



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

28

MEMO NO. ST13-017

2. Council Meeting Date:
December 13, 2012

TO: MAYOR & COUNCIL

3. Date Prepared: November 1, 2012

THROUGH: CITY MANAGER

4. Requesting Department:
Transportation & Development

5. SUBJECT: Agreement No. ST3-914-3175 with Sand Dollar Construction, Inc. for Wall Repair & Replacement – Commonwealth Avenue and Alma School Road.

6. RECOMMENDATION: Approval of Agreement No. ST3-914-3175 for Wall Repair & Replacement – Commonwealth Avenue and Alma School Road with Sand Dollar Construction, Inc. in an amount not to exceed \$266,309.

7. BACKGROUND/DISCUSSION: This contract is to remove and replace two existing walls in poor condition. The first is a 380 foot wall section which separates an alley from our retention basin at Alma School Road and Highland Street. An adjacent wall which separates Fire Station No. 2 from the drainage basin will also be repaired and painted. The second wall is a 980 foot section and is located on the north side of Commonwealth Avenue currently under construction from Hamilton Street to Ithica Place including the small portions on the side streets at the corner lots.

8. EVALUATION PROCESS: An Invitation for Bid (IFB) was issued on September 12, 2012. The bid was advertised and all registered vendors were notified. Two (2) eligible responses were received and are listed as follows:

Sand Dollar Construction, Inc. - \$266,309.00

Sunset Fence - \$282,427.44

City staff is recommending award to Sand Dollar Construction, the lowest, responsive and responsible bidder.

9. FINANCIAL IMPLICATIONS:

Costs \$266,309

Savings N/A

Long Term Costs N/A

<u>Account Name</u>	<u>Fund</u>	<u>Program Name</u>	<u>Funds</u>
401.3310.0000.6517.6ST652	General Fund	Wall Repair	\$222,300
411.3310.0000.6517.6ST652	Streets GOB	Wall Repair	\$ 44,009

10. PROPOSED MOTION: Move to approve Agreement No. ST3-914-3175 for Wall Repair & Replacement – Commonwealth Avenue and Alma School Road with Sand Dollar Construction, Inc. in an amount not to exceed \$266,309.

ATTACHMENT: Location Map, Agreement

APPROVALS

11. Requesting Department


Daniel W. Cook, Transportation Manager

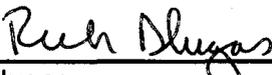
12. Department Head


R.J. Zeder, Transportation & Development Director

13. Procurement Officer


Kristy Garcia, CPPB

14. City Manager

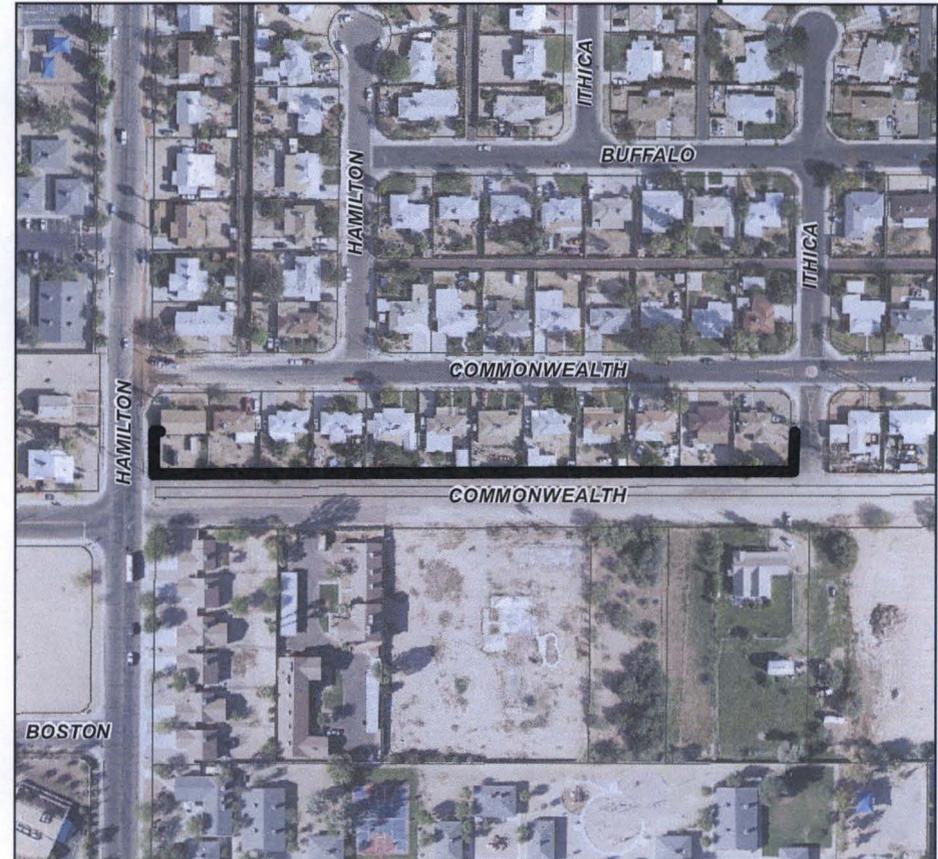
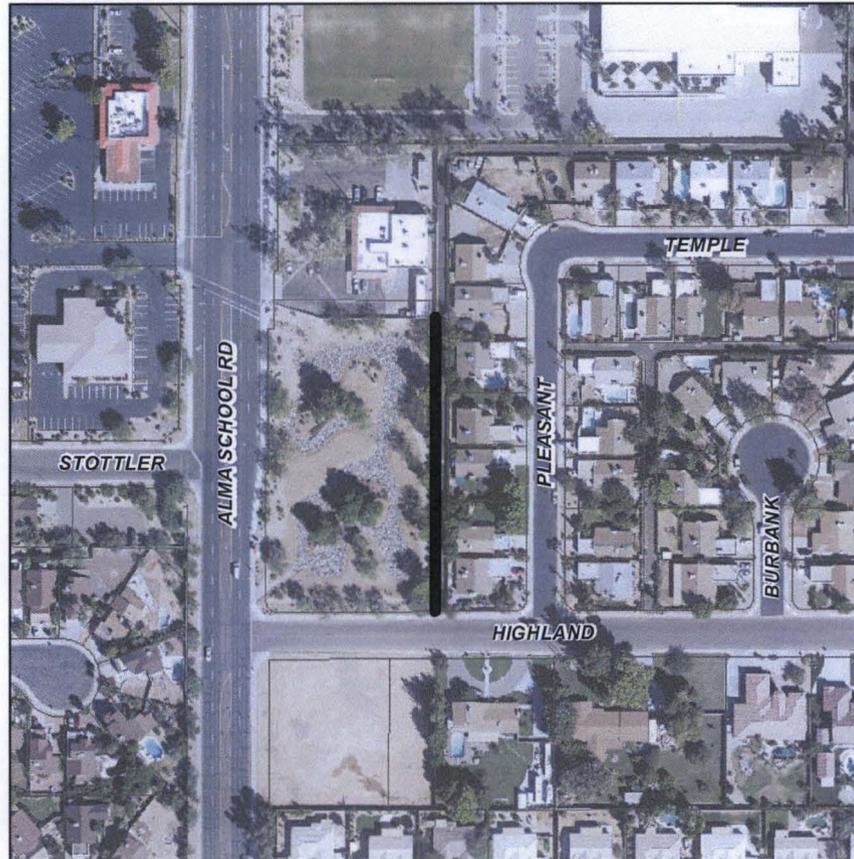
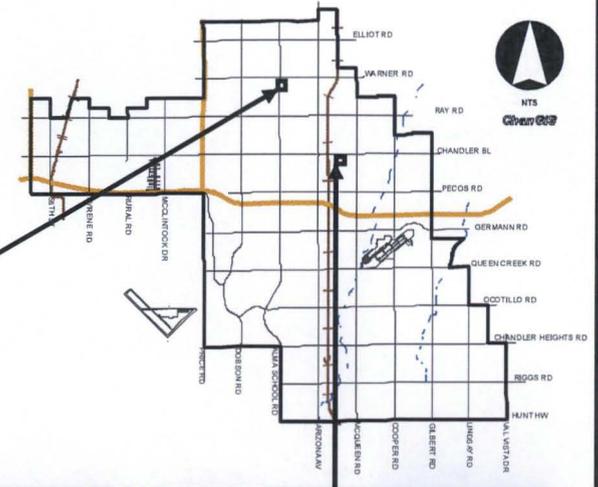

Rich Dlugas



WALL REPAIR & REPLACEMENT COMMONWEALTH AV AND ALMA SCHOOL RD AGREEMENT NO. ST3-914-3175

MEMO NO. ST13-017

PROJECT SITE



**CITY OF CHANDLER SERVICES AGREEMENT
WALL REPAIR & REPLACEMENT – COMMONWEALTH / ALMA SCHOOL
AGREEMENT NO.: ST3-914-3175**

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 Sand Dollar Construction, Inc. (a Corporation of the State of California), hereinafter referred to as "CONTRACTOR".

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

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

1. CONTRACT ADMINISTRATOR:

- 1.1 Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Streets Superintendent/designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2 Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3 Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.
- 1.4 Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

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

- 2.1 Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2 Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
- 2.3 Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for benefit concerning this Contract without the prior written approval of the CITY.
- 2.4 Compliance with Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
 - 2.4.1** Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

- 2.4.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.4.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.4.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.5 **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.
- 3 **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- 3.1 **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2 **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 3.3 **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
- 3.4 **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
- 4 **PRICE:**
- 4.1 CITY shall pay to CONTRACTOR an amount not to exceed **Two Hundred Sixty Six Thousand Three Hundred and Nine Dollars (\$266,309.00)** 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.

- 4.2. **Taxes.** CONTRACTOR shall be solely legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 4.3. CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.4. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.5. **Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
- 4.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
- 4.7. **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:** Following execution of this Agreement by CITY, CONTRACTOR shall immediately commence work and shall complete all services described herein no later than June 15, 2013.
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.
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.
- 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:

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 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.

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: Streets Division

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

In the case of the CONTRACTOR

Firm Name: Sand Dollar
Construction, Inc.

Contact: J.R. Rodriguez
Address: 625 W. Southern Ave.
City, State, Zip: Mesa, AZ 85210
Phone: 602-697-6696
FAX: 480-809-4646
EMAIL: jr@sanddollarconst.com

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

14. **CONFLICT OF INTEREST:**

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

15. **GENERAL TERMS:**

- 15.1. **Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 15.2. **Performance and Payment Bonds.** Within fifteen (15) days from the time a Contract is awarded, CONTRACTOR shall furnish fully executed Performance and Payment Bond (Labor and Materials) in such form and context as determined by CITY from a surety approved by CITY. Said bonds shall be in a sum no less than one hundred (100%) of the Contract price.

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

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

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

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

15.10. 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 27TH day of NOVEMBER, 2012.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: 
Signature

ATTEST:

ATTEST: If Corporation

SEAL

City Clerk

Secretary

Approved as to form:

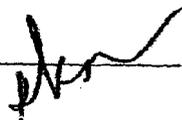
City Attorney 

EXHIBIT A

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

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

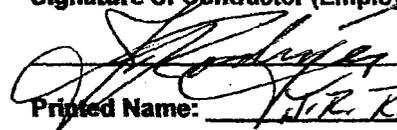
By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: ST3-914-3175 Wall Repair & Replacement – Commonwealth / Alma School		
Name (as listed in the contract): Sand Dollar Construction, Inc.		
Street Name and Number: 625 W. Southern Ave.		
City: Mesa	State: AZ	Zip Code: 85210

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: J.R. RODRIGUEZ
Title: PROJECT MANAGER
Date (month/day/year): 11/27/2012

**EXHIBIT B
SCOPE OF WORK**

1. CONTRACTOR shall provide all labor, materials, dust mitigation, permits, equipment, and everything necessary to complete the work while adhering to applicable laws, specifications, and ordinances. This shall include all traffic control, if necessary. As is more clearly specified on the drawings, the proposed work shall be done at two separate sites. One site is on the north side of Commonwealth Avenue from Ithica to Hamilton. The second site is replacing the existing wall parallel to Alma School Rd at the basin at the intersection of Alma School and Highland and patch and painting the existing wall on the north side of the site. CONTRACTOR shall be responsible for the removal and disposal of all walls or fences designated to be removed including but not limited to the spoils from the proposed footings and other debris.
2. CONTRACTOR shall verify all utilities and must utilize Blue Stake services. Should any damage occur, CONTRACTOR shall take sole responsibility for any costs incurred. CONTRACTOR must repair and/or replace all damaged areas including plant material, irrigation, sod, and irrigation systems in kind. CONTRACTOR shall be responsible for documenting existing site conditions on prior to commencing any work.
3. CONTRACTOR shall be responsible for ensuring that the proposed walls meet Arizona Department of Transportation (ADOT) specifications. (Refer to ADOT bridge structure detail drawings entitled "Sound Barrier Wall SD 9.01 & 8.02, most current revision).
4. The proposed walls are located on both private and CITY-owned property. The private walls shall require various levels of repair or replacement. This is especially evident where the proposed wall is to tie into the existing walls or fences on site. CONTRACTOR may need to tie the proposed wall into the existing side yard walls. CONTRACTOR shall include pricing to construct plus/minus 6' or wall to make the necessary connection to the side yard wall. CONTRACTOR shall also ensure any proposed walls meet existing walls in a secure fashion, utilizing good masonry practice. CONTRACTOR shall assure that the minimum wall height, on either side is 6' height.
5. CONTRACTOR shall prepare and utilize door hangers to notify property owners of work to be completed. Door hangers shall provide CONTRACTOR's contact information, including date(s) of work for said property, and five (5) days minimum notice. (Exhibit E attached). CONTRACTOR shall submit a sample door hanger to the Contract Administrator/designee for prior approval.
6. CONTRACTOR shall coordinate all work with the property owner and the Contract Administrator/designee, including notification to the property owner when work is to commence on their property and installation of screened temporary fencing. The temporary fencing must secure potential pets within the owners' property. The maximum timeframe a single property may go with a temporary fence is seven (7) days. This shall be sufficient time to replace a wall portion on the property.
7. CONTRACTOR shall be responsible for providing documentation to the Contract Administrator/designee of the existing condition of the sites prior to commencing work in case any discrepancies arise. Documentation shall be submitted to Contract Administrator/designee on a weekly basis. CONTRACTOR shall photograph or videotape entire site reflecting existing conditions prior to commencement of any work and provide a copy of said photos or videotape to Contract Administrator/designee.
8. If access to the alley is restricted for trash collection, it shall be CONTRACTORS responsibility to relocate the receptacles to the nearby street on trash collection days and replace them in the intended location once the trash has been collected on that day.

9. At the Commonwealth Avenue site, the home owner's side of the wall is to be painted the same wall color as previously approved by home owner and each lot is to be offered one of the following which shall be designed and installed by CONTRACTOR. The homeowners options are as follows:
- a. Painted interior wall or not painted interior wall. Per this Agreement, CONTRACTOR shall include painting on the inside of the proposed wall and the side walls to a point of connection to existing walls or to the construction easement line (6'). If additional wall area is to be painted, CONTRACTOR shall provide a square foot price that may be utilized if the same color is provided or an acceptable paint is provided to CONTRACTOR by the home owner. If agreeable, CONTRACTOR shall paint the inside wall the color the homeowner requests, and homeowner shall either provide to CONTRACTOR or pay CONTRACTOR to complete. If any other arrangement is made, it must be done between CONTRACTOR and homeowner.
 - b. All wrought iron shall be gloss black and also include 3/4" square pickets, a 4"x1/8" flat strap, a heavy duty pipe track and track wheels with a safety catch and safety post, heavy duty lockable latch post. CONTRACTOR shall also provide a reinforced 12" x 12" concrete pad behind wall for the gate to roll on. The required material shall be mounted to the proposed wall securely. CONTRACTOR shall submit gate plans to Contract Administrator/designee for approval and acceptance prior any gate construction. Exhibit C (attached) outlines the gate types required.
10. CONTRACTOR may commence work on the Alma School wall upon receipt of an approved, executed Agreement. CONTRACTOR shall wait for approval from Contract Administrator/designee prior to commencing work on the Commonwealth Road wall; work will not begin until the proposed road in this location is predominately done.
11. CONTRACTOR shall be responsible for equipment and site during construction. CONTRACTOR must take care in the existing landscape when storing block and other equipment.
12. In regards to the Alma School wall, only the basin side of the wall shall be painted. In addition, the existing wall along the basin adjacent to the Fire Station shall be painted with the current color as well as be patched, as required, and receive tile additions matching that of the proposed wall at the same separation distances so the combination of walls looks uniform. CONTRACTOR shall attach all wall features as required.
13. CONTRACTOR shall coordinate all site work, including block and tile work, wall repair, painting, anti-graffiti coatings, clean-up, and wrought iron gate work including roll gate concrete pad as specified.
14. Anti-graffiti coating to be applied is MB4500G coating as manufactured by MB Solutions 1-888-554-8844 or approved equal. CONTRACTOR shall apply per manufacturers recommendations.

**EXHIBIT C
PRICING**

ITEM #	DESCRIPTION	QTY	UNIT PRICE
Alma School Rd. and Highland Basin Wall			
1.	6' high masonry wall replacement w/ adornment as specified, including paint, anti-graffiti coatings	382 ± LF	\$ 160.00
2.	Repair and paint and add adornment to existing wall including anti-graffiti coatings	223± LF	\$ 65.00
3.	Existing wall and footing to be removed and disposed	382± LF	\$ 12.00
4.	Per S.F. repair, patch, and painting	SF	\$ 21.00
Commonwealth Ave. Wall (Ithica to Hamilton)			
5.	6' high masonry wall replacement w/ adornment as specified	950± LF	\$ 150.00
6.	6'ht., 20' wide Wrought Iron picket w, composite slats – Back Track Roll Gate	EA	\$ 4,592.00
7.	6'ht., 42" wide Wrought Iron picket w, composite slats – Pedestrian Gate	EA	\$ 500.00
8.	Temporary fencing at specified private wall locations	LS	\$ 1,500.00
9.	Existing wall, fencing, and footing to be removed and disposed	950± LF	\$ 12.00
10.	6'ht., 10' wide Wrought Iron picket w, composite slats – Back Track Roll Gate	EA	\$ 1,700.00
11.	6'ht., 14' wide Wrought Iron picket w, composite slats – Back Track Roll Gate	EA	\$ 3,300.00
12.	Per S.F. repair, patch, and painting and anti-graffiti coating	SF	\$ 35.00
13.	Repair and paint 6' of wall from proposed wall north	PER SIDE	\$ 950.00
14.	6' ht. swing Wrought Iron Picket Gate w/ composite slats at end of driveway at 601 Commonwealth	EA	\$ 1,300.00
15.	– Wrought Iron Swing Gate to match proposed gates at drive for 699 Commonwealth Ave	EA	\$ 2,700.00
16.	– Two coats of paint the color specified by City	SF	\$ 400.00
17.	– Labor to move or relocate existing debris/personal property within yards so wall work may commence	HRLY 8 hours projected	\$ 150.00

**EXHIBIT D1
BID BOND**

ARIZONA STATUTORY BID BOND PURSUANT TO
TITLES 28,34 AND 41.
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must not be less than 10% of the bid amount)

KNOW ALL MEN BY THESE PRESENTS: That, _____,
_____, (hereinafter Principal), as Principal, and
_____, (hereinafter "Surety"), a corporation organized and
existing under the laws of the State of _____, with its principal offices in _____,
holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department
of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, held and firmly bound unto
_____, (hereinafter "Obligee"), as Obligee, in the amount of Ten Percent (10%) of the
amount of the bid of Principal, submitted by Principal to the Obligee for the work described below, for the
payment of which sum, the Principal and the Surety bind themselves, and their heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has submitted a bid for:

Wall Repairs – Commonwealth/Alma School; Agreement No. ST3-914-3175

NOW, THEREFORE, if the Obligee accepts the proposal of the Principal and the Principal shall enter into
a contract with the Obligee in accordance with the terms of the proposal and give the bonds and certificates of
insurance as specified in the Standard Specifications with good and sufficient surety for the faithful performance of
the contract and for the prompt payment of labor and materials furnished in the prosecution of the contract, or in
the event of the failure of the Principal to enter into the contract and give the bonds and certificates of insurance, if
the Principal pays to the Obligee the difference not to exceed the penalty of the bond between the amount
specified in the proposal and such larger amount for which the Obligee may in good faith contract with another
party to perform the work covered by the proposal then this obligation is void. Otherwise to remain in full force and
effect provided, however, that this bond is executed pursuant to the provisions of Section 34-201, Arizona Revised
Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of that section to the
extent as if it were copied at length herein.

Witness our hands this _____ day of _____, 2012.

Principal

SEAL SURETY

By: _____
Attorney-in-Fact

By: _____
SEAL

Its: _____

AGENCY OF RECORD

AGENCY ADDRESS

Revised 8/2004

**EXHIBIT D2
PERFORMANCE BOND**

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Bond amount)

KNOW ALL MEN BY THESE PRESENTS: That, _____ (hereinafter called the Principal), as Principal, and _____ a corporation organized and existing under the law of the State of _____ with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Chandler, County of Maricopa, State of Arizona, in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the City of Chandler, Dated the _____ day of _____, 2012, for **Wall Repairs – Commonwealth/Alma School; Agreement No. ST3-914-3175**, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants terms, conditions, and agreements of said contract during the original term of said Contract and any extensions thereof, with or without notice to the Surety, and during the life of any warranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of conditions of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligations shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter and Article, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 2012.

PRINCIPAL SEAL

AGENT OF RECORD

BY _____

SURETY SEAL

AGENT ADDRESS

**EXHIBIT D3
PAYMENT BOND**

ARIZONA STATUTORY PAYMENT BOND
PURSUANT TO TITLES 28, 34, AND 41, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

THAT: _____ (hereinafter "Principal"), as Principal, and _____ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto the City of Chandler, (hereinafter "Obligee") County of Maricopa, State of Arizona, in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the City of Chandler, dated the _____ day of _____, 2012, for **Wall Repairs – Commonwealth/Alma School; Agreement No. ST3-914-3175**, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 2012.

AGENT OF RECORD	PRINCIPAL	SEAL
AGENT ADDRESS	BY _____	SURETY
		SEAL