



Chandler - Arizona
Where Values Make The Difference

**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. RE17-008**

1. Agenda Item Number: **27**
2. Council Meeting Date:
July 28, 2016

TO: MAYOR AND COUNCIL

3. Date Prepared: June 28, 2016

THROUGH: CITY MANAGER

4. Requesting Department: Transportation & Development

5. **SUBJECT:** Approval of a Professional Services Agreement between the City of Chandler and Dennis Lopez & Associates, LLC, to provide professional appraisal services for the Queen Creek Road Improvement Project (CIP ST1306) from McQueen Road to Gilbert Road and for a portion of Cooper Road from Queen Creek Road south approximately ¼ mile, for a total not to exceed amount of \$44,775.

6. **RECOMMENDATION:** Staff recommends that Council approve a contract with Dennis Lopez & Associates, LLC, to provide professional appraisal services for the Queen Creek Road Improvement Project (CIP ST1306) from McQueen Road to Gilbert Road and for a portion of Cooper Road from Queen Creek Road south approximately ¼ mile, for a total not to exceed amount of \$44,775.

7. **BACKGROUND/DISCUSSION:** On August 13, 2015, Council authorized the acquisition of property rights required for the Queen Creek Road Improvement Project (CIP ST1306) from McQueen Road to Gilbert Road and for a portion of Cooper Road from Queen Creek Road south for approximately ¼ mile. Bids for appraisal services were requested from five appraisers that are listed on the ADOT list of approved appraisers. Their bids ranged from \$900 to \$1,651 per appraisal. Dennis Lopez & Associates, LLC, was the successful low bidder at \$900 per appraisal.

8. **EVALUATION** The funding for the appraisal services will come from federal funds being received on this project and the source identified below.

9. **FINANCIAL IMPLICATIONS:**

Professional Services Agreement: \$44,775

Fund Source:

Acct. No.:	Fund Name	Program Name	CIP Funded	Amount
411.3310.6517 6ST048	Streets General	Queen Creek Road	16/17	\$44,775
	General Obligation Bonds	McQueen to Gilbert		

10. **PROPOSED MOTION:** Move that Council approve Professional Services Agreement between the City of Chandler and Dennis Lopez & Associates, LLC, to provide professional appraisal services for the Queen Creek Road Improvement Project (CIP ST1306) from McQueen Road to Gilbert Road and for a portion of Cooper Road from Queen Creek Road south approximately ¼ mile, for a total not to exceed amount of \$44,775.

ATTACHMENT: Agreement

APPROVALS

11. Requesting Department

Bob Fortier, Capital Projects Manager

13. Department Head

R.J. Zeder, Transportation & Development Director

12. City Engineer

Daniel W. Cook, City Engineer

14. City Manager

Marsha Reed

**PROFESSIONAL SERVICES AGREEMENT
FOR REAL PROPERTY APPRAISALS**

Project Name: Queen Creek Road Improvements (McQueen Road to Gilbert Road) – Real Estate Services

Project No.: ST1306.102

THIS CONTRACT is made and entered into this ____ day of _____, 2016, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Dennis L. Lopez & Associates, LLC, a limited liability company, in Arizona, hereinafter referred to as "APPRAISER".

WHEREAS, the Mayor and City Council of the City of Chandler is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

WHEREAS, APPRAISER represents that it 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:

A. To provide the professional services required by this Agreement, APPRAISER shall act under the authority and approval of City Engineer or designee (the Contract Administrator), who shall oversee the execution of this Agreement, assist the APPRAISER with any necessary information, audit billings, and approve payments. The APPRAISER shall channel reports and special requests through the Contract Administrator.

B. CITY reserves the right to review and approve any/all changes to APPRAISER'S key staff assigned to the CITY project by the firm during the term of this Agreement.

2. SCOPE OF WORK:

A. APPRAISER shall provide the following services (hereinafter referred to in the aggregate as "Services") for the real property parcels identified in Exhibit A:

B. Provide primary appraisals of real property parcels identified in Exhibit A for eminent domain purposes according to the Uniform Standards of Professional Appraisal Practice Standards and the requirements of the Arizona Department of Transportation and/or the Federal Highway Administration guidelines for federally funded projects for full or partial acquisition, whichever is applicable according to the direction of the Contract Administrator and assume no environmental issues are present.

C. The same completion timing, as set forth in Subsection 2(F), shall apply for APPRAISER'S corrections to its appraisals, if any.

D. Include in the appraisal, the Tax Map, parcel number and proposed development plan for adjacent property.

E. Provide technical review of appraisal according to the Uniform Standards of Professional Appraisal Practice, the Arizona Department of Transportation and the Federal Highway Administration guidelines for federally funded projects unless otherwise noted.

F. The APPRAISER must notify landowner and/or their designated representative to inform them that it has been requested to perform an appraisal. APPRAISER shall allow the owner or an owner-designated representative, the opportunity to provide any information they wish

regarding the property and to accompany the APPRAISER during their inspection of the property.

- G. Provide four (4) copies of each appraisal along with a PDF copy on CD.
- H. Deliver the completed written reports and PDF copy on CD to the Contract Administrator on or before 5:00 p.m., **Thirty (30) calendar days** after receipt of Notice to Proceed ("Deadline") and receipt of parcel list, owner contact information, title reports and schedule B Exceptions, strip map, construction plans and legal descriptions. The date of delivery of the report(s) may not be extended without written authorization of the Contract Administrator or his/her authorized agent.
- I. Provide Appraisal(s) in complete condition upon submission. The APPRAISER agrees to correct any omissions or errors on its part at no extra cost to the City within **Five (5) calendar days of Notice To Proceed requesting correction ("Correction Deadline") given within Ten (10) calendar days** after the date of the relevant initial appraisal.
- J. The APPRAISER will testify in the courts or other proceedings with reference to the appraisal(s) prepared for the CITY when requested by the City or subpoenaed. The APPRAISER shall be paid at the rate set forth in Exhibit B for all Services performed as described in this Subsection 2(H) for depositions, attorney pretrial, trial conferences, testimony in court or other related services.
- K. Neither the APPRAISER'S employment nor its compensation is in any way contingent upon the amount at which its appraisal values the property.
- L. The APPRAISER may not assign the Services to another appraiser without prior consent by the City of Chandler.
- M. Time is of the essence in the performance of the Services. It is understood that should the APPRAISER not produce the agreed upon Services in the proscribed time, the CITY may elect to ask the APPRAISER to terminate Services on the project, and not be responsible for payment. In the event Services is delayed beyond the Deadline or Correction Deadline, and the CITY elects to have APPRAISER continue with Services, APPRAISER shall be responsible for payment to the CITY of \$100 per day in liquidated damages.
- N. The APPRAISER agrees that it will not disclose its appraisal and conclusions in whole or in part to any person other than as directed in writing by the Contract Administrator.
- O. The APPRAISER warrants that it has no interest, present or contemplated, in the property or the properties detailed in Exhibit A.
- P. The APPRAISER has not employed or retained any company, firm or person, other than a bona fide employee working solely for it, to solicit or secure this Services, and that it has not paid or agreed to pay any company, firm, or person, other than a bona fide employee working solely for it, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the CITY shall have the right to cancel this agreement without liability.

3. ACCEPTANCE AND DOCUMENTATION:

Each task shall be reviewed and approved by CITY to determine acceptable completion. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Agreement, shall be and remain the property of CITY and shall be delivered to CITY before final payment is made to APPRAISER.

4. FEE SCHEDULE:

For the services described in paragraph 2 of this Agreement, CITY shall pay APPRAISER in a fee based on the fee schedule attached hereto and made a part hereof by reference Exhibit B not to exceed the sum Forty Four Thousand Seven Hundred Seventy Five dollars (\$44,775.00).

5. TERM:

For Twelve (12) months following execution of this Agreement, and issuance of the Notice to Proceed, APPRAISER shall immediately commence performance of the Services and shall complete all Services described herein within the time period set forth in Subsections 2(H) and 2(I).

6. TERMINATION FOR CAUSE:

This Agreement may be terminated by CITY for cause should the APPRAISER fail to perform any provision of this Agreement, including without limitation, for any of the following reasons:

- A. APPRAISER abandons performance of the Services;
- B. APPRAISER assigns or attempts to assign its rights or obligations under this Agreement or any part thereof to any third-party (without the prior written consent of CITY);
- C. APPRAISER is adjudged bankrupt or insolvent, makes a general assignments for the benefit of creditors, has a trustee or receiver appointed for its property, or files a petition to take advantage of any debtor's act;
- D. APPRAISER fails or refuses to perform any obligation under the Agreement, or fails to remedy such nonperformance within seven (7) days after its occurrence;
- E. APPRAISER fails to comply with any applicable Laws and fails to remedy such nonperformance within seven (7) days after its occurrence;
- F. APPRAISER fails to achieve the required dates for performance required pursuant to the Agreement.

7. TERMINATION FOR CONVENIENCE:

CITY may at any time and for any or no reason, including its convenience, terminate this contract or any part of the Services to be rendered pursuant thereto by written notice to APPRAISER specifying the termination date. Immediately after receiving such notice, APPRAISER shall discontinue advancing the Services under this Agreement and shall deliver to the CITY all drawings, notes, calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by the CITY, if any.

The City will pay the APPRAISER, as compensation in full for services performed to date of such termination, a fee for the percentage of Services actually completed. This fee shall be a percentage of APPRAISER's fee described in Exhibit B and shall be in the amount to be agreed mutually by APPRAISER and the CITY. The CITY shall make this final payment within sixty (60) days after APPRAISER has delivered the last of the partially completed items.

8. OWNERSHIP OF INSTRUMENTS OF SERVICE UPON TERMINATION FOR CAUSE AND/OR FOR CONVENIENCE:

Upon Termination for Cause or for Convenience, the CITY shall have ownership of any materials APPRAISER prepared or gathered to complete the Services.

9. INDEMNIFICATION:

To the fullest extent permitted by law, APPRAISER, 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, reckless, or intentional actions, acts, errors, mistakes or omissions caused in whole or part by APPRAISER, 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 APPRAISER and its 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.

10. INSURANCE REQUIREMENTS:

1. General.

A. At the same time as execution of this Agreement, APPRAISER 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 Worker's Compensation coverage.

B. APPRAISER 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 City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect APPRAISER from liabilities that might arise out of the performance of the Services under this Agreement by APPRAISER, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and APPRAISER is free to purchase any additional insurance as it may determine is necessary.

D. 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 APPRAISER from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during APPRAISER'S performance of this Agreement.

E. Use of Subcontractors: If any of the Services are subcontracted in any way, APPRAISER shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of APPRAISER in this Agreement. APPRAISER 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. APPRAISER shall provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form. APPRAISER must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$1,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury with the same limits. If any Excess insurance is utilized to fulfill the requirement 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: APPRAISER must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each occurrence, \$1,000,000 aggregate on APPRAISER owned, hired, and non-owned vehicles assigned to or used in the performance of Services. 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: APPRAISER must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of APPRAISER employees engaged in the performance of Services and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease coverage for each employee. If APPRAISER is retained solely to provide reviews of primary appraisals, then, if applicable or required by Arizona law, APPRAISER shall carry worker's compensation insurance for its employees at statutory limits and Employers' Liability insurance in an amount of not less than \$100,000 for each accident/disease per employee.

D. Professional Liability. If the Agreement is the subject of any professional Services performed by APPRAISER, or if APPRAISER engages in any professional Services adjunct or residual to performing the Services, APPRAISER must maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by the APPRAISER, or anyone employed by APPRAISER, or anyone whose acts, mistakes, errors and omissions the APPRAISER is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 2 years past completion and acceptance of the Services, and APPRAISER, will submit Certificates of Insurance as evidence the required coverage is in effect. The APPRAISER must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 2 year period.

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. The APPRAISER's insurance must contain broad form contractual liability coverage.

C. 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,

APPRAISER including the City's general supervision of the APPRAISER; Products and Completed operations of APPRAISER; and automobiles owned, leased, hired, or borrowed by APPRAISER.

2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by APPRAISER even if those limits of liability are in excess of those required by this Agreement.

3. APPRAISER'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 APPRAISER and must not contribute to it.

4. APPRAISER'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.

5. Coverage provided by APPRAISER must not be limited to the liability assumed under the indemnification provisions of this Agreement.

6. 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 Services performed by APPRAISER for the City.

7. APPRAISER, 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 Services. APPRAISER 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.

8. 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 APPRAISER must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

11. ENTIRE CONTRACT:

This Agreement constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

12. INCORPORATION OF EXHIBITS:

Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body of the Agreement.

13. CONFLICT OF INTEREST:

APPRAISER 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 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 Agreement.

Pursuant to A.R.S. Section 38-511, CITY may cancel this Agreement within three (3) years after its execution, without penalty or further obligation by CITY if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of CITY is, at any time while this Agreement is in effect, an employee of any other party to this Agreement in any capacity, or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement

13. ARIZONA LAW, JURISDICTION AND VENUE, AND FEES AND COSTS:

- A. Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- B. 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.
- C. 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.

14. REQUIRED COMPLIANCE WITH ARIZONA PROCUREMENT LAW:

- A. Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the APPRAISER hereby warrants to the City that the Consultant 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 "Consultant Immigration Warranty").
- B. A breach of the Consultant Immigration Warranty (Exhibit C) shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the contract.
- C. The City retains the legal right to inspect the papers of any Consultant or Subcontractor employee who works on this Agreement to ensure that the Consultant or Subcontractor is complying with the Consultant Immigration Warranty. The Consultant agrees to assist the City in the conduct of any such inspections.
- D. The City may, at its sole discretion, conduct random verifications of the employment records of the Consultant and any Subcontractors to ensure compliance with Consultants Immigration Warranty. The Consultant agrees to assist the City in performing any such random verifications.
- E. The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Consultant or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

15. 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.

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.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2016.

CITY OF CHANDLER

APPRAISER:

MAYOR Date

By: _____
Title: MANAGING MEMBER

ADDRESS FOR NOTICE
City of Chandler
P.O. Box 4008, Mail Stop 407
Chandler, AZ 85244-4008
Phone: 480-782-3307

ADDRESS FOR NOTICE
Dennis L. Lopez & Associates
8631 S. Priest Drive, Suite 103
Tempe, AZ 85284
Phone: 480-838-7332

APPROVED AS TO FORM:

ATTEST: If Corporation

City Attorney by: TL

Secretary

ATTEST:

City Clerk

SEAL

**EXHIBIT A
APPRAISALS FOR REAL PROPERTY PARCELS**

List of Properties for Appraisals

Parcel Number	Owner's Name
Parcels on Queen Creek Road	
303-31-001F, 001K	CMB McQueen, LLC
303-32-009E, 009F	Chandler Airpark Business Center, LLC
303-42-004T	Chris and Tiffini Sorensen
303-42-024D	Brian and Deborah Sienkiewicz
303-42-025A	Scott and Shannon Veach
303-42-035	Raul and Fransisca Murillo
303-43-968, 977	Abralee Meadow Community Association
303-43-537, 538	Sienna Community Association
303-43-529	Lloyd Plus, LLC and R&A Life Trust/etal
303-92-584	Airpark South PV Condo Association
303-42-955A, 955B	ATC Realty Sixteen, Inc.
303-46-981	Carmel Village Lot 1, LLC
303-46-982	Circle K Stores, Inc.
303-31-005Q	Rock-Queen Creek, LLC

Parcels on Cooper Road

303-42-001C, 001D	Richard and Luiza Groover
303-42-001K	Zoya Farm, LLC
303-42-001J	William Valentic
303-42-003J	Robert and Debera Kopp
303-42-003N	Alfred and Francis Escobeda
303-42-003P	Clark Bullinger
303-42-018C, 982	St. Mary Roman Catholic Parish

City of Chandler Parcels – Queen Creek Road - condition of title only to show what easements or other encumbrances may exist.

303-32-009C
303-32-012L
303-42-019B, 022C
303-32-012M, 012Q

City of Chandler Parcels – Cooper Road - condition of title only to show what easements or other encumbrances may exist.

303-42-003Q, 008P

**EXHIBIT B
FEE SCHEDULE**

APPRAISER shall provide all services for an amount not to exceed \$ 44,775.00.

	Est. Qty.	Unit	Unit Price	Total
Appraisal	32	EA	\$900.00	\$28,800.00
Legal Services: depositions, attorney pretrial, trial conferences, testimony in court or other related services performed as described in this Subsection 2(H).	67	HR	\$225.00	\$15,075.00
Allowance	1	AL	\$900.00	\$900.00
Total				\$44,775.00