a written quote with a detailed scope of work when from requested by Contract Administrator/designee. All additional work/labor charges outside the original scope of work shall be approved by Contract Administrator/designee Grade/sheen/color of paint shall be specified in the scope of work.

CONTRACTOR may be required to purchase materials necessary to perform routine maintenance and repairs. Pricing for hourly rate shall be for all costs required, including crew, truck, equipment operator, etc. CONTRACTOR will require authorization from Contract Administrator/designee prior to such purchases and will be required to submit receipts for reimbursement per the following guidelines:

1. Materials/supplies for a specific job may not be reimbursed without the consent of the Contract Administrator/designee.
2. CITY reserves the right to purchase and furnish the required materials when the Contract Administrator deems it is the CITY's best interest. The CITY may furnish CONTRACTOR with an inventory of commonly used materials and/or supplies that are to be used solely for CITY purposes.
3. CONTRACTOR will be accountable for all materials and/or supplies issued by CITY. Invoices for purchase of authorized items shall be turned in at the end of each project

3.1 CONTRACTOR's submitted price quote shall be all-inclusive. All additional fees shall be absorbed by CONTRACTOR unless prior approved by Contract Administrator/designee prior to commencing work and shall be paid at the price established on Exhibit C listed herein. Exceptions to this are

changes requested by Contract Administrator/designee that incur higher project cost and longer delays. All changes must be in writing and approved by the Contract Administrator/designee prior to any commencement of additional work. CONTRACTOR(s) failing to acquire prior approval in writing shall incur the additional cost without payment.

All work under this Agreement shall include everything CONTRACTOR anticipates is necessary to complete the job (i.e., rental equipment, materials, labor, supervision, subcontractor costs, mobilization costs, demobilization costs, etc.). These costs shall be part of the overall price and as such are not itemized.

- 3.2 **Rental Equipment.** If rental equipment is required, CONTRACTOR shall provide rented equipment charges (invoice) to Contract Administrator/designee. CONTRACTOR shall be allowed a mark-up for rental equipment but shall not add additional fees other than what the rental firm has posted. If rented equipment requires a supply of fuel, the cost of fuel is allowed but only at the prevailing rates.
4. **RESPONSE TIME.** CITY shall specify the work to be performed and the time within which it should normally be completed. The Contract Administrator/designee shall furnish the painter or drywall hanger such instructions and specifications (verbally or in writing) as are deemed necessary in order to accomplish the required task. The method of performing the work shall be the responsibility of CONTRACTOR after consultation with the Contract Administrator/designee. CONTRACTOR shall be available within 48-hours from the date of request for non-emergency situations. In the event of an emergency, CONTRACTOR shall be available within four (4).
5. **INSPECTION AND APPROVAL OF WORK.** All work performed by CONTRACTOR shall be subject to inspection and approval by the Contract Administrator/designee for quality and completeness to specifications and standards, prior to issuance of payment.  
  
If results by CONTRACTOR show materials being used do not comply with requirements, CONTRACTOR may be directed to stop work, and remove non-complying materials, and re-coat surfaces if, upon re-re-coating with specified materials, the two coatings are not compatible.
6. **HEALTH AND SAFETY.** CONTRACTOR shall take all precautionary measures for the health and safety of CITY staff and citizens when work is being performed during normal business hours.
7. **MOVING FURNISHINGS.** CONTRACTOR shall not be responsible for moving furniture, file cabinets, desks, wall hangings, or other related office items.
8. **DISRUPTION TO BUSINESS.** CONTRACTOR shall perform work in such a way to minimize disruption to the normal operation of City business. Upon completion of work, CONTRACTOR shall be responsible for cleaning and removing from the job site all debris, materials, and equipment associated with work performed.
9. **DAMAGE TO CITY PROPERTY.** CONTRACTOR shall perform painting services in such a manner that does not damage CITY property. In the event damage occurs by reason of any painting, repairs, or other related painting services performed under this Agreement, CONTRACTOR shall replace or repair the same at no cost to the CITY. If damage caused by CONTRACTOR has to be repaired or replaced by CITY, the cost of such work shall be deducted from monies due CONTRACTOR.
10. **CONTRACTOR EMPLOYEES.** CONTRACTOR shall be responsible for maintaining satisfactory standards for CONTRACTOR's employees with regards to competency, conduct, integrity, and respect towards all CITY staff as well as the public. CONTRACTOR employees shall be required to wear a uniform bearing CONTRACTOR Company name and/or logo. All CONTRACTOR employees must speak English. CONTRACTOR shall be responsible for ensuring that all work is performed in accordance with the established practices of the industry.

While on City property conducting services outlined in this document, CONTRACTOR'S employees shall wear uniforms or other apparel to identify as their employees.

Each journeyman painter or drywall hanger who is assigned to work for CITY shall have a minimum of five (5) years documented experience with the ability to perform the tasks listed herein. CONTRACTOR shall submit written documentation of all potential employees with the bid for review.

The CITY reserves the right to require CONTRACTOR to remove any employee from the work area whom the Contract Administrator/designee has deemed incompetent, careless, insubordinate, or whose continued presence on the work site is deemed by Contract Administrator/designee to be contrary to Public's interest.

It shall be CONTRACTOR's responsibility to maintain all work areas to provide neat, attractive, and safe conditions during and upon completion of the required tasks. From time to time, CONTRACTOR may be asked to move existing furniture in the work area. It will be CONTRACTOR's responsibility to handle this task in a satisfactory manner and return furniture to where it was situated prior to the work being completed.

CONTRACTOR shall exercise precautions at all times for the protection of CITY staff, citizens, and property. Safety provisions for all applicable laws and ordinances shall be strictly observed. The Contract Administrator/designee may require CONTRACTOR to discontinue any potentially hazardous work practices upon notice.

**EXHIBIT C  
PRICING**

Pricing for hourly rate shall be for all costs required, including crew, truck, equipment operator, etc. It should be noted that CITY will calculate the hourly rate based on an average of the rates listed in order to determine the lowest responsible, responsive CONTRACTOR's rate.

ITEM #	DESCRIPTION	STRAIGHT TIME	OVER TIME
1.	Labor, brush and roller painting services	\$ .30 /per sq. ft.	\$ .40 /per sq. ft.
2.	Labor, spray painting services	\$ .25 /per sq. ft.	\$ .35 /per sq. ft.
3.	Drywall repair, plaster repair, texturing	\$ 25.00 /per hour	\$ 37.50 /per hour
4.	Paint, coatings, other paint materials, etc.	35% Discount Off of List Price	

Pricing shall include all materials to complete the work. Window sash, trim, base molding, doors, etc. shall be based on the brush and roller square foot pricing and not by the linear foot or an hourly rate. This pricing based on one coat of approved paint.

Item #	Description	Hourly Rate
1.	Journeyman Painter / Contractor. Straight time rate.	\$30.00
2.	Journeyman Painter / Contractor. Overtime rate.	\$45.00
3.	Painter's Helper. Straight time rate	\$15.00
4.	Painter's Helper. Overtime rate.	\$22.50
5.	Drywall Technician. Straight time rate.	\$25.00
6.	Drywall Technician, Overtime rate	\$37.50
7.	Labor for services performed outside scope of contract	\$30.00

Additional supplies, materials and/or misc. items, if required: Cost plus 5 %

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

**\*CONTRACTOR to supply paint**

\*Straight time will be based upon an eight (8) hour day, Monday – Friday, inclusive. Overtime (if required and authorized by Contract Administrator/designee) will be based upon work in excess of eight (8) hours per day Monday – Friday, and for all work performed on Saturday, Sunday or CITY holidays. CONTRACTOR will be expected to comply with all applicable provisions of the Fair Labor Standards Act as amended and the Arizona Workers Compensation Law (ARS Title 23, Chapter 6) as amended.

**CITY OF CHANDLER SERVICES AGREEMENT  
PAINTING & RELATED SERVICES  
AGREEMENT NO.: BF3-910-3153**

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 **HERNANDEZ COMPANIES, INC.** 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 Facilities Maintenance Manager/designee (Contract Administrator), to provide the services required by this Agreement.

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

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

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

**2. SCOPE OF WORK:** CONTRACTOR shall provide painting services all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

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

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

**2.3 Background Checks and Security.** CONTRACTOR shall be required to have a background check for all employees providing testing, maintenance and inspection services to CITY in order to allow CONTRACTOR's employees access to all areas within CITY, including Police and Fire Departments, Administrative offices, detention facilities, court buildings, and other restricted areas. CITY will incur the cost of this service.

**2.4 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.

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

- 2.5.1 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").
- 2.5.2 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.
- 2.5.3 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.
- 2.5.4 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.
- 2.5.5 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.
- 2.5.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.5.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
3. **Warranties. One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.
4. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
  - 4.1. **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.
  - 4.2. **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.
  - 4.3. **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.
  - 4.4. **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.
5. **PRICE:** CITY shall pay to CONTRACTOR an amount, including all companion Agreements, not to exceed **One hundred Fifty Thousand Dollars (\$150,000)** for the completion of all the work and

services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.

- 4.1. **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.
- 4.2. 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.
- 4.3. **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.
- 4.4. **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.
- 4.5. **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.
- 4.6. **Price Adjustment.** All prices offered herein shall be firm against any increase for the initial term 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.
- 4.7. **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.
- 4.8. **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 **two (2) year (s)**, commencing on the **1<sup>st</sup> day of November, 2012** and terminating on **October 31, 2014** 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 additional two (2) year term**.
6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.
- 6.1 **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at [www.maricopa.gov/materials](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.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

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

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

**7.1 Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

**7.2 Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

**7.3** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

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

**7.5 Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.

**7.6 Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

**8 TERMINATION:**

**8.1 Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and 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 its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.
12. **INSURANCE:**
  - 12.1. **Insurance Representations and Requirements:**
    1. General.
      - A. At the same time as execution of this Agreement, the CONTRACTOR shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
      - B. The CONTRACTOR and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.

- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
  - D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect CONTRACTOR from liabilities that might arise out of the performance of the Agreement services under this Agreement by CONTRACTOR its agents, representatives, employees, subcontractors, sublicensees or subconsultants and the CONTRACTOR is free to purchase any additional insurance as may be determined necessary.
  - E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the CONTRACTOR from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
  - F. Use of SubContractors: If any work is subcontracted in any way, the CONTRACTOR shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the CONTRACTOR in this Agreement. The CONTRACTOR is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.
2. Minimum Scope And Limits Of Insurance. The CONTRACTOR shall provide coverage with limits of liability not less than those stated below.
- A. *Commercial General Liability-Occurrence Form.* CONTRACTOR must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
  - B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability:* CONTRACTOR must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on CONTRACTOR owned, hired, and non-owned vehicles assigned to or used in the performance of the [Party contracting with City]'s work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
  - C. *Workers Compensation and Employers Liability Insurance:* CONTRACTOR must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.
- [Note: If there is no Professional Liability work or service to be performed as a part of this Agreement, the Professional Liability insurance language may not be necessary.]
- D. *Professional Liability.* If the Agreement is the subject of any professional services or work performed by the CONTRACTOR or if the CONTRACTOR engages in any professional services or work adjunct or residual to performing the work under this Agreement, the CONTRACTOR must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the CONTRACTOR or anyone employed by the CONTRACTOR or anyone whose acts, mistakes, errors and omissions the CONTRACTOR is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and the CONTRACTOR or its selected

Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

3. Additional Policy Provisions Required.

- A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
- B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:
1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CONTRACTOR including the City's general supervision of the CONTRACTOR; Products and Completed operations of the CONTRACTOR; and automobiles owned, leased, hired, or borrowed by the CONTRACTOR.
  2. The CONTRACTOR's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
  3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CONTRACTOR even if those limits of liability are in excess of those required by this Agreement.
  4. The CONTRACTOR's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CONTRACTOR and must not contribute to it.
  5. The CONTRACTOR's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  6. Coverage provided by the CONTRACTOR must not be limited to the liability assumed under the indemnification provisions of this Agreement.
  7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CONTRACTOR for the City.
  8. The CONTRACTOR its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The CONTRACTOR must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
  9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If

any of the required policies expire during the life of this Agreement, the CONTRACTOR must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

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: Building & Facilities  
Contact: Larry LaMay  
Mailing Address: PO Box 4008  
MS 906  
Physical Address: 650 E Ryan Rd  
City, State, Zip Chandler AZ 85244  
Phone: 480-7872-2501  
FAX: 480-782-2560

In the case of the CONTRACTOR

Firm Name: Hernandez Companies  
Contact: Denise Hernandez  
Address: 3734 E Anne St  
City, State, Zip Phoenix, AZ 85040  
Phone: 602-438-7825  
FAX: 602-438-6558  
EMAIL: info@hernandezcompanies.com

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

14. **CONFLICT OF INTEREST:**

- 14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.
- 14.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. **GENERAL TERMS:**

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

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

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

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

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

\_\_\_\_\_  
MAYOR

By: \_\_\_\_\_  
Signature

ATTEST:

ATTEST: If Corporation

\_\_\_\_\_  
City Clerk

SEAL

\_\_\_\_\_  
Renee Hernandez  
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: BF3-910-3153		
Name (as listed in the contract): HERNANDEZ COMPANIES INC.		
Street Name and Number: 3734 E ANNE ST		
City: PHOENIX	State: AZ	Zip Code: 85040

I hereby attest that:

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

Signature of Contractor (Employer) or Authorized Designee:

Denise Hernandez

Printed Name: Denise Hernandez

Title: Vice President

Date (month/day/year): 10/18/12

**EXHIBIT B  
TECHNICAL SPECIFICATIONS**

1. **BACKGROUND.** Per CITY request, CONTRACTOR shall furnish qualified journeyman painter(s), painter's helper(s), drywall hanger(s), and texturer(s) from time to time to perform painting, drywall, texturing and/or special repair work on various CITY projects. All projects will require CONTRACTOR to supply paint. CONTRACTOR shall equip craftsman with the normal tools of his trade and transportation necessary to move between projects. CITY will provide, or make available at the jobsite, any tools which are not normal tools of the trade but are required in order to complete the task requested by Contract Administrator/designee.

1.1 CONTRACTOR shall supply all labor, supervision, materials, supplies, and equipment used in the painting industry, transportation, and all effort necessary to perform painting services including surface preparation. The cost of wear and tear on painting application equipment, such as: rollers, brushes, sprayers, hoses, taping tools, roller handles, etc. shall be included in the bid price and not billed to the CITY. Pricing shall be all-inclusive. The CITY will not entertain portal-to-portal charges. CONTRACTOR shall provide all personnel, labor, equipment and materials necessary to perform the requirements of the Agreement.

CONTRACTOR shall be responsible for the tape masking, where applicable, and for the use of drop cloths over furniture and floors.

Damage caused by spillage of paint or stains, or back-splatter of paint rollers, overspray from spray equipment, or brush drops, shall be the responsibility of CONTRACTOR to clean, repair and/or replace damaged items.

2. **HOURS.** CONTRACTOR shall provide painting & related services Monday thru Friday between the hours of 6:00 am – 2:30 pm.

3. **WORK AND TIME AND MATERIALS.** Work performed by CONTRACTOR shall be an all-inclusive price, not time and materials. CONTRACTOR shall meet with Contract Administrator/designee at the site to ascertain what work is to be performed. CONTRACTOR shall provide a written quote with a detailed scope of work when from requested by Contract Administrator/designee. All additional work/labor charges outside the original scope of work shall be approved by Contract Administrator/designee Grade/sheen/color of paint shall be specified in the scope of work.

CONTRACTOR may be required to purchase materials necessary to perform routine maintenance and repairs. Pricing for hourly rate shall be for all costs required, including crew, truck, equipment operator, etc. CONTRACTOR will require authorization from Contract Administrator/designee prior to such purchases and will be required to submit receipts for reimbursement per the following guidelines:

1. Materials/supplies for a specific job may not be reimbursed without the consent of the Contract Administrator/designee.
2. CITY reserves the right to purchase and furnish the required materials when the Contract Administrator deems it is the CITY's best interest. The CITY may furnish CONTRACTOR with an inventory of commonly used materials and/or supplies that are to be used solely for CITY purposes.
3. CONTRACTOR will be accountable for all materials and/or supplies issued by CITY. Invoices for purchase of authorized items shall be turned in at the end of each project

3.1 CONTRACTOR's submitted price quote shall be all-inclusive. All additional fees shall be absorbed by CONTRACTOR unless prior approved by Contract Administrator/designee prior to commencing work and shall be paid at the price established on Exhibit C listed herein. Exceptions to this are

changes requested by Contract Administrator/designee that incur higher project cost and longer delays. All changes must be in writing and approved by the Contract Administrator/designee prior to any commencement of additional work. CONTRACTOR(s) failing to acquire prior approval in writing shall incur the additional cost without payment.

All work under this Agreement shall include everything CONTRACTOR anticipates is necessary to complete the job (i.e., rental equipment, materials, labor, supervision, subcontractor costs, mobilization costs, demobilization costs, etc.). These costs shall be part of the overall price and as such are not itemized.

- 3.2 **Rental Equipment.** If rental equipment is required, CONTRACTOR shall provide rented equipment charges (invoice) to Contract Administrator/designee. CONTRACTOR shall be allowed a mark-up for rental equipment but shall not add additional fees other than what the rental firm has posted. If rented equipment requires a supply of fuel, the cost of fuel is allowed but only at the prevailing rates.
4. **RESPONSE TIME.** CITY shall specify the work to be performed and the time within which it should normally be completed. The Contract Administrator/designee shall furnish the painter or drywall hanger such instructions and specifications (verbally or in writing) as are deemed necessary in order to accomplish the required task. The method of performing the work shall be the responsibility of CONTRACTOR after consultation with the Contract Administrator/designee. CONTRACTOR shall be available within 48-hours from the date of request for non-emergency situations. In the event of an emergency, CONTRACTOR shall be available within four (4).
5. **INSPECTION AND APPROVAL OF WORK.** All work performed by CONTRACTOR shall be subject to inspection and approval by the Contract Administrator/designee for quality and completeness to specifications and standards, prior to issuance of payment.  
  
If results by CONTRACTOR show materials being used do not comply with requirements, CONTRACTOR may be directed to stop work, and remove non-complying materials, and re-coat surfaces if, upon re-re-coating with specified materials, the two coatings are not compatible.
6. **HEALTH AND SAFETY.** CONTRACTOR shall take all precautionary measures for the health and safety of CITY staff and citizens when work is being performed during normal business hours.
7. **MOVING FURNISHINGS.** CONTRACTOR shall not be responsible for moving furniture, file cabinets, desks, wall hangings, or other related office items.
8. **DISRUPTION TO BUSINESS.** CONTRACTOR shall perform work in such a way to minimize disruption to the normal operation of City business. Upon completion of work, CONTRACTOR shall be responsible for cleaning and removing from the job site all debris, materials, and equipment associated with work performed.
9. **DAMAGE TO CITY PROPERTY.** CONTRACTOR shall perform painting services in such a manner that does not damage CITY property. In the event damage occurs by reason of any painting, repairs, or other related painting services performed under this Agreement, CONTRACTOR shall replace or repair the same at no cost to the CITY. If damage caused by CONTRACTOR has to be repaired or replaced by CITY, the cost of such work shall be deducted from monies due CONTRACTOR.
10. **CONTRACTOR EMPLOYEES.** CONTRACTOR shall be responsible for maintaining satisfactory standards for CONTRACTOR's employees with regards to competency, conduct, integrity, and respect towards all CITY staff as well as the public. CONTRACTOR employees shall be required to wear a uniform bearing CONTRACTOR Company name and/or logo. All CONTRACTOR employees must speak English. CONTRACTOR shall be responsible for ensuring that all work is performed in accordance with the established practices of the industry.

While on City property conducting services outlined in this document, CONTRACTOR'S employees shall wear uniforms or other apparel to identify as their employees.

Each journeyman painter or drywall hanger who is assigned to work for CITY shall have a minimum of five (5) years documented experience with the ability to perform the tasks listed herein. CONTRACTOR shall submit written documentation of all potential employees with the bid for review.

The CITY reserves the right to require CONTRACTOR to remove any employee from the work area whom the Contract Administrator/designee has deemed incompetent, careless, insubordinate, or whose continued presence on the work site is deemed by Contract Administrator/designee to be contrary to Public's interest.

It shall be CONTRACTOR's responsibility to maintain all work areas to provide neat, attractive, and safe conditions during and upon completion of the required tasks. From time to time, CONTRACTOR may be asked to move existing furniture in the work area. It will be CONTRACTOR's responsibility to handle this task in a satisfactory manner and return furniture to where it was situated prior to the work being completed.

CONTRACTOR shall exercise precautions at all times for the protection of CITY staff, citizens, and property. Safety provisions for all applicable laws and ordinances shall be strictly observed. The Contract Administrator/designee may require CONTRACTOR to discontinue any potentially hazardous work practices upon notice.

**EXHIBIT C  
PRICING**

Pricing for hourly rate shall be for all costs required, including crew, truck, equipment operator, etc. It should be noted that CITY will calculate the hourly rate based on an average of the rates listed in order to determine the lowest responsible, responsive CONTRACTOR's rate.

ITEM #	DESCRIPTION	STRAIGHT TIME	OVER TIME
1.	Labor, brush and roller painting services	\$ .20 /per sq. ft.	\$ .20 /per sq. ft.
2.	Labor, spray painting services	\$ .20 /per sq. ft.	\$ .20 /per sq. ft.
3.	Drywall repair, plaster repair, texturing	\$ 32.00 /per hour	\$ 32.00 /per hour
4.	Paint, coatings, other paint materials, etc.	30% Discount Off of List Price	

Pricing shall include all materials to complete the work. Window sash, trim, base molding, doors, etc. shall be based on the brush and roller square foot pricing and not by the linear foot or an hourly rate. This pricing based on one coat of approved paint.

Item #	Description	Hourly Rate
1.	Journeyman Painter / Contractor. Straight time rate.	\$32.00
2.	Journeyman Painter / Contractor. Overtime rate.	\$37.00
3.	Painter's Helper. Straight time rate	\$20.00
4.	Painter's Helper. Overtime rate.	\$25.00
5.	Drywall Technician. Straight time rate.	\$32.00
6.	Drywall Technician, Overtime rate	\$37.00
7.	Labor for services performed outside scope of contract	\$32.00

Additional supplies, materials and/or misc. items, if required: Cost plus 10 %

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

**\*CONTRACTOR to supply paint**

\*Straight time will be based upon an eight (8) hour day, Monday – Friday, inclusive. Overtime (if required and authorized by Contract Administrator/designee) will be based upon work in excess of eight (8) hours per day Monday – Friday, and for all work performed on Saturday, Sunday or CITY holidays. CONTRACTOR will be expected to comply with all applicable provisions of the Fair Labor Standards Act as amended and the Arizona Workers Compensation Law (ARS Title 23, Chapter 6) as amended.