



Chandler · Arizona
When Values Make The Difference

**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. MUA15-055**

1. Agenda Item Number: 28
2. Council Meeting Date:
February 12, 2015

TO: MAYOR & COUNCIL

3. Date Prepared: January 28, 2015

THROUGH: CITY MANAGER

4. Requesting Department: Municipal Utilities

5. SUBJECT: Agreement No. MU5-830-3493 with Diamond Services, for Repair and Recoating of Hypochlorite Tanks

6. RECOMMENDATION: Staff recommends City Council approve Agreement No. MU5-830-3493 with Diamond Services, for repair and recoating of hypochlorite tanks, in an amount not to exceed \$67,087.

7. BACKGROUND/DISCUSSION: The Pecos Surface Water Treatment Plant, located at 1475 East Pecos Road, uses sodium hypochlorite to disinfect the treated water for the City's potable water system. The sodium hypochlorite is produced onsite, and stored in four different fiberglass tanks prior to use. A routine annual inspection revealed that two of the four tanks require relining of the interior walls and fittings. Failure to perform the relining could result in a failure of the tank and a possible spill.

8. EVALUATION: Staff requested pricing from other tank manufacturers, and none were willing to provide pricing on tanks they didn't manufacture. Additionally, Staff believes Diamond Services has the specialized knowledge to repair the tank, as they are the original manufacturer of the tanks. Staff recommends Diamond Services as the sole source provider for this service. Completion time is 35 calendar days following Notice to Proceed.

9. FINANCIAL IMPLICATIONS:

Cost: \$67,087
Savings: N/A
Long Term Costs: N/A

Fund Source:

Account No.:	Fund:	Program Name:	CIP Funded:	Funds:
605.3860.5419.0	Water Operating	Other Equipment R and M	No	\$67,087

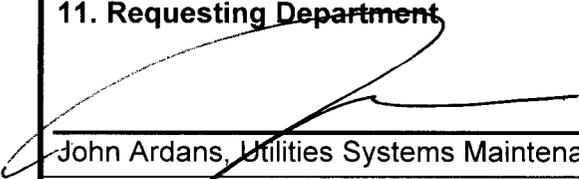
10. PROPOSED MOTION: Move City Council approve Agreement No. MU5-830-3493 with Diamond Services, for repair and recoating of hypochlorite tanks, in an amount not to exceed \$67,087.

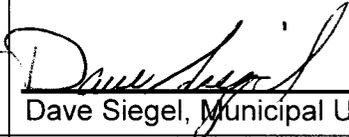
ATTACHMENTS: Agreement

APPROVALS

11. Requesting Department

13. Department Head


John Ardans, Utilities Systems Maintenance Supt.


Dave Siegel, Municipal Utilities Director

12. Procurement Officer

14. City Manager


Mike Mandt, CPPB


Rich Dlugas

**CITY OF CHANDLER SERVICES AGREEMENT
REPAIR AND RECOATING OF HYPOCHLORITE TANKS
AGREEMENT NO.:MU5-830-3493**

THIS AGREEMENT is made and entered into this ____ day of _____, 2015, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Diamond Services, 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 Water Systems Maintenance Superintendent/designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.
- 1.4. Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall repair and recoat hypochlorite tanks 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 commercial 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 verification.
- 2.4.5** The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.6** In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.4.7** In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.5. Warranties.**
- 2.6. 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. 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 sixty seven thousand and eighty seven dollars (\$67,087) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.

- 4.2. **Taxes.** CONTRACTOR shall be solely legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 5 **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
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.
- 6.2. **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.
 - E. *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.

3. Additional Policy Provisions Required.

- A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
- B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:
1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CONTRACTOR including the City's general supervision of the CONTRACTOR; Products and Completed operations of the CONTRACTOR; and automobiles owned, leased, hired, or borrowed by the CONTRACTOR.
 2. The CONTRACTOR's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
 3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CONTRACTOR even if those limits of liability are in excess of those required by this Agreement.
 4. The CONTRACTOR's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CONTRACTOR and must not contribute to it.
 5. The CONTRACTOR's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 6. Coverage provided by the CONTRACTOR must not be limited to the liability assumed under the indemnification provisions of this Agreement.
 7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CONTRACTOR for the City.
 8. The CONTRACTOR, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The CONTRACTOR must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
 9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the CONTRACTOR must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

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

In the case of the CITY

Contract Administrator: John Ardans
 Contact: _____
 Mailing Address: PO Box 4008 MS 914
 Physical Address: 1475 E Pecos Road
 City, State, Zip: Chandler AZ 85225
 Phone: 480-782-3634
 FAX: _____

In the case of the CONTRACTOR

Firm Name: Diamond Services
 Contact: Russ Rodriguez
 Address: PO Box 8465
 City, State, Zip: Victoria TX 77902
 Phone: 361-572-4040
 FAX: _____

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

14. **CONFLICT OF INTEREST:**

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

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

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

15. **GENERAL TERMS:**

- 15.1. **Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 15.2. **Entire Agreement.** This Agreement, including Exhibits A, B and C attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives of each party.

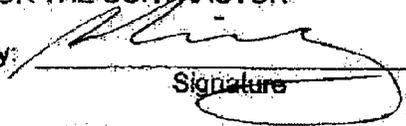
- 15.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.5. **Amendments.** The Contract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

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2015.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

Mayor

By: 
Signature

APPROVED AS TO FORM:

ATTEST: If Corporation

City Attorney (14)

Secretary

ATTEST:

City Clerk

SEAL

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:	14-10167
Name (as listed in the contract):	Diamond Services, LLC
Street Name and Number:	1036 Industrial Park Drive
City:	Victoria
State:	Texas
Zip Code:	77904

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: R. S. Rodriguez
Title: Account Representative
Date (month/day/year): 1/5/15

EXHIBIT B
SCOPE OF WORK

CONTRACTOR shall rehabilitate by fully reline the interior floor and up entirety of sidewall', and replace all fittings below elevation of 3' on CIYT tanks (8630) and (8635) in accordance with the scope of work listed below.

1. SCOPE OF WORK:

- 1.1. Build scaffold within tank to reach top knuckle
- 1.2. Prepare substrate by sanding and grinding off entire old liner
- 1.3. Apply Hetron 8084 for priming
- 1.4. Apply 2 mat and 2 nexus saturated with 922 with a BPO/DMA cure, resin coat and wax sealing of sidewall and floor
- 1.5. Install (2) 2", (2) 3" nozzles and (1) side manway
- 1.6. Post-cure

2. JOB SPECIFIC DETAIL CLARIFICATIONS AND ASSUMPTIONS:

- 2.1. Price includes travel and lodging to Chandler, AZ.
- 2.2. The projected work schedule is twenty-one (21) -10 hour days consisting of a Foreman and three (3) Technicians. Completion shall be within 35 days of notice to proceed.
- 2.3. Price includes an application of Ashland's Hetron 8084 vinyl ester primer.
- 2.4. Resin system shall be Hetron 992 resin, premium grade brominated vinyl ester, a BPO/DMA cure, and a hot air post-cure as required for NaOCL service.
- 2.5. Final top coat will consist of a resin wax coating of entire tank.
- 2.6. It is assumed that there will be no delays or slowdowns due to permitting or other contractors in the area.
- 2.7. CITY will provide 110 volt, 30 amp power supply to operate hand power tools.
- 2.8. CONTRACTOR will provide all required tools, materials, etc. to complete the quoted work, but the CITY must provide access to dumpsters as required for resulting trash, trimmings, etc. and is responsible for the disposal of the materials once the job is complete. No hazardous materials will be discarded into the dumpster by CONTRACTOR.

3. RESPONSIBILITIES:

- 3.1. CONTRACTOR will provide the following:
- 3.2. PPE (as required by the site)
- 3.3. Hardhats
- 3.4. Face shields
- 3.5. Chemical Splash Goggles
- 3.6. Safety Glasses
- 3.7. Steel toe boots
- 3.8. Chemical Suits (Tyvek SL)
- 3.9. Chemical gloves
- 3.10. Equipment

- 3.11. Power-Tools
- 3.12. Inspection equipment

4. GENERAL FIELD SERVICE DETAILS & CLARIFICATIONS:

- 4.1. CITY Preparation: The area should be clean and dry prior to our start-up. It is the CITY's responsibility to remove items that may slow work down. Any delays due to the areas not being "work ready" will be billed at extra cost.
- 4.2. Inspection / Additional Work: CONTRACTOR will perform a visual inspection of all work areas and advise the CITY if any additional work is required. This work will only be done after authorization from the CITY. All repairs will be done according to either industry standards or CONTRACTOR standards; the more stringent of the two standards will be applied. Additional work will result in additional Time and Material charges.
- 4.3. Odor from Vinyl Ester Resins: Polyester and vinyl ester resins produce an odor. This odor occurs even when quantities as low as 7 to 8 parts per million of styrene monomer (a component of the resin) are present. CONTRACTOR will not be held responsible for work stoppage or worker complaints due to the odor. The percentage of styrene in the air will not exceed the OSHA limit of 100 parts per million averaged over an eight hour period.
- 4.4. Work Area / Clean-Up: CONTRACTOR will perform daily clean-ups (or more frequent clean-ups if necessary) and will perform a final clean-up after the project has been completed.
- 4.5. Waste Disposal: The CITY shall provide a waste container at a location near the work area for the removal and disposal of debris.
- 4.6. Safety & Insurance: Our field personnel will operate all equipment and tools, mix and apply all material as per industry standards (or manufacturer's standards).
- 4.7. Sanitary Facilities: Our personnel require the use of the CITY's sanitary facilities while working on site. CITY will ensure such facilities are readily accessible.
- 4.8. Delays: Any delays caused by the CITY will be billed at an additional cost. These include stoppage due to a situation not caused by our personnel, excess waiting time for tank permits or safety inspectors, and delays caused by the vessel not being ready when we arrive. We will work with the CITY to accomplish the project in an expedient manner.

EXHIBIT C

PRICE

PRICE..... \$ 67,087.00