



**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. CS14-080**

1. Agenda Item Number:

13

2. Council Meeting Date:
February 27, 2014

TO: MAYOR & COUNCIL

3. Date Prepared: February 12, 2014

THROUGH: CITY MANAGER

4. Requesting Department: Community Services

5. SUBJECT: Agreement No. PM4-967-3313 for Fertilizer, Herbicides and Pesticides

6. RECOMMENDATION: Recommend approval of Agreement No. PM4-967-3313 for fertilizer, herbicides and pesticides with Crop Production Services, Inc., and Helena Chemical Company for a combined total amount of \$215,000.00 for one (1) year with options to renew for four additional one-year terms.

7. BACKGROUND/DISCUSSION: The Park Operations Division is in need of purchasing fertilizer, herbicides, and pesticides material in the amount of \$165,000.00. The Chandler Parks Division currently fertilizes City parks two times per year and ballfields three times per year during the active growing period (April-Oct). Park staff, certified in herbicide application, apply these chemicals.

The herbicides are used in the control of weed germination and establishment within the landscape areas. Pre-emergent herbicides are applied twice per year with post-emergent spot spraying applied twice a month. The pesticides being purchased are used in the control of mosquitoes and ants within the parks. The amount being purchased will provide control for one (1) year.

In addition to Parks, the Streets Division anticipates requiring \$50,000.00 for applying chemicals to the right-of-way areas.

8. EVALUATION: Bids were advertised and all registered vendors were notified. A total of eight (8) responses were received and evaluated. City staff is recommending award to Crop Production Services Inc., and Helena Chemical Company, to ensure availability of needed items. The results found the pricing to be fair and reasonable.

9. FINANCIAL IMPLICATIONS:

Costs: \$215,000.00
Savings: N/A
Long Term Costs: N/A
Fund Source:

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
101.4530.0000.5318	Chemicals	Park Dev & Ops	N/A	\$165,000.00
215.3300.5219.0000	HURF	Other Professional	No	\$ 50,000.00

10. PROPOSED MOTION: Move to approve Agreement PM4-967-3313 for Fertilizer, Herbicides and Pesticides with Crop Production Services, Inc., and Helena Chemical Company for a combined total amount of \$215,000.00 for one (1) year with options to renew for four (4) additional one-year terms.

ATTACHMENTS: Agreements

APPROVALS

11. Requesting Department

Mickey Ohland, Parks Development & Operations
Manager

13. Department Head

Mark M. Eynatten, Community Services Director

12. Procurement Officer

Raquel McMahon

Raquel McMahon, CPPB

14. City Manager

Rich Dlugas

Rich Dlugas

**CITY OF CHANDLER PURCHASE CONTRACT
FERTILIZERS, HERBICIDES & PESTICIDES
AGREEMENT NO.: PM4-967-3313**

THIS AGREEMENT is made and entered into this ____ day of _____, 2014, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **CROP PRODUCTION SERVICES, INC.**, hereinafter referred to as "CONTRACTOR".

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

1. CONTRACT ADMINISTRATION AND OPERATION:

1.1. Contract Administrator: CONTRACTOR shall act under the authority and approval of the Sr. Management Asst./designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. Ordering Instructions: Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.

1.3. Ordering Process. Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.

1.4. Annual Usage Report. CONTRACTOR shall furnish CITY a usage report on an annual basis delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B, all as more specifically set forth in the Specifications and details included therein.

2.1. Safety Standards: All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

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

2.3. Product Discontinuance (Categories): In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

- 2.4. **Licenses:** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.
- 2.5. **Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 2.6. **Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.7. **Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. **Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 2.10. **Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.12. **Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.
- 2.13. **Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.14. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

3. WARRANTIES:

- 3.1. Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 3.2. Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
- 3.2.1.** Of a quality to pass without objection in the trade under the Contract description;
 - 3.2.2.** Fit for the intended purposes for which the materials are used;
 - 3.2.3.** Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.2.4.** Adequately contained, packaged and marked as the Contract may require; and
 - 3.2.5.** Conform to the written promises or affirmations of fact made by CONTRACTOR.
- 3.3. Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.4. Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.5. Warranty.** CONTRACTOR must provide a one-year manufacturer's warranty on all goods or equipment supplied pursuant to this Contract.
- 4. ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification
- 4.1. Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
 - 4.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
 - 4.3. Delivery.** Delivery shall be made within 3-5 calendar days after receipt of a Contract Purchase Order (ARO).
- 5. PRICE:** CITY shall pay to CONTRACTOR an amount, including all companion Agreements, not to exceed **TWO HUNDRED THIRTY THOUSAND Dollars (\$230,000.00)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.

- 5.1. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.
- 5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. **Taxes:** CONTRACTOR shall be solely legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 5.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
- 5.7. **Price Adjustment (Annual—CPI).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a request for price adjustments in accordance with the current Consumer Price Index. CONTRACTOR must request all price adjustments in writing at least sixty (60) days prior to the renewal date.
- 5.8. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is ONE YEAR, commencing on **February 13, 2014**, unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **FOUR (4)** additional terms of one year each. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.

7. USE OF THIS CONTRACT:

The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.

CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.

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

7.2. Cooperative Use of Contract. In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials 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.

8. CITY'S CONTRACTUAL REMEDIES:

8.1. Right to Assurance: If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Non-exclusive Remedies: The rights and the remedies of CITY under this Contract are not exclusive.

8.3. Nonconforming Tender: Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.4. Right of Offset: CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. TERMINATION:

9.1 Termination for Convenience: CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

9.2 Termination for Cause: City may terminate this Agreement for Cause:

Upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR 'S property;
- 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

9.3. Termination for Misrepresentation. CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

9.4. Cancellation for Conflict of Interest: Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

9.5. Gratuities: CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.

- 9.6. Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 9.7. Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 9.8. No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 9.9. 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.
- 10. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 11. DISPUTE RESOLUTION:**
- 11.1 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 11.2 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.
- 11.3 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.
- 12. 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.

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

In the case of CITY	In the case of the CONTRACTOR
Department: Parks Operations	Firm Name: Crop Production Services, Inc.
Contact: <u>Tyrone Allen</u>	Contact: <u>Shane Powell</u>
Mailing Address: _____	Address: <u>6858 W. Chicago St., Ste. #1</u>
Physical Address: <u>650 E. Ryan Rd.</u>	City, State, Zip <u>Chandler, AZ 85226</u>
City, State, Zip <u>Chandler, AZ</u>	Phone: <u>602-525-4305</u>
Phone: <u>480-782-2667</u>	FAX: <u>480-592-9902</u>
FAX: <u>480-782-2560</u>	<u>Shane.powell@cpsagu.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. **GENERAL TERMS:**

- 14.1. **Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. **Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. **Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 14.5. **Conflict of Interest:**
- 14.5.1 **No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.

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

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

14.6. Independent CONTRACTOR: The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

14.7. No Parole Evidence: This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

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

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

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this ____ day of _____, 2014.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR
By: *[Signature]*
Signature

ATTEST:

City Clerk

SEAL ATTEST: If Corporation
[Signature]
Secretary

Approved as to form:

City Attorney *[Signature]*

**EXHIBIT A
TECHNICAL SPECIFICATIONS**

GENERAL INFORMATION/PURPOSE

Vendor shall provide Fertilizer, Herbicides and Pesticides as specified herein.

GENERAL VENDOR QUALIFICATIONS

The Contractor shall be in compliance with all applicable Federal, State, Local, ANSI and OSHA laws, rules and regulations and all other applicable regulations for the term of this contract.

The Contractor, without additional expense to the City, shall be responsible for obtaining and maintaining any necessary licenses and permits required in connection with the completion of the required services herein.

The Contractor may not subcontract any segment or services covered herein, without prior approval of the Contract Administrator. All subcontractors used under the scope of this contract shall meet all requirements, terms and conditions set forth herein. All subcontracted services shall be warranted by and be the responsibility of the Contractor.

PRODUCT SPECIFICATIONS

CONTRACTOR shall identify on Exhibit B the brand of product they are bidding.

Non-liquid items listed as 50 lbs. or 1 ton or more, shall be in 50 lb. bags. Items listed as 1 ton or more shall be delivered on a pallet with 40 bags per pallet that is shrink-wrapped. Bulk (loose) item purchases shall be an available option for orders over 20 tons or 200 cubic yards. All pallets supplied with delivery of a product shall be non-refundable and require no deposit.

CONTRACTOR shall store and dispose of all chemicals that are in any way related to performance of this Agreement in compliance with applicable laws.

**EXHIBIT B
PRICING**

Group 1 – Fertilizers					
ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
1	32-2-8 with 50% Sulfur-coated Urea _____ Manufacturer and Product #	50	Ton	\$ 770.00	\$ 38,500.00
2	21-0-0 Ammonium Sulfate Fertilizer _____ Manufacturer and Product #	5	Ton	\$ 440.00	\$ 2200.00
3	15.5-0-0 Calcium Nitrate _____ Manufacturer and Product #	3	Ton	\$ 540.00	\$ 1620.00
4	22-0-06 with Dimension Best 18-5-0 with Dimension _____ Manufacturer and Product #	1	Ton	\$ 1250.00	\$ 1250.00
5	46-0-0 Urea Fertilizer _____ Manufacturer and Product #	1	Ton	\$ 630.00	\$ 630.00
6	Dispersal _____ Manufacturer and Product #	1	Ton	\$ 500.00	\$ 500.00
7	21-7-14 Turf Royale with 9.9% Nitrate Nitrogen _____ Manufacturer and Product #	1	Ton	\$ 725.00	\$ 725.00
			Group 1 Total		\$ 45,425.00

Group 2 – Fungicides					
ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
8	Subdue _____ Manufacturer and Product #	1	Gallon	\$ 510.00	\$ 510.00
				Group 2 Total	\$ 510.00

Group 3 – Herbicides					
ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
9	Gallery Pre-emergent _____ Manufacturer and Product #	400	Lbs.	\$ 94.50	\$ 37,800.00
10	Kleenup Pro Herbicide _____ Manufacturer and Product #	55	Gallon	\$ 17.00	\$ 935.00
11	Mec Amine D Herbicide _____ Manufacturer and Product #	2.5	Gallon	\$ 21.50	\$ 53.75
12	Diquat Herbicide Syngenta-Tribune _____ Manufacturer and Product #	20	Gallon	\$ 52.00	\$ 1040.00
13	Reward Herbicide _____ Manufacturer and Product #	2.5	Gallon	\$ 79.00	\$ 197.50
14	Surflan in 2.5 gallon containers _____ Manufacturer and Product #	30	Gallon	\$ 48.00	\$ 1440.00
15	Fusillade II in 1-quart containers _____ Manufacturer and Product #	8	Gallon	\$ 248.00	\$ 1984.00
16	Pendulum Aqua Cap; 2.5 gallon _____ Manufacturer and Product #	30	Gallon	\$ 45.00	\$ 1350.00

ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
17	Round Up Pro Concentrate	2.5	Gallon	\$ 21.00	\$ 52.50
	_____ Manufacturer and Product #	50	Gallon	\$ 21.00	\$ 1050.00
18	Round Up Quick Pro, in 6.8 lb. jug	100	jugs	\$ 66.30	\$ 6630.00
	_____ Manufacturer and Product #				
19	Rodeo, in 2.5 gallon containers	5	Gallon	\$ 21.00	\$ 105.00
	_____ Manufacturer and Product #				
20	Vectobac, in 40 lb. box	10	boxes	\$ 0	\$ 0
	_____ Manufacturer and Product #				
21	VectoLex, in 40 lb. box	5	boxes	\$ 0	\$ 0
	_____ Manufacturer and Product #				
22	Altosid XR tabs	3	cases	\$ 189.00	\$ 567.00
	_____ Manufacturer and Product #				
			Group 3 Total		\$53,204.75

Group 4 – Insecticides					
ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
23	Du-O-Cide Insecticide	20	Lbs.	\$ 1.00	\$ 20.00
	_____ Manufacturer and Product #				
24	Abate 4-E mosquito control	2	gallons	\$ 0	\$ 0
	_____ Manufacturer and Product #				
25	Abate 5% granules	5	lbs.	\$ 0	\$ 0
	_____ Manufacturer and Product #				
			Group 4 Total		\$20.00

Group 5 - Miscellaneous Products					
ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
26	Alco Olive Stop, 1 gallon jugs _____ Manufacturer and Product #	1	gallons	\$ 225.00	\$ 225.00
27	Turf Trax Marking Dye _____ Manufacturer and Product #	40	Gallon	\$ 20.00	\$ 800.00
28	Foam Fighter, 1 quart _____ Manufacturer and Product #	16	Quarts	\$ 8.00	\$ 128.00
29	Target Pro Spreader _____ Manufacturer and Product #	15	Gallon	\$ 18.00	\$ 270.00
30	Agradex, 2.5 gallons _____ Manufacturer and Product #	10	Gallon	\$ 0	\$ 0
31	Primo _____ Manufacturer and Product #	10	Gallon	\$ 178.00	\$ 1780.00
32	Embark, 1 gallon container _____ Manufacturer and Product #	1	Gallon	\$ 357.00	\$ 357.00
33	Amdro; granular _____ Manufacturer and Product #	1	lb.	\$ 9.80	\$ 9.80
			Group 5 Total		\$3569.80

ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
Group 6 - Soil Amendments					
34	Soil Amendments – Mulch suitable for over seeding topdressing. Manufacturer and Product #	200	Cubic Yard	\$ 0	\$ 0
			Group 6 Total		\$0

**PRICE RECAP
FERTILIZERS, HERBICIDES & PESTICIDES**

TOTAL GROUP ONE	\$ 45,425.00
TOTAL GROUP TWO	\$ 510.00
TOTAL GROUP THREE	\$ 53,204.75
TOTAL GROUP FOUR	\$ 20.00
TOTAL GROUP FIVE	\$ 3569.80
TOTAL GROUP SIX	\$ 0
GRAND TOTAL	\$ 102,729.55

**CITY OF CHANDLER PURCHASE CONTRACT
FERTILIZERS, HERBICIDES & PESTICIDES
AGREEMENT NO.: PM4-967-3313**

THIS AGREEMENT is made and entered into this ____ day of _____, 2014, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and HELENA CHEMICAL COMPANY, hereinafter referred to as "CONTRACTOR".

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

1. CONTRACT ADMINISTRATION AND OPERATION:

- 1.1. **Contract Administrator:** CONTRACTOR shall act under the authority and approval of the Sr. Management Asst./designee (Contract Administrator), to provide the goods and merchandise required by this Contract.
- 1.2. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.
- 1.3. **Ordering Process.** Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.
- 1.4. **Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report on an annual basis delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B, all as more specifically set forth in the Specifications and details included therein.

- 2.1. **Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.
- 2.2. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.3. **Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

- 2.4. **Licenses:** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.
- 2.5. **Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 2.6. **Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.7. **Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. **Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 2.10. **Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.12. **Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.
- 2.13. **Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.14. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

3. WARRANTIES:

- 3.1. Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 3.2. Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
- 3.2.1.** Of a quality to pass without objection in the trade under the Contract description;
 - 3.2.2.** Fit for the intended purposes for which the materials are used;
 - 3.2.3.** Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.2.4.** Adequately contained, packaged and marked as the Contract may require; and
 - 3.2.5.** Conform to the written promises or affirmations of fact made by CONTRACTOR.
- 3.3. Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.4. Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.5. Warranty.** CONTRACTOR must provide a one-year manufacturer's warranty on all goods or equipment supplied pursuant to this Contract.

4. ACCEPTANCE AND DOCUMENTATION: All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification

- 4.1. Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 4.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
- 4.3. Delivery.** Delivery shall be made within Five (5) calendar days after receipt of a Contract Purchase Order (ARO).
- 5. PRICE:** CITY shall pay to CONTRACTOR an amount, including all companion Agreements, not to exceed **TWO HUNDRED THIRTY THOUSAND Dollars (\$230,000.00)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.

- 5.1. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.
- 5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. **Taxes:** CONTRACTOR shall be solely legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 5.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
- 5.7. **Price Adjustment (Annual—CPI).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a request for price adjustments in accordance with the current Consumer Price Index. CONTRACTOR must request all price adjustments in writing at least sixty (60) days prior to the renewal date.
- 5.8. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is **ONE YEAR**, commencing on **February 14, 2014**, unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **FOUR (4)** additional terms of one year each. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.

7. USE OF THIS CONTRACT:

The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.

CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.

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

7.2. Cooperative Use of Contract. In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials 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.

8. CITY'S CONTRACTUAL REMEDIES:

8.1. Right to Assurance: If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Non-exclusive Remedies: The rights and the remedies of CITY under this Contract are not exclusive.

8.3. Nonconforming Tender: Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.4. **Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. **TERMINATION:**

9.1 **Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

9.2 **Termination for Cause:** City may terminate this Agreement for Cause:

Upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR 'S property;
- 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

9.3. **Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

9.4. **Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

9.5. **Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, In addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.

- 9.6. **Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 9.7. **Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 9.8. **No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 9.9. **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.
10. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
11. **DISPUTE RESOLUTION:**
- 11.1 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 11.2 **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.
- 11.3 **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.
12. **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.

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

In the case of CITY	In the case of the CONTRACTOR
Department: <u>Parks Operations</u>	Firm Name: <u>Helena Chemical Company</u>
Contact: <u>Tyrone Allen</u>	Contact: <u>Robert Deacon</u>
Mailing Address: _____	Address: <u>225 Schilling Blvd, Ste. 300</u>
Physical Address: <u>650 E. Ryan Rd.</u>	City, State, Zip: <u>Collierville, TN</u>
City, State, Zip: <u>Chandler, AZ</u>	Phone: <u>480-688-5186</u>
Phone: <u>480-782-2667</u>	FAX: <u>480-688-5186</u>
FAX: <u>480-782-2560</u>	<u>deaconr@helenachemical.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. **GENERAL TERMS:**

- 14.1. **Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.
- 14.2. **Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. **Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 14.5. **Conflict of Interest:**
- 14.5.1 **No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.

- 14.5.2 **Kickback Termination:** CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).
- 14.5.3 **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
- 14.6. **Independent CONTRACTOR:** The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 14.7. **No Parole Evidence:** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 14.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.
- 14.9. **Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2014.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

By: X *W. McCarty*
Signature 1/28/2014

ATTEST:

SEAL

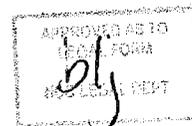
ATTEST Corporation

City Clerk

[Signature]
Asst. Secretary

Approved as to form:

City Attorney *[Signature]*



**EXHIBIT A
TECHNICAL SPECIFICATIONS**

GENERAL INFORMATION/PURPOSE

Vendor shall provide Fertilizer, Herbicides and Pesticides as specified herein.

GENERAL VENDOR QUALIFICATIONS

The Contractor shall be in compliance with all applicable Federal, State, Local, ANSI and OSHA laws, rules and regulations and all other applicable regulations for the term of this contract.

The Contractor, without additional expense to the City, shall be responsible for obtaining and maintaining any necessary licenses and permits required in connection with the completion of the required services herein.

The Contractor may not subcontract any segment or services covered herein, without prior approval of the Contract Administrator. All subcontractors used under the scope of this contract shall meet all requirements, terms and conditions set forth herein. All subcontracted services shall be warranted by and be the responsibility of the Contractor.

PRODUCT SPECIFICATIONS

CONTRACTOR shall identify on Exhibit B the brand of product they are bidding.

Non-liquid items listed as 50 lbs. or 1 ton or more, shall be in 50 lb. bags. Items listed as 1 ton or more shall be delivered on a pallet with 40 bags per pallet that is shrink-wrapped. Bulk (loose) item purchases shall be an available option for orders over 20 tons or 200 cubic yards. All pallets supplied with delivery of a product shall be non-refundable and require no deposit.

CONTRACTOR shall store and dispose of all chemicals that are in any way related to performance of this Agreement in compliance with applicable laws.

**EXHIBIT B
PRICING**

Group 1 – Fertilizers					
ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
1	32-2-8 with 50% Sulfur-coated Urea <u>Helena Chemical F3228</u> Manufacturer and Product #	50	Ton	\$ 767.30	\$ 38,365.00
2	21-0-0 Ammonium Sulfate Fertilizer <u>Martin Resources Armsulf2</u> Manufacturer and Product #	5	Ton	\$ 553.20	\$ 2766.00
3	15.5-0-0 Calcium Nitrate <u>Yara Hydro Calnit 20</u> Manufacturer and Product #	3	Ton	\$ 506.00	\$ 1518.00
4	22-0-06 with Dimension <u>Lebanon Proscape Lebanon 512</u> Manufacturer and Product #	1	Ton	\$ 986.80	\$ 986.80
5	46-0-0 Urea Fertilizer <u>Yara Hydro Urea P5</u> Manufacturer and Product #	1	Ton	\$ 631.60	\$ 631.60
6	Dispersal <u>Martin Resources Sulfur 24</u> Manufacturer and Product #	1	Ton	\$ 540.00	\$ 540.00
7	21-7-14 Turf Royale with 9.9% Nitrate Nitrogen <u>Yara Hydro Turfroy 101</u> Manufacturer and Product #	1	Ton	\$ 716.00	\$ 716.00
			Group 1 Total		\$ 45,523.40

Group 2 – Fungicides					
ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
8	Subdue <u>Syngenta Professional Subdue 498 Syngenta Agency Item</u> Manufacturer and Product #	1	Gallon	\$ 510.00	\$ 510.00
				Group 2 Total	\$ 510.00

Group 3 – Herbicides					
ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
9	Gallery Pre-emergent <u>Dow Agrosience Gallery 262</u> Manufacturer and Product #	400	Lbs.	\$ 94.50	\$ 37,800.00
10	Kleanup Pro Herbicide <u>Helena Showdown008</u> Manufacturer and Product #	55	Gallon	\$ 18.50	\$ 1017.50
11	Mec Amine D Herbicide <u>Endrun001</u> Manufacturer and Product #	2.5	Gallon	\$ 32.85	\$ 82.13
12	Diquat Herbicide <u>Tribune001 Syngenta Professional</u> Manufacturer and Product #	20	Gallon	\$ 42.50	\$ 850.00
13	Reward Herbicide <u>Reward 578 Syngenta Professional</u> Manufacturer and Product #	2.5	Gallon	\$ 79.00	\$ 197.50
14	Surflan in 2.5 gallon containers <u>Surflan 290 AS4 T+0</u> Manufacturer and Product #	30	Gallon	\$ 37.50	\$ 1125.00
15	Fusillade II in 1-quart containers <u>Syngenta Fusillade 001 (32 Quarts)</u> Manufacturer and Product #	32	Quart	\$ 56.50	\$ 1808.00
16	Pendulum Aqua Cap; 2.5 gallon <u>BASF Pendulu 218</u> Manufacturer and Product #	30	Gallon	\$ 42.00	\$ 1260.00

ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
17	Round Up Pro Concentrate	2.5	Gallon	\$ 18.50	\$ 46.25
	Roundup 204, Roundup 205-Mosanto Manufacturer and Product #	30	Gallon	\$ 18.00	\$ 540.00
18	Round Up Quick Pro, in 6.8 lb. jug Mosanto Roundup 214 Manufacturer and Product #	100	jugs	\$ 59.40	\$ 5940.00
19	Rodeo, in 2.5 gallon containers Dow Agroscience Rodeo001 Manufacturer and Product #	5	Gallon	\$ 22.50	\$ 112.50
20	Vectobac, in 40 lb. box Manufacturer and Product #	10	boxes	\$ NB	\$ NB
21	VectoLex, in 40 lb. box Manufacturer and Product #	5	boxes	\$ NB	\$ NB
22	Altosid XR tabs Manufacturer and Product #	3	cases	\$ NB	\$ NB
				Group 3 Total	\$ 50,778.88

Group 4 – Insecticides

ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
23	Du-O-Cide Insecticide Manufacturer and Product #	20	Lbs.	\$ NB	\$ NB
24	Abate 4-E mosquito control Manufacturer and Product #	2	gallons	\$ NB	\$ NB
25	Abate 5% granules Manufacturer and Product #	5	lbs.	\$ NB	\$ NB
				Group 4 Total	\$ NB

Group 5 - Miscellaneous Products					
ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
26	Alco Olive Stop, 1 gallon jugs _____ Manufacturer and Product #	1	gallons	\$ 299.00	\$ 299.00
27	Turf Trax Marking Dye BASF Turfmark267 _____ Manufacturer and Product #	40	Gallon	\$ 28.80	\$ 1152.00
28	Foam Fighter, 1 quart Foambuster _____ Manufacturer and Product #	16	Quarts	\$ 11.08	\$ 177.28
29	Target Pro Spreader Andersons Pro Spreader Accupro Spread167 _____ Manufacturer and Product #	1	Each	\$ 388.15	\$ 388.15
30	Agradex, 2.5 gallons Agridex102 _____ Manufacturer and Product #	10	Gallon	\$ 19.04	\$ 190.40
31	Primo Syngenta Primo001 _____ Manufacturer and Product #	10	Gallon	\$ 283.00	\$ 2830.00
32	Embark, 1 gallon container PBI Gordon Embark 644 _____ Manufacturer and Product #	1	Gallon	\$ 61.05	\$ 61.05
33	Amdro; granular BASF-AMDRO PRO639 _____ Manufacturer and Product #	1	lb.	\$ 9.97	\$ 9.97
			Group 5 Total		\$5107.85

ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
Group 6 - Soil Amendments					
34	Soil Amendments – Mulch suitable for over seeding topdressing. _____ Manufacturer and Product #	200	Cubic Yard	\$ NB	\$ NB
			Group 6 Total		\$ NB

**PRICE RECAP
FERTILIZERS, HERBICIDES & PESTICIDES**

TOTAL GROUP ONE	\$ 45,523.40
TOTAL GROUP TWO	\$ 510.00
TOTAL GROUP THREE	\$ 50,778.88
TOTAL GROUP FOUR	\$ 0
TOTAL GROUP FIVE	\$ 5107.85
TOTAL GROUP SIX	\$ 0
GRAND TOTAL	\$ 101,920.13