



**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. TE15-036**

1. Agenda Item Number:
34
2. Council Meeting Date:
September 11, 2014

TO: MAYOR & COUNCIL
THROUGH: CITY MANAGER

3. Date Prepared: August 20, 2014
4. Requesting Department:
Transportation & Development

5. SUBJECT: Streetlight Pole Replacement

6. RECOMMENDATION: Recommend approval of Agreement No. TD5-968-3404 for Streetlight Pole Replacement with Utility Construction Company, Inc., in an amount not to exceed \$137,815, for one year with the option of four (4) additional one-year periods.

7. BACKGROUND/DISCUSSION: The City has a need for contractor services for the replacement of damaged streetlights, as a result of traffic accidents or rust, and new miscellaneous streetlight installations to increase lighting levels in older developed areas. This agreement is used on an as-needed basis and quantities are estimated based on past history. Staff has estimated that approximately 70 streetlights may be replaced and/or upgraded during the term of this agreement. Risk Management recovers approximately 80% of the cost for damaged poles through insurance companies and/or persons involved. The remainder will be funded from the City's self-insurance program. Rusted streetlight poles, replacements, and the miscellaneous new installations are funded from the Capital Improvement Program as needed.

8. EVALUATION PROCESS: On July 25, 2014, staff issued a bid for Streetlight Pole Replacement at various locations throughout the City. The bid was advertised and all registered vendors were notified. Five (5) bids were received and evaluated. Staff is recommending award to Utility Construction Company, Inc., who has been deemed to have submitted the lowest responsive and responsible bid. The term of this agreement will be October 1, 2014, through September 30, 2015, with options to renew for up to four (4) additional one-year periods.

Utility Construction	\$137,815.00
Brooks Bros Utility	\$220,010.00
RK Sanders	\$251,850.00
Arizona Traffic Signal	\$320,627.50
Madyson Corp.	\$890,921.21

9. FINANCIAL IMPLICATIONS:

Cost: \$137,815
Savings: \$0
Long Term Costs: N/A
Funding Source:

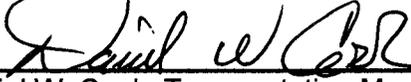
<u>Acct No.:</u>	<u>Fund:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
411.3310.6517.0.6ST051	GO Bonds	Street Light Additions/Repairs	Yes	\$137,815

10. PROPOSED MOTION: Move City Council approve Agreement No. TD5-968-3404 for Streetlight Pole Replacement with Utility Construction Company, Inc., in an amount not to exceed \$137,815, for one year with the option of four (4) additional one-year periods.

ATTACHMENTS: Agreement

APPROVALS

11. Requesting Department



Daniel W. Cook, Transportation Manager/Interim City Engineer

12. Department Head



R.J. Zeder, Transportation & Development Director

13. Procurement Officer



Carolee Stees, CPPB

14. City Manager



Rich Dlugos

**CITY OF CHANDLER SERVICES AGREEMENT
STREETLIGHT POLE REPLACEMENT
AGREEMENT NO.: TD4-968-3404**

THIS AGREEMENT is made and entered into this ____ day of September, 2014, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Utility Construction Company, Inc., hereinafter referred to as "CONTRACTOR".

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

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

1. CONTRACT ADMINISTRATOR:

1.1. Contract Administrator. CONTRACTOR shall act under the authority and approval of the Signals and Lighting Field Supervisor/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 streetlight pole replacements 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. **Warranty.** CONTRACTOR must provide a manufacturer's guarantee/warranty on all work performed pursuant to this Contract.
- 2.6. **Warranty (Equipment).** Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.
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.
- 4.1. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed One Hundred Thirty-seven Thousand Eight Hundred Fifteen Dollars (\$137,815) 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. **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.
- 4.3. **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.
- 4.4. **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.
- 4.5. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.6. **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.
- 4.7. **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 one year period 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 5 years. Additionally, the contract may be extended unilaterally for a period of thirty-one 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.

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

The amount and type of insurance coverage requirements set forth in the Agreement will in no way be construed as limiting the scope of indemnity in this paragraph.

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.
- C. *Builders' Risk Insurance (Course of Construction)*. The CONTRACTOR bears all responsibility for loss to all Work being performed and to buildings under construction. Unless waived in writing by the City of Chandler, the CONTRACTOR will purchase and maintain in force Builders' Risk-Installation insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss policy form, (minimally including perils of fire, flood, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, and collapse), completed value, replacement cost policy form equal to the GMP and all subsequent modifications. The CONTRACTOR's Builders' Risk-Installation insurance must be primary and not contributory.
1. Builders' Risk-Installation insurance must name the City of Chandler, the CONTRACTOR and all tiers of SubContractors as Additional Insureds and must contain a provision that this insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The City must also be named as a Loss Payee under Builders' Risk-Installation coverage.
 2. Builders' Risk-Installation insurance must cover the entire Work including reasonable compensation for architects and engineers' services and expenses and other "soft costs" made necessary by an insured loss. Builders' Risk-Installation insurance must provide coverage from the time any covered property comes under the CONTRACTOR's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.
 3. The CONTRACTOR must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders' Risk-Installation insurance cited above if the Work to be performed involves

any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law or testing requirements in the performance of this Agreement. The CONTRACTOR will be responsible for any and all deductibles under these policies and the CONTRACTOR waives all rights of recovery and subrogation against the City under the CONTRACTOR-provided Builders' Risk-Installation insurance described above.

4. Builders' Risk Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.
 - a. The Builders' Risk insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City.
 - b. This insurance must include as named insureds, the City, the CONTRACTOR, SubContractors, Subconsultants and others with an insurable interest in the Work who will be named as additional insureds unless they are able to provide some level of coverage with the City and CONTRACTOR named as additional insureds. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The City must also be named as a Loss Payee under the Builders' Risk-Installation coverage.
 - c. This insurance must be written using the Special Causes of Loss policy form, replacement cost basis.
 - d. All rights of subrogation are, by this Agreement, waived against the City of Chandler, its officers, officials, agents and employees.
 - e. The CONTRACTOR is responsible for payment of all deductibles under the Builders' Risk policy.

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: Traffic Engineering Dept.
 Contact: Hector Peralta
 Mailing Address: PO Box 4008 MS 910
 Physical Address: 975 E Armstrong Wy, Bldg B
 City, State, Zip: Chandler, AZ 85225
 Phone: 480-782-3456
 FAX: 480-782-3444

In the case of the CONTRACTOR

Firm Name: Utility Construction Company, Inc.
 Contact: Bob Martin
 Address: 19442 E Warner Rd
 City, State, Zip: Mesa, AZ 85212
 Phone: 480-654-3100
 FAX: 480-654-8374
bob@utilityconstructionco.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. 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.
- 15.2. Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.3. Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.4. 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 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.
- 15.5. 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.
- 15.6. 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.
- 15.7. 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 September, 2014.

FOR THE CITY OF CHANDLER

Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney *KS*

FOR THE CONTRACTOR

By: *Bob Martin*

Signature
BOB MARTIN, VICE PRESIDENT

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.

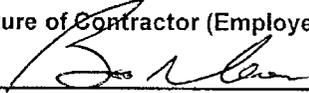
By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: TD5-968-3404		
Name (as listed in the contract): Utility Construction Company, Inc.		
Street Name and Number: 19442 E Warner Rd		
City: Mesa	State: AZ	Zip Code: 85212

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: BOB MARTIN

Title: VICE PRESIDENT

Date (month/day/year): AUGUST 29, 2014

**EXHIBIT B
TECHNICAL SPECIFICATIONS**

CONTRACTOR shall provide all labor and equipment necessary to provide a complete delivery/installation of new streetlight poles, to include electrical splice pit. CONTRACTOR is responsible for obtaining a copy of the CITY's Streetlight Manual and/or Construction Standards Book.

- A. **SITE INSPECTION.** CONTRACTOR shall familiarize themselves with any conditions that may affect performance and pricing.
- B. **VANDALISM.** CONTRACTOR shall report all cases of vandalism to CITY when discovered and CITY will determine the course of action to be taken.
- C. **CONTRACTOR/CITY COMMUNICATIONS.** CONTRACTOR shall provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Agreement.

CONTRACTOR's employees shall possess and carry a valid vehicle operator's license issued by the State of Arizona at all times and must have authorization to work in the State of Arizona.

- D. **CONDUCT.** CONTRACTOR'S employees, officers and subcontractors shall not identify themselves as being employees of the CITY. CONTRACTOR's employees shall conduct themselves in such a manner as to avoid embarrassment to the CITY, and shall be courteous to the public at all times.
- E. **CONTRACTOR'S EQUIPMENT.** CONTRACTOR shall provide and maintain equipment sufficient in number, condition and capacity to efficiently perform the work and render the services required by this contract.

CONTRACTOR's vehicles shall be maintained in good repair, appearance and sanitary condition at all times. 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 personnel transportation vehicles. The letters shall be of such size that they are distinguishable from reasonable distance. The CITY reserves the right to inspect CONTRACTOR's vehicles at any time to ascertain said condition.

- F. **REDUCTION IN PAYMENT DUE TO UNSATISFACTORY SERVICE.** CONTRACTOR'S performance shall be evaluated for satisfactory service. If performance for any required service is unsatisfactory and poor performance is clearly the fault of CONTRACTOR (any service not performed which is required by the contract), an amount of money equal to the service value shall be withheld. Anytime the CONTRACTOR'S performance is unsatisfactory, payment shall be withheld until CONTRACTOR'S performance is deemed satisfactory by Contract Administrator/designee.

In the event CONTRACTOR is deficient in any required service, CITY may perform the service using CITY personnel or by separate contract. Cost of services not performed by CONTRACTOR shall be deducted from CONTRACTOR's monthly invoice.

- G. **REPLACEMENTS.** CONTRACTOR shall replace streetlight poles that have been damaged by vehicle accident or other means of accident. Streetlight poles replaced by CONTRACTOR for the CITY OF CHANDLER shall satisfy the provisions of the City's self-insurance program, which is administered by the Risk Management Division.

Approximately 20% of the streetlight pole replacements are located in the medians.

The CITY will provide an inventory of poles. Poles are stored and available for pickup at the CITY's

Central Supply Yard located at 975 E Armstrong Way Building I, Chandler.

- H. **NOTIFICATION.** The Contract Administrator/designee will notify CONTRACTOR of the location of damaged light, the type of light to be replaced including the pole height, mast arm, and type of wattage for the luminaire. This will be done by phone and followed up in writing and mailed to CONTRACTOR.

CONTRACTOR shall notify the Contract Administrator/designee 24-hours prior to initiating work. Once work has been completed, CONTRACTOR shall contact the Contract Administrator/designee 24-hours in advance to arrange for inspection. Payment will be processed once a CITY approved inspection report is submitted.

- I. **UPGRADES.** The CITY estimates 20 streetlight upgrades per year over a 5-year period. The Contract Administrator/designee will notify CONTRACTOR of the location of the light and junction box. The type of light to be installed including the pole height, mast arm, and type of wattage for the luminaire will depend on location and type of existing lighting. This information will be provided by CITY. CONTRACTOR shall be notified by letter with copy of the plan sets.

CONTRACTOR shall arrange for inspection and notify SRP or APS that the lights are ready to be energized once work has been completed.

CONTRACTOR shall work with residents to assure pole placement, landscape restoration and to alleviate any other problems that may arise. CONTRACTOR shall contact the Contract Administrator/designee no later than two (2) working days prior to commencing work. CONTRACTOR shall arrange for a CITY inspection once work has been completed.

CITY will furnish poles, davit arms, and luminaires. CONTRACTOR will furnish junction boxes. CONTRACTOR shall furnish and install electrical conduit, 10" PVC mounting tube and gravel for pole, ground rod and #12 solid wire from luminaire to junction box. CONTRACTOR shall touch up paint to match and place APS or SRP streetlight numbers on poles.

CONTRACTOR shall be responsible for contacting APS or SRP and Chandler Street Lighting Section for inspections. Plan sets shall consist of a CITY location plan along with the APS or SRP wiring plan and electrical splice pit location.

- J. **TRAFFIC CONTROL.** CONTRACTOR shall provide all traffic control required to perform the job. The City of Chandler Traffic Barricade Manual shall be followed for all traffic control layouts.

- K. **ELECTRICAL CONNECTIONS.** CONTRACTOR shall check the voltage supply and wire the luminaire for the proper voltage. In-line fuses (HEB-AA Buss fuse holder with WPBI rubber boot) shall be installed on each power conductor at the point of service

- L. **CLEAN UP AND DISPOSAL.** CONTRACTOR shall be responsible for cleaning up and disposing of any material, dirt, gravel, broken concrete or asphalt which is remaining as part of this work. CONTRACTOR shall be responsible for removing the pole if the pole is still on-site. CONTRACTOR shall be responsible for properly disposing of all waste material.

- M. **RESPONSE TIME.** When notified by the Contract Administrator/designee, CONTRACTOR shall respond by installing the required material as directed by CITY. It is of utmost importance that the streetlight replacement (and related work) be completed within **15-calendar days from receipt of written notification**, or by informing Contract Administrator/designee if this schedule cannot be met and the reasons for such delay. The CITY is to be notified of energization delays or work completion delays due to the failure of SRP or APS.

CONTRACTOR shall pick up the poles listed above out of the CITY's inventory in order to perform the

replacement within the 15-calendar days.

The intent of inventory is to facilitate replacement of damaged poles within the time frame given. Liquidated damages will be assessed beginning on Day 16 and every calendar day thereafter at the rate of \$100.00 per day until work is completed.

In the event that the required pole is not available at the CITY yard, the CONTRACTOR shall be responsible for ordering and installing the required pole. In this case, CONTRACTOR shall complete the repair within 120 calendar days or be subject to liquidated damages at the rate of \$100.00 per day beginning on Day 121, and every calendar day thereafter until work is completed.

**EXHIBIT C
PRICING**

Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Install new pole, remove/dispose of old pole and infrastructure.* (Replacement)			
a	30 ft or 35 ft SL-1 pole	50	Ea	\$ 1,020.00
b	30 ft or 35 ft SL-16 pole	11	Ea	\$ 1,020.00
c	30 ft or 35 ft SL-17 pole	5	Ea	\$ 1,020.00
d	30 ft SL-6 APS pole	5	Ea	\$ 1,020.00
e	38.6 ft SL-8 APS pole	1	Ea	\$ 1,020.00
2	Install new pole on existing concrete foundation. (Upgrade)			
a	30 ft or 35 ft SL-1 pole	5	Ea	\$ 500.00
b	30 ft or 35 ft SL-16 pole	3	Ea	\$ 500.00
c	30 ft or 35 ft SL-17 pole	5	Ea	\$ 500.00
d	30 ft SL-6 APS pole	2	Ea	\$ 500.00
e	38.6 ft SL-8 APS pole	1	Ea	\$ 500.00
3	Supply & install foundation**	60	Ea	\$ 700.00
4	Supply & install PVC tube	25	Ea	\$ 225.00
5	Supply & install 2.5 inch trenched conduit	250	Ft	\$ 5.00
6	Supply & install 2.5 inch bored conduit	250	Ft	\$ 10.00
7	Supply & install 3.5 inch pull box	50	Ea	\$ 100.00

* Includes disposal of concrete collar, if present. For damaged concrete foundations, jackhammer one foot below finished grade and backfill.

** At no extra cost, the City may choose to use 1" x 69" anchor bolts in lieu of cage in tight places.