



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

18

2. Council Meeting Date:

June 27, 2013

TO: MAYOR & COUNCIL

3. Date Prepared: June 6, 2013

THROUGH: CITY MANAGER

4. Requesting Department:
City Manager

5. SUBJECT: Agreement #CS3-910-3208 for HVAC Repair, Maintenance & Service.

6. RECOMMENDATION: Approval of Agreement #CS3-910-3208 for HVAC Repair, Maintenance & Service with Frontier Mechanical AZ Inc., dba FMI Heating & Cooling, TD Industries, and United Technologies, Inc. dba Uni-Tech, in an amount not to exceed \$450,000.00 for a two-year period.

7. BACKGROUND/DISCUSSION: The City frequently uses outside vendors for repairs and maintenance of HVAC equipment. These agreements will provide the City with three (3) contractors for scheduled, preventative and emergency HVAC repairs throughout the City. Buildings and Facilities will use these contracts for preventative and unscheduled maintenance on packaged, split system and heat pump units along with repair of pumps, motors and other associated equipment in central plant systems. Municipal Utilities Department will utilize these contracts for maintenance and repair of packaged and small HVAC units at various MUD operated buildings.

8. EVALUATION PROCESS: An Invitation for Bid (IFB) was issued on April 24, 2013. The bid was advertised and all registered vendors were notified. Thirteen (13) responses were received and evaluated. City staff is recommending award to FMI Heating & Cooling, TD Industries, and Uni-Tech, the lowest, responsive and responsible bidders. Staff is recommending award to three vendors to ensure rapid response for safety and health concerns as well as ensuring coverage for City-owned equipment. Multiple awards eliminate problems in acquiring emergency services especially during the summer months due to the increase in demand for this type of service. The initial contract term is for a two year period, July 1, 2013 through June 30, 2015 with provisions to extend for three additional one-year periods.

9. FINANCIAL IMPLICATIONS:

Costs	\$ 450,000.00
Savings	N/A
Long Term Costs	N/A

<u>Account Name</u>	<u>Fund Number</u>	<u>Project #</u>	<u>Funds</u>	
<u>Account Name</u>	<u>Fund Name</u>	<u>Program Name</u>	<u>CIP Funded</u>	<u>Funds</u>
101.3200.0000.5316	General Fund, Building & Facilities	Mach/Equip Repair & Maint	Non-CIP	\$ 150,000
605.3800.0000.5410	Water Operating, Water Distribution	Buildings & Grounds R&M	Non-CIP	\$ 20,000
605.3830.0000.5410	Water Operating, Water Treatment Plant	Buildings & Grounds R&M	Non-CIP	\$ 40,000
605.3840.0000.5410	Water Operating, Environmental Resources	Buildings & Grounds R&M	Non-CIP	\$ 20,000
605.3860.0000.5410	Water Operating, Water Production Facilities	Buildings & Grounds R&M	Non-CIP	\$ 100,000
605.3880.0000.5410	Water Operating, Meter Services	Buildings & Grounds R&M	Non-CIP	\$ 20,000
615.3900.0000.5410	Wastewater Operating, Wastewater Collection	Buildings & Grounds R&M	Non-CIP	\$ 40,000
615.3960.0000.5410	Wastewater Operating, Airport WRF	Buildings & Grounds R&M	Non-CIP	\$ 20,000
616.3930.0000.5410	Industrial Wastewater Operating, RO Facility	Buildings & Grounds R&M	Non-CIP	\$ 20,000
625.3700.0000.5410	Solid Waste Operating, Solid Waste Services	Buildings & Grounds R&M	Non-CIP	\$ 20,000

10. PROPOSED MOTION: Move to approve Agreement #CS3-910-3208 for HVAC Repair, Maintenance & Service with Frontier Mechanical AZ Inc., dba FMI Heating & Cooling, TD Industries, and United Technologies, Inc. dba Uni-Tech, in an amount not to exceed \$450,000.00 for a two-year period.

ATTACHMENT: Agreement(s)

APPROVALS

11. Requesting Department



Kris Kircher, Facilities Maintenance Manager

12. Department Head



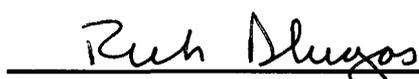
Pat McDermott, Assistant City Manager

13. Procurement Officer



Kristy Garcia, CPPB

14. City Manager



Rich Dlugas

**CITY OF CHANDLER SERVICES AGREEMENT
HVAC REPAIRS, MAINTENANCE & SERVICE
AGREEMENT NO.: CS3-910-3208**

THIS AGREEMENT is made and entered into this ____ day of _____, 2013, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Frontier Mechanical AZ Inc. dba FMI Heating & Cooling (a Corporation of the State of Arizona), 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 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 HVAC Repairs, Maintenance & Service 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. 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. Warranties.**
- 2.6. 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, including all companion Agreements, an amount not to exceed **Four Hundred Fifty Thousand Dollars (\$450,000), for a two-year period**, 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. **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 (Term).** All prices offered herein shall be firm against any increase for two (2) years from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.7. **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:**
- 5.1. The contract term is for a **two year period, July 1, 2013 through June 30, 2015**, subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five years. Additionally, the contract may be extended unilaterally for a period of 60 days or a portion thereof.
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 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 subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

- 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:

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. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.

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: 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: 480-782-2501
 Fax: 480-782-2560

In the case of the CONTRACTOR

Firm Name: FMI Heating & Cooling
 Contact: Nick McGowan
 Address: 1721 W 10th PI
 City, State, Zip Tempe, AZ 85281
 Phone: 480-656-3800
 Fax: 480-446-0640
 Email: nmcgowan@fmiaz.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 _____, 2013.

FOR THE CITY OF CHANDLER

MAYOR

ATTEST:

City Clerk

Approved as to form:

City Attorney *pl*

FOR THE CONTRACTOR

By: _____ *V.P.*
Signature

ATTEST: If Corporation

SEAL

Secretary

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.

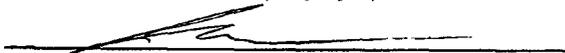
By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: CS3-910-3208; HVAC Repairs, Maintenance & Service		
Name (as listed in the contract): FMI Heating & Cooling		
Street Name and Number: 1721 W 10th Pl		
City: Tempe	State: AZ	Zip Code: 85281

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: Nick McGowan

Title: Vice President

Date (month/day/year): 6/10/13

**EXHIBIT B
SCOPE OF WORK**

CONTRACTOR(s) shall provide emergency repair, maintenance, replacement, and retrofit for heating, ventilation, and air conditioning (HVAC) equipment. CONTRACTOR(s) shall supply all labor, supervision, materials, tools, equipment, and effort necessary to repair, retrofit, or replacement of HVAC systems and products used in the commercial and industrial environments.

CONTRACTOR, when submitting a price quote to perform work, shall use the quote as an "estimate" and no work shall be performed without prior approval from Contract Administrator/designee. The Contract Administrator/designee will monitor CONTRACTOR's time and materials, ensuring hours spent on each job is verifiable. Only actual hours on the job shall be billed. The only exception will be "special projects", wherein one price is all-inclusive to perform an entire job. CONTRACTOR shall be compensated for additional work requested that is not detailed in this scope of work based on the labor rates listed in Exhibit C.

The work shall consist of, but not be limited to: repairs, maintenance, retrofitting for the following HVAC groups:

Group 1: HVAC Equipment:

Package air conditioning units / split systems / heat pumps
Include all associated equipment
Exhaust Fans
Evaporative Coolers

Group 2: Central Plant Associated Equipment:

Chilled water/condenser water pumps
Centrifugal, Submersible, Vertical, Turbine

Cooling Towers:
Drift Eliminators
Spray Nozzles
Float mechanisms
Drive motors, shafts, and bearings

Boilers

Variable Air Volume (VAV) units
Fan Coil Units
Associated support components:
Distribution piping/plumbing including component parts and pipe insulation

Electrical distribution:
120 volts through 600 volts, single and three phase
Wiring
DDC controls

Contactors, magnetic starters:
Conduit
Thermostats
Velocity controllers
Transmitters

Duct:
Fabrication, design, and installation
Repair

1. **QUALIFICATIONS.** CONTRACTOR must have been in the HVAC service business for a minimum of three (3) years, and shall be completely familiar with the specified requirements and methods needed for proper performance of this agreement. CONTRACTOR shall have a fully stocked service vehicle. CONTRACTOR shall possess an L-39 license for Air Conditioning and Refrigeration. A copy of all licenses and certifications must accompany bid response.

CONTRACTOR's technical staff shall be CFC certified. Technicians shall be thoroughly trained with a minimum of three (3) years experience in the field of air conditioning and heating as well as have factory certified training. Proof of certification must accompany bid response.

Repair work for HVAC service shall be performed with the use of one (1) HVAC technician. If needed, CONTRACTOR may dispatch a laborer to aid the technician. Any additional technicians or laborers needed for a specific job must be pre-approved Contract Administrator/designee. Please note that one (1) HVAC technician may complete repair work. However, depending upon the work being requested and the requirements, the job may necessitate having more than one person.

2. **SERVICE HOURS.** Due to the nature of some City facilities operating on a seven/twenty-four schedule, CONTRACTOR shall make available to CITY services 365 days per year, 24 hours per day.
 - a. Regular Service shall be work performed between 6:00 am to 4:00 pm Monday through Friday, excluding City holidays.
 - b. After Hours shall be work performed after 4:00 pm and before 6:00 am the next morning and Saturday work.
 - c. Sunday & Holidays shall be work performed during Sundays or during any City holiday.

3. **RESPONSE TIMES.** Response time to all *REGULAR* service work shall be within four (4) hours on-site after CONTRACTOR receives request from CITY, with the exception of an emergency request that occurs during regular hours, which shall be two (2) hours. *AFTER HOURS* and *SUNDAY & HOLIDAY* requests shall have a two (2) hour response time. CONTRACTOR shall provide twenty-four (24) hour access to their staff and shall respond back to a request within thirty (30 minutes) of receiving such request.

4. **REQUIREMENTS.** CONTRACTOR shall obtain CITY authorization before using machinery/equipment that will be considered as additional cost to CITY and used indirectly to the HVAC industry for the performance of normal services. After CITY approval of needed machinery/equipment, items shall be line item priced and allowed at administrative mark-up cost of five (5%).

CONTRACTOR shall perform work in accordance with all applicable laws, codes, and regulations required by authorities having jurisdiction over such work and provide for all inspections and permits required by federal, state, and local authorities in furnishing, transporting and installing materials as shown or for completing the work identified herein.

Repair work for HVAC services shall be performed with the use of one (1) HVAC technician. If deemed necessary, CONTRACTOR may dispatch a laborer to aid the technician. Additional technicians or laborers needed for a specific job shall be pre-approved by the Contract Administrator/designee.

CONTRACTOR shall meet all Federal EPA and OSHA guidelines in the proper handling and disposal of refrigerant, refrigerant oils, and refrigerant filters/dryers. CONTRACTOR shall pay for all fees and /or charges, permits and licenses. Costs may be billed back to CITY without mark-up.

All vehicles used by CONTRACTOR shall be clearly identified with the name of the company, address of local office and phone number of local office on each side of the equipment, including personal transportation vehicles. CONTRACTOR's service truck shall carry sufficient supply to repair and equipment to perform routine HVAC service and repairs, and hot water boiler service repair.

CONTRACTOR shall perform the work in such a way as to minimize disruption to the normal operation of

CITY staff. Upon completion of work, CONTRACTOR shall be responsible for cleaning and removing from the job site all debris; materials and equipment associated with the work performed, and shall obtain sign-off of work by CITY staff.

CONTRACTOR shall make necessary repairs to HVAC units in such a manner that does not damage CITY property. In the event damage occurs to CITY property, or any adjacent property by reason of any repairs or installations performed under the contract, CONTRACTOR shall replace or repair the same at no cost to the CITY or adjacent property owner. If damage caused by CONTRACTOR has to be repaired or replaced by CITY, the cost of such work shall be deducted from the monies due CONTRACTOR.

In the event CONTRACTOR's work performance is unsatisfactory, CONTRACTOR will be notified by Contract Administrator/designee and given a four (4) hour period to correct the work. Labor for all re-work shall be at no cost to CITY. Additional parts replaced shall be billed at contract pricing.

5. **CONTRACTOR EMPLOYEES.** CONTRACTOR shall be required to provide as many personnel as needed to meet the scope of work, with the approval of the Contract Administrator/designee. In addition, CONTRACTOR's employees shall wear identification badges and a uniform shirt or vest bearing the CONTRACTOR 's name and/or logo while on CITY's premises. The badge shall have the CONTRACTOR's employee's picture, name, and signature.

CONTRACTOR's employees shall be required to wear a clean uniform bearing the Contractor's company name and/or logo. All employees shall conduct themselves in a professional and courteous manner.

CONTRACTOR employees are not to be accompanied in the work area by acquaintances, family members, or any other person unless said person is an authorized CONTRACTOR employee.

CONTRACTOR shall carry on the operation in such a manner that damage is not inflicted to existing facilities, grounds, utilities or other structures. In the event CONTRACTOR causes damage to CITY property, CONTRACTOR shall replace or repair the same at no cost to CITY as directed by the Contract Administrator/designee. If damage caused by CONTRACTOR has to be repaired or replaced by the Contract Administrator/designee, the cost of such work shall be deducted from the CONTRACTOR's monthly payments.

CONTRACTOR shall keep maintenance and repair records on each individual HVAC unit. CONTRACTOR shall keep City officials advised of each HVAC's condition and recommend necessary work needed to insure the equipment's reliability.

A Police background check will be required for all employees of CONTRACTOR. This is required due to the need to access restricted areas within the CITY.

6. **MAINTENANCE REQUIREMENTS.** The specifications listed herein are the minimum requirements and are intended to govern, in general, the requirements desired. The CITY reserves the right to make variations from these specifications. CONTRACTOR may be asked from time-to-time to change filters for Municipal Utilities Department.
7. **TIME & MATERIALS / LABOR HOURS.** CONTRACTOR, when submitting a quote to perform a time and materials task, shall use quote as an "estimate". The Contract Administrator/designee will monitor the CONTRACTOR's time. Only actual hours on the job shall be billed. Exceptions are "job quotes" wherein one price is all-inclusive to perform an entire job.

CONTRACTOR shall be responsible for sourcing all HVAC parts/components/units necessary to repair/replace HVAC systems, unless it is deemed in the best interest of the CITY to use their own HVAC contracts to source said parts/supplies.

Trip charges may be allowed when CONTRACTOR arrives on-site at the scheduled time and is unable

to locate someone who knows about the call, or the technician examines and is unable to locate the problem, and therefore actual labor is not initiated. Should this be the case, *only the trip charge* will be allowed. Combination trip charges and labor rates shall not be allowed if the service call is legitimate and actual HVAC work is initiated.

**EXHIBIT C
PRICING**

All billable rates after the first hour shall be in increments of one-quarter hour. Service rates shall start when CONTRACTOR's employee arrives on-site. Mileage charges and fuel surcharges are not allowed.

1. **REGULAR business hours: (Labor rate is per hour, per man)**

Foreman rate:	<u>\$70.00</u> /per hr
Journeyman:	<u>\$70.00</u> /per hr
Helper:	<u>\$55.00</u> /per hr
Trip charge (See Section 7)	<u>\$35.00</u> /flat rate

2. **AFTER hours/EMERGENCY:(Labor rate is per hour, per man)**

Foreman rate:	<u>\$105.00</u> /per hr
Journeyman:	<u>\$105.00</u> /per hr
Helper:	<u>\$82.50</u> /per hr
Trip charge (See Section 7)	<u>\$35.00</u> /flat rate

3. **WEEKEND AND HOLIDAY: (Labor rate is per hour, per man)**

Foreman rate:	<u>\$140.00</u> /per hr
Journeyman:	<u>\$140.00</u> /per hr
Helper:	<u>\$110.00</u> /per hr
Trip charge (See Section 7)	<u>\$35.00</u> /flat rate

4. **PARTS - COMPONENTS, UNITS, ETC., COST PLUS** 30 %

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

**CITY OF CHANDLER SERVICES AGREEMENT
HVAC REPAIRS, MAINTENANCE & SERVICE
AGREEMENT NO.: CS3-910-3208**

THIS AGREEMENT is made and entered into this ____ day of _____, 2013, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and TD Industries (a Corporation of the State of Texas), 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 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 HVAC Repairs, Maintenance & Service 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. **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. Warranties.

- 2.6. **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, including all companion agreements, an amount not to exceed **Four Hundred Fifty Thousand Dollars (\$450,000), for a two-year period**, 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. **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 (Term).** All prices offered herein shall be firm against any increase for two (2) years from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.7. **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:**
- 5.1. The contract term is for a **two year period, July 1, 2013 through June 30, 2015**, subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five years. Additionally, the contract may be extended unilaterally for a period of 60 days or a portion thereof.
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 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 subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

- 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:

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. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- 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 Building & Facilities
 Administrator: _____
 Contact: Larry LaMay
 Mailing Address: PO Box 4008 – MS
906
 Physical Address: 650 E Ryan Rd
 City, State, Zip Chandler, AZ
85244
 Phone: 480-782-2501
 Fax: 480-782-2560

In the case of the CONTRACTOR

Firm Name: TD Industries
 Contact: Robert Stinger
 Address: 1702 W 3rd St
 City, State, Zip Tempe, AZ 85281
 Phone: 602-509-2925
 Fax: 480-557-9781
 Email: Robert.stinger@tdindustries.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 _____, 2013.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: Robert Arroyo
Signature

ATTEST:

ATTEST: If Corporation

City Clerk

SEAL

Secretary

Approved as to form:

City Attorney *pk*

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: CS3-910-3208; HVAC Repairs, Maintenance & Service		
Name (as listed in the contract): TD Industries		
Street Name and Number: 1702 W 3rd St		
City: Tempe	State: AZ	Zip Code: 85281

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: ROBERT A. STINGER

Title: SALES MANAGER

Date (month/day/year): 5-30-13

**EXHIBIT B
SCOPE OF WORK**

CONTRACTOR(s) shall provide emergency repair, maintenance, replacement, and retrofit for heating, ventilation, and air conditioning (HVAC) equipment. CONTRACTOR(s) shall supply all labor, supervision, materials, tools, equipment, and effort necessary to repair, retrofit, or replacement of HVAC systems and products used in the commercial and industrial environments.

CONTRACTOR, when submitting a price quote to perform work, shall use the quote as an "estimate" and no work shall be performed without prior approval from Contract Administrator/designee. The Contract Administrator/designee will monitor CONTRACTOR's time and materials, ensuring hours spent on each job is verifiable. Only actual hours on the job shall be billed. The only exception will be "special projects", wherein one price is all-inclusive to perform an entire job. CONTRACTOR shall be compensated for additional work requested that is not detailed in this scope of work based on the labor rates listed in Exhibit C.

The work shall consist of, but not be limited to: repairs, maintenance, retrofitting for the following HVAC groups:

Group 1: HVAC Equipment:

Package air conditioning units / split systems / heat pumps
Include all associated equipment
Exhaust Fans
Evaporative Coolers

Group 2: Central Plant Associated Equipment:

Chilled water/condenser water pumps
Centrifugal, Submersible, Vertical, Turbine

Cooling Towers:
Drift Eliminators
Spray Nozzles
Float mechanisms
Drive motors, shafts, and bearings

Boilers

Variable Air Volume (VAV) units
Fan Coil Units

Associated support components:
Distribution piping/plumbing including component parts and pipe insulation

Electrical distribution:

120 volts through 600 volts, single and three phase

Wiring
DDC controls

Contactors, magnetic starters:
Conduit
Thermostats
Velocity controllers
Transmitters

Duct:
Fabrication, design, and installation
Repair

1. **QUALIFICATIONS.** CONTRACTOR must have been in the HVAC service business for a minimum of three (3) years, and shall be completely familiar with the specified requirements and methods needed for proper performance of this agreement. CONTRACTOR shall have a fully stocked service vehicle. CONTRACTOR shall possess an L-39 license for Air Conditioning and Refrigeration. A copy of all licenses and certifications must accompany bid response.

CONTRACTOR's technical staff shall be CFC certified. Technicians shall be thoroughly trained with a minimum of three (3) years experience in the field of air conditioning and heating as well as have factory certified training. Proof of certification must accompany bid response.

Repair work for HVAC service shall be performed with the use of one (1) HVAC technician. If needed, CONTRACTOR may dispatch a laborer to aid the technician. Any additional technicians or laborers needed for a specific job must be pre-approved Contract Administrator/designee. Please note that one (1) HVAC technician may complete repair work. However, depending upon the work being requested and the requirements, the job may necessitate having more than one person.

2. **SERVICE HOURS.** Due to the nature of some City facilities operating on a seven/twenty-four schedule, CONTRACTOR shall make available to CITY services 365 days per year, 24 hours per day.
 - a. Regular Service shall be work performed between 6:00 am to 4:00 pm Monday through Friday, excluding City holidays.
 - b. After Hours shall be work performed after 4:00 pm and before 6:00 am the next morning and Saturday work.
 - c. Sunday & Holidays shall be work performed during Sundays or during any City holiday.

3. **RESPONSE TIMES.** Response time to all *REGULAR* service work shall be within four (4) hours on-site after CONTRACTOR receives request from CITY, with the exception of an emergency request that occurs during regular hours, which shall be two (2) hours. *AFTER HOURS* and *SUNDAY & HOLIDAY* requests shall have a two (2) hour response time. CONTRACTOR shall provide twenty-four (24) hour access to their staff and shall respond back to a request within thirty (30 minutes) of receiving such request.

4. **REQUIREMENTS.** CONTRACTOR shall obtain CITY authorization before using machinery/equipment that will be considered as additional cost to CITY and used indirectly to the HVAC industry for the performance of normal services. After CITY approval of needed machinery/equipment, items shall be line item priced and allowed at administrative mark-up cost of five (5%).

CONTRACTOR shall perform work in accordance with all applicable laws, codes, and regulations required by authorities having jurisdiction over such work and provide for all inspections and permits required by federal, state, and local authorities in furnishing, transporting and installing materials as shown or for completing the work identified herein.

Repair work for HVAC services shall be performed with the use of one (1) HVAC technician. If deemed necessary, CONTRACTOR may dispatch a laborer to aid the technician. Additional technicians or laborers needed for a specific job shall be pre-approved by the Contract Administrator/designee.

CONTRACTOR shall meet all Federal EPA and OSHA guidelines in the proper handling and disposal of refrigerant, refrigerant oils, and refrigerant filters/dryers. CONTRACTOR shall pay for all fees and /or charges, permits and licenses. Costs may to be billed back to CITY without mark-up.

All vehicles used by CONTRACTOR shall be clearly identified with the name of the company, address of local office and phone number of local office on each side of the equipment, including personal transportation vehicles. CONTRACTOR's service truck shall carry sufficient supply to repair and equipment to perform routine HVAC service and repairs, and hot water boiler service repair.

CONTRACTOR shall perform the work in such a way as to minimize disruption to the normal operation of

CITY staff. Upon completion of work, CONTRACTOR shall be responsible for cleaning and removing from the job site all debris; materials and equipment associated with the work performed, and shall obtain sign-off of work by CITY staff.

CONTRACTOR shall make necessary repairs to HVAC units in such a manner that does not damage CITY property. In the event damage occurs to CITY property, or any adjacent property by reason of any repairs or installations performed under the contract, CONTRACTOR shall replace or repair the same at no cost to the CITY or adjacent property owner. If damage caused by CONTRACTOR has to be repaired or replaced by CITY, the cost of such work shall be deducted from the monies due CONTRACTOR.

In the event CONTRACTOR's work performance is unsatisfactory, CONTRACTOR will be notified by Contract Administrator/designee and given a four (4) hour period to correct the work. Labor for all re-work shall be at no cost to CITY. Additional parts replaced shall be billed at contract pricing.

5. **CONTRACTOR EMPLOYEES.** CONTRACTOR shall be required to provide as many personnel as needed to meet the scope of work, with the approval of the Contract Administrator/designee. In addition, CONTRACTOR's employees shall wear identification badges and a uniform shirt or vest bearing the CONTRACTOR 's name and/or logo while on CITY's premises. The badge shall have the CONTRACTOR's employee's picture, name, and signature.

CONTRACTOR's employees shall be required to wear a clean uniform bearing the Contractor's company name and/or logo. All employees shall conduct themselves in a professional and courteous manner.

CONTRACTOR employees are not to be accompanied in the work area by acquaintances, family members, or any other person unless said person is an authorized CONTRACTOR employee.

CONTRACTOR shall carry on the operation in such a manner that damage is not inflicted to existing facilities, grounds, utilities or other structures. In the event CONTRACTOR causes damage to CITY property, CONTRACTOR shall replace or repair the same at no cost to CITY as directed by the Contract Administrator/designee. If damage caused by CONTRACTOR has to be repaired or replaced by the Contract Administrator/designee, the cost of such work shall be deducted from the CONTRACTOR's monthly payments.

CONTRACTOR shall keep maintenance and repair records on each individual HVAC unit. CONTRACTOR shall keep City officials advised of each HVAC's condition and recommend necessary work needed to insure the equipment's reliability.

A Police background check will be required for all employees of CONTRACTOR. This is required due to the need to access restricted areas within the CITY.

6. **MAINTENANCE REQUIREMENTS.** The specifications listed herein are the minimum requirements and are intended to govern, in general, the requirements desired. The CITY reserves the right to make variations from these specifications. CONTRACTOR may be asked from time-to-time to change filters for Municipal Utilities Department.

7. **TIME & MATERIALS / LABOR HOURS.** CONTRACTOR, when submitting a quote to perform a time and materials task, shall use quote as an "estimate". The Contract Administrator/designee will monitor the CONTRACTOR's time. Only actual hours on the job shall be billed. Exceptions are "job quotes" wherein one price is all-inclusive to perform an entire job.

CONTRACTOR shall be responsible for sourcing all HVAC parts/components/units necessary to repair/replace HVAC systems, unless it is deemed in the best interest of the CITY to use their own HVAC contracts to source said parts/supplies.

Trip charges may be allowed when CONTRACTOR arrives on-site at the scheduled time and is unable

to locate someone who knows about the call, or the technician examines and is unable to locate the problem, and therefore actual labor is not initiated. Should this be the case, *only the trip charge* will be allowed. Combination trip charges and labor rates shall not be allowed if the service call is legitimate and actual HVAC work is initiated.

**EXHIBIT C
PRICING**

All billable rates after the first hour shall be in increments of one-quarter hour. Service rates shall start when CONTRACTOR's employee arrives on-site. Mileage charges and fuel surcharges are not allowed.

1. **REGULAR business hours: (Labor rate is per hour, per man)**

Foreman rate:	\$ <u>70.00</u> /per hr
Journeyman:	\$ <u>65.00</u> /per hr
Helper:	\$ <u>60.00</u> /per hr
Trip charge (See Section 7)	\$ <u>38.00</u> /flat rate

2. **AFTER hours/EMERGENCY:(Labor rate is per hour, per man)**

Foreman rate:	\$ <u>105.00</u> /per hr
Journeyman:	\$ <u>97.50</u> /per hr
Helper:	\$ <u>90.00</u> /per hr
Trip charge (See Section 7)	\$ <u>38.00</u> /flat rate

3. **WEEKEND AND HOLIDAY: (Labor rate is per hour, per man)**

Foreman rate:	\$ <u>105.00</u> /per hr
Journeyman:	\$ <u>97.50</u> /per hr
Helper:	\$ <u>90.00</u> /per hr
Trip charge (See Section 7)	\$ <u>38.00</u> /flat rate

4. **PARTS - COMPONENTS, UNITS, ETC., COST PLUS** 25 %

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

**CITY OF CHANDLER SERVICES AGREEMENT
HVAC REPAIRS, MAINTENANCE & SERVICE
AGREEMENT NO.: CS3-910-3208**

THIS AGREEMENT is made and entered into this ____ day of _____, 2013, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and United Technologies, Inc. dba Uni-Tech (a Corporation of the State of Arizona), 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 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 HVAC Repairs, Maintenance & Service 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. **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. Warranties.

- 2.6. **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, including all companion Agreements, an amount not to exceed **Four Hundred Fifty Thousand Dollars (\$450,000), for a two-year period**, 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. **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 (Term).** All prices offered herein shall be firm against any increase for two (2) years from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.7. **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:**
- 5.1. The contract term is for a **two year period, July 1, 2013 through June 30, 2015**, subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five years. Additionally, the contract may be extended unilaterally for a period of 60 days or a portion thereof.
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 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 subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

- 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:

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. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- 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:	Building & Facilities
Contact:	<u>Larry LaMay</u>
Mailing Address:	<u>PO Box 4008 – MS 906</u>
Physical Address:	<u>650 E Ryan Rd</u>
City, State, Zip	<u>Chandler, AZ 85244</u>
Phone:	<u>480-782-2501</u>
Fax:	<u>480-782-2560</u>

In the case of the CONTRACTOR

Firm Name:	Uni-Tech
Contact:	<u>Joe L. Granado</u>
Address:	<u>18704 E Chandler Heights Rd.</u>
City, State, Zip	<u>Queen Creek, AZ 85142</u>
Phone:	<u>480-888-0264</u>
Fax:	<u>480-987-2680</u>
Email:	<u>Joe.granado@unitechmechanical.com</u>

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

14. 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 of 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 _____, 2013.

FOR THE CITY OF CHANDLER

MAYOR

ATTEST:

City Clerk

Approved as to form:

City Attorney *[Signature]*

FOR THE CONTRACTOR

By: *[Signature]*
Signature

ATTEST: If Corporation

SEAL

[Signature]
Secretary

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: CS3-910-3208; HVAC Repairs, Maintenance & Service		
Name (as listed in the contract): Uni-Tech		
Street Name and Number: 18704 E Chandler Heights Rd		
City: Queen Creek	State: AZ	Zip Code: 85142

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: Joe L. Granado

Title: President

Date (month/day/year): 05/30/2013

**EXHIBIT B
SCOPE OF WORK**

CONTRACTOR(s) shall provide emergency repair, maintenance, replacement, and retrofit for heating, ventilation, and air conditioning (HVAC) equipment. CONTRACTOR(s) shall supply all labor, supervision, materials, tools, equipment, and effort necessary to repair, retrofit, or replacement of HVAC systems and products used in the commercial and industrial environments.

CONTRACTOR, when submitting a price quote to perform work, shall use the quote as an "estimate" and no work shall be performed without prior approval from Contract Administrator/designee. The Contract Administrator/designee will monitor CONTRACTOR's time and materials, ensuring hours spent on each job is verifiable. Only actual hours on the job shall be billed. The only exception will be "special projects", wherein one price is all-inclusive to perform an entire job. CONTRACTOR shall be compensated for additional work requested that is not detailed in this scope of work based on the labor rates listed in Exhibit C.

The work shall consist of, but not be limited to: repairs, maintenance, retrofitting for the following HVAC groups:

Group 1: HVAC Equipment:

Package air conditioning units / split systems / heat pumps
Include all associated equipment
Exhaust Fans
Evaporative Coolers

Group 2: Central Plant Associated Equipment:

Chilled water/condenser water pumps
Centrifugal, Submersible, Vertical, Turbine

Cooling Towers:

Drift Eliminators
Spray Nozzles
Float mechanisms
Drive motors, shafts, and bearings

Boilers

Variable Air Volume (VAV) units

Fan Coil Units

Associated support components:

Distribution piping/plumbing including component parts and pipe insulation

Electrical distribution:

120 volts through 600 volts, single and three phase
Wiring
DDC controls

Contactors, magnetic starters:

Conduit
Thermostats
Velocity controllers
Transmitters

Duct:

Fabrication, design, and installation
Repair

1. **QUALIFICATIONS.** CONTRACTOR must have been in the HVAC service business for a minimum of three (3) years, and shall be completely familiar with the specified requirements and methods needed for proper performance of this agreement. CONTRACTOR shall have a fully stocked service vehicle. CONTRACTOR shall possess an L-39 license for Air Conditioning and Refrigeration. A copy of all licenses and certifications must accompany bid response.

CONTRACTOR's technical staff shall be CFC certified. Technicians shall be thoroughly trained with a minimum of three (3) years experience in the field of air conditioning and heating as well as have factory certified training. Proof of certification must accompany bid response.

Repair work for HVAC service shall be performed with the use of one (1) HVAC technician. If needed, CONTRACTOR may dispatch a laborer to aid the technician. Any additional technicians or laborers needed for a specific job must be pre-approved Contract Administrator/designee. Please note that one (1) HVAC technician may complete repair work. However, depending upon the work being requested and the requirements, the job may necessitate having more than one person.

2. **SERVICE HOURS.** Due to the nature of some City facilities operating on a seven/twenty-four schedule, CONTRACTOR shall make available to CITY services 365 days per year, 24 hours per day.

- a. Regular Service shall be work performed between 6:00 am to 4:00 pm Monday through Friday, excluding City holidays.
- b. After Hours shall be work performed after 4:00 pm and before 6:00 am the next morning and Saturday work.
- c. Sunday & Holidays shall be work performed during Sundays or during any City holiday.

3. **RESPONSE TIMES.** Response time to all *REGULAR* service work shall be within four (4) hours on-site after CONTRACTOR receives request from CITY, with the exception of an emergency request that occurs during regular hours, which shall be two (2) hours. *AFTER HOURS* and *SUNDAY & HOLIDAY* requests shall have a two (2) hour response time. CONTRACTOR shall provide twenty-four (24) hour access to their staff and shall respond back to a request within thirty (30 minutes) of receiving such request.

4. **REQUIREMENTS.** CONTRACTOR shall obtain CITY authorization before using machinery/equipment that will be considered as additional cost to CITY and used indirectly to the HVAC industry for the performance of normal services. After CITY approval of needed machinery/equipment, items shall be line item priced and allowed at administrative mark-up cost of five (5%).

CONTRACTOR shall perform work in accordance with all applicable laws, codes, and regulations required by authorities having jurisdiction over such work and provide for all inspections and permits required by federal, state, and local authorities in furnishing, transporting and installing materials as shown or for completing the work identified herein.

Repair work for HVAC services shall be performed with the use of one (1) HVAC technician. If deemed necessary, CONTRACTOR may dispatch a laborer to aid the technician. Additional technicians or laborers needed for a specific job shall be pre-approved by the Contract Administrator/designee.

CONTRACTOR shall meet all Federal EPA and OSHA guidelines in the proper handling and disposal of refrigerant, refrigerant oils, and refrigerant filters/dryers. CONTRACTOR shall pay for all fees and /or charges, permits and licenses. Costs may to be billed back to CITY without mark-up.

All vehicles used by CONTRACTOR shall be clearly identified with the name of the company, address of local office and phone number of local office on each side of the equipment, including personal transportation vehicles. CONTRACTOR's service truck shall carry sufficient supply to repair and equipment to perform routine HVAC service and repairs, and hot water boiler service repair.

CONTRACTOR shall perform the work in such a way as to minimize disruption to the normal operation of

CITY staff. Upon completion of work, CONTRACTOR shall be responsible for cleaning and removing from the job site all debris; materials and equipment associated with the work performed, and shall obtain sign-off of work by CITY staff.

CONTRACTOR shall make necessary repairs to HVAC units in such a manner that does not damage CITY property. In the event damage occurs to CITY property, or any adjacent property by reason of any repairs or installations performed under the contract, CONTRACTOR shall replace or repair the same at no cost to the CITY or adjacent property owner. If damage caused by CONTRACTOR has to be repaired or replaced by CITY, the cost of such work shall be deducted from the monies due CONTRACTOR.

In the event CONTRACTOR's work performance is unsatisfactory, CONTRACTOR will be notified by Contract Administrator/designee and given a four (4) hour period to correct the work. Labor for all re-work shall be at no cost to CITY. Additional parts replaced shall be billed at contract pricing.

5. **CONTRACTOR EMPLOYEES.** CONTRACTOR shall be required to provide as many personnel as needed to meet the scope of work, with the approval of the Contract Administrator/designee. In addition, CONTRACTOR's employees shall wear identification badges and a uniform shirt or vest bearing the CONTRACTOR 's name and/or logo while on CITY's premises. The badge shall have the CONTRACTOR's employee's picture, name, and signature.

CONTRACTOR's employees shall be required to wear a clean uniform bearing the Contractor's company name and/or logo. All employees shall conduct themselves in a professional and courteous manner.

CONTRACTOR employees are not to be accompanied in the work area by acquaintances, family members, or any other person unless said person is an authorized CONTRACTOR employee.

CONTRACTOR shall carry on the operation in such a manner that damage is not inflicted to existing facilities, grounds, utilities or other structures. In the event CONTRACTOR causes damage to CITY property, CONTRACTOR shall replace or repair the same at no cost to CITY as directed by the Contract Administrator/designee. If damage caused by CONTRACTOR has to be repaired or replaced by the Contract Administrator/designee, the cost of such work shall be deducted from the CONTRACTOR's monthly payments.

CONTRACTOR shall keep maintenance and repair records on each individual HVAC unit. CONTRACTOR shall keep City officials advised of each HVAC's condition and recommend necessary work needed to insure the equipment's reliability.

A Police background check will be required for all employees of CONTRACTOR. This is required due to the need to access restricted areas within the CITY.

6. **MAINTENANCE REQUIREMENTS.** The specifications listed herein are the minimum requirements and are intended to govern, in general, the requirements desired. The CITY reserves the right to make variations from these specifications. CONTRACTOR may be asked from time-to-time to change filters for Municipal Utilities Department.
7. **TIME & MATERIALS / LABOR HOURS.** CONTRACTOR, when submitting a quote to perform a time and materials task, shall use quote as an "estimate". The Contract Administrator/designee will monitor the CONTRACTOR's time. Only actual hours on the job shall be billed. Exceptions are "job quotes" wherein one price is all-inclusive to perform an entire job.

CONTRACTOR shall be responsible for sourcing all HVAC parts/components/units necessary to repair/replace HVAC systems, unless it is deemed in the best interest of the CITY to use their own HVAC contracts to source said parts/supplies.

Trip charges may be allowed when CONTRACTOR arrives on-site at the scheduled time and is unable

to locate someone who knows about the call, or the technician examines and is unable to locate the problem, and therefore actual labor is not initiated. Should this be the case, *only the trip charge* will be allowed. Combination trip charges and labor rates shall not be allowed if the service call is legitimate and actual HVAC work is initiated.

**EXHIBIT C
PRICING**

All billable rates after the first hour shall be in increments of one-quarter hour. Service rates shall start when CONTRACTOR's employee arrives on-site. Mileage charges and fuel surcharges are not allowed.

1. **REGULAR business hours: (Labor rate is per hour, per man)**

Foreman rate:	<u>\$50.00</u> /per hr
Journeyman:	<u>\$50.00</u> /per hr
Helper:	<u>\$25.00</u> /per hr
Trip charge (See Section 7)	<u>\$0.00</u> /flat rate

2. **AFTER hours/EMERGENCY:(Labor rate is per hour, per man)**

Foreman rate:	<u>\$60.00</u> /per hr
Journeyman:	<u>\$60.00</u> /per hr
Helper:	<u>\$35.00</u> /per hr
Trip charge (See Section 7)	<u>\$0.00</u> /flat rate

3. **WEEKEND AND HOLIDAY: (Labor rate is per hour, per man)**

Foreman rate:	<u>\$65.00</u> /per hr
Journeyman:	<u>\$65.00</u> /per hr
Helper:	<u>\$40.00</u> /per hr
Trip charge (See Section 7)	<u>\$0.00</u> /flat rate

4. **PARTS - COMPONENTS, UNITS, ETC., COST PLUS** 20 %

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