



PURCHASING ITEM FOR COUNCIL AGENDA

1. Agenda Item Number:

27

2. Council Meeting Date:

January 11, 2007

TO: MAYOR & COUNCIL

3. Date Prepared: December 21, 2006

THROUGH: CITY MANAGER

4. Requesting Department: Municipal Utilities

5. SUBJECT: Award of contract to Pacheco Brothers Gardening Inc. for landscape maintenance service at the Municipal Utilities Reverse Osmosis Facility and the Brine Evaporation Ponds, for one year, Bid No. MU7-988-2402, in an amount not to exceed \$35,000.

6. RECOMMENDATION: Recommend award of contract to Pacheco Brothers Gardening Inc. for landscape maintenance service at the Municipal Utilities Reverse Osmosis Facility and Brine Evaporation Ponds, for one year, Bid No. MU7-988-2402, in an amount not to exceed \$35,000.

7. HISTORICAL BACKGROUND/DISCUSSION: This contract includes weekly trash pick up, weed control, irrigation repair, and pruning/trimming, as required. The landscaped areas to be maintained under this contract are the Reverse Osmosis Facility located at 3737 S. Old Price Road, on approximately 12 acres, and the Reverse Osmosis Brine Evaporation Ponds located at 22488 S. Gilbert Road that covers approximately 40 acres. Both sites have extensive landscaping that requires weekly maintenance.

8. EVALUATION PROCESS: The Municipal Utilities Department requested bids be obtained for landscaping maintenance for the Reverse Osmosis Facility and Brine Evaporation Ponds. The Invitation for Bids (IFB) was advertised; notice of bid was e-mailed to 195 registered vendors, and 12 vendors requested bid documents. Two vendors submitted bids that were opened and evaluated. The following is the summary of all bids received:

Pacheco Brothers Gardening Inc.	\$33,800
Handyman Maintenance, Inc.	\$65,936

City staff is recommending an award to Pacheco Brothers Gardening, Inc., the low responsive, responsible bidder for one year with provisions for four one-year extensions. The contract term will begin February 1, 2007.

9. FINANCIAL IMPLICATIONS:

Cost:	\$35,000
Savings:	N/A
Long Term Cost:	N/A

Fund Source:

Account	Fund Name	Program Name	CIP Funded	Funds
616.3930.5410	WW Industrial Process Treatment/RO	Building and Grounds R&M	Non-CIP	\$35,000

10. PROPOSED MOTION: Move that Council approve award of contract to Pacheco Brothers Gardening Inc. for landscape maintenance service at the Municipal Utilities Reverse Osmosis Facility and Brine Evaporation Ponds, for one year, Bid No. MU7-988-2402, in an amount not to exceed \$35,000.

ATTACHMENTS: Contract Agreement

APPROVALS

11. Requesting Department

[Signature] Robert Mulvey, Assistant Municipal Utilities Director

13. Department Head

[Signature] Dave Siegel, Municipal Utilities Director

12. Buyer/Contract Admin.

[Signature] Thomas W. North, CPPB

14. City Manager

[Signature] W. Mark Pentz

CITY OF CHANDLER SERVICES AGREEMENT
LANDSCAPE MAINTENANCE REVERSE OSMOSIS FACILITY & BRINE EVAPORATION PONDS
CONTRACT NO.: RO7-988-2402

THIS AGREEMENT is made and entered into this _____ day of _____, 2006, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Pacheco Brothers Gardening Inc. (a Corporation of the State of California, with authority to transact surety business in Arizona), hereinafter referred to as "CONTRACTOR".

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

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

1. CONTRACT ADMINISTRATOR:

1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of Kim Neill, Utility Systems Manager /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.

2. SCOPE OF WORK: CONTRACTOR shall furnish all labor, material and equipment necessary to provide landscape maintenance for the Reverse Osmosis Facility and Brine Evaporation Ponds all as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference and as set forth in the Scope of Work 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. CONTRACTOR shall be a licensed landscape CONTRACTOR and licensed by the Registrar of CONTRACTORS and licensed by State of Arizona Structural Board of Pesticide Control or obtain licensed SUBCONTRACTOR for the application of pesticide and herbicide products. All chemical applications must be done by applicators licensed through State Structural Pesticide Department.

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.

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.

4. PRICE: CITY shall pay to CONTRACTOR an amount not to exceed Thirty-Five Thousand Dollars (\$35,000.00) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.

4.1. **Taxes.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.

4.2. **Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions which shall be paid or credited to the City.

4.3. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.

4.4. **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.

5. TERM: 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. Prior to commencement of subsequent renewal terms, City will entertain a request for price adjustments. CONTRACTOR must request all price adjustments in writing at no later than sixty (60) days prior to the renewal date.

6. 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. Performance and Payment Bonds

Within fifteen (15) days from the time a Contract is awarded, CONTRACTOR shall furnish fully executed Performance and Payment Bond (Labor and Materials) in such form and context as determined by CITY from a surety approved by CITY. Said bonds shall be in a sum no less than one hundred (100%) of the Contract price.

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.

7.2.1 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.

7.3. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.

7.4. **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.

7.5. **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 for 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, upon written notice, terminate this Agreement for CONTRACTOR'S failure to comply with the terms of this Agreement.

8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract within three (3) years 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.

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. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the City and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.

10.1. **Notice.** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as it occurs and not postponed until the end of the Contract nor lumped together with other pending claims.

10.2. **Forfeiture.** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.

10.3. **CITY Response.** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.

10.4. **Appeal.** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.

10.5. **Arbitration.** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as

determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.

- A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with the CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
- B. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
- C. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
- D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.
- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.

- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with the CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.
- 11. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;

- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. General Liability - Minimum Coverage Limits

The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent CONTRACTORS, and Personal Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than \$1,000,000 or 10% of the contract cost and with a \$2,000,000 aggregate.

12.6. Automobile Liability

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$ 1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

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
 Department: Municipal Utilities
 Contact: Gene Patterson

In the case of the CONTRACTOR
 Firm Name: Pacheco Brothers
 Gardening Inc.
 Contact: Neal Hornbeck

Mailing Address: MS 913, PO Box 4008
Physical Address: 3737 Old Price Rd.
City, State, Zip Chandler, AZ 85244
Phone: (480) 782-3560
FAX: (480) 782-3565

Address: 795 Sandoval Way
City, State, Zip Hayward, CA 94544
Phone: 510.487.3580
FAX: 510.487.6830

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

15.2. **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 20

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

By: _____
Signature

MAYOR

ATTEST:

ATTEST: If Corporation

City Clerk

Secretary

Approved as to form:

City Attorney

SEAL

*

CITY OF CHANDLER SERVICES AGREEMENT
LANDSCAPE MAINTENANCE REVERSE OSMOSIS FACILITY & BRINE EVAPORATION PONDS
CONTRACT NO.: R07-988-2402

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 Agreement
day of ~~November~~ 20, ~~2006~~.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: [Signature]
Signature

ATTEST:

ATTEST: If Corporation

City Clerk

[Signature]
Secretary

Approved as to form:

City Attorney ^{1/2}

SEAL

PERFORMANCE BOND

ARIZONA STATUTORY PERFORMANCE BOND
PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: _____

(hereinafter "Principal"), and _____
(hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto _____ (hereinafter "Obligee") in the amount of Thirty-Five Thousand (Dollars) (\$35,000.00), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20____ for the **LANDSCAPE MAINTENANCE REVERSE OSMOSIS PLANT & PONDS; BID NO. RO7-988-2402**, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice of the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20__.

PRINCIPAL SEAL

AGENT OF RECORD

By _____

SURETY SEAL

AGENT ADDRESS

PAYMENT BOND

ARIZONA STATUTORY PAYMENT BOND
PURSUANT TO TITLES 28, 34, AND 41, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the contract amount)

KNOW ALL MEN BY THESE PRESENTS:

THAT: _____ (hereinafter "Principal"), as Principal, and _____ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto the City of Chandler, (hereinafter "Obligee") County of Maricopa, State of Arizona, in the amount of Thirty-Five Thousand Dollars (\$ 35,000.00), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the City of Chandler, dated the _____ day of _____, 20____, for _____, Bid No. _____, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20____.

PRINCIPAL SEAL

AGENT OF RECORD BY _____

AGENT ADDRESS SURETY SEAL

EXHIBIT A
SCOPE OF WORK

- A. The CONTRACTOR shall furnish all labor, material and equipment necessary to maintain Reverse Osmosis Facility and Brine Evaporation Ponds as specified herein
1. All areas, includes sidewalks and curbs, are to be kept clean of weeds, seedlings and suckers.
 2. All trees and shrubs are to be kept in such a manner that they present a pleasing appearance and are not a sight or safety hazard.
 3. Use gopher control.
 4. Gravel areas are to be kept clean and raked in accordance with specifications to present a pleasing appearance.
 5. All irrigation systems are to be repaired and operating efficiently to insure healthy plants and turf.
- B. MATERIALS: Any materials required that are not stipulated in the contract must be approved by Utility Systems Manager /designee, prior to purchase. CONTRACTOR must provide invoices as proof of purchase to the Utility Systems Manager /designee before reimbursement will be made. The City retains the right to make direct purchases of all materials and to make them available to the CONTRACTOR for use in fulfilling the terms of this agreement.
- C. WATER: The City shall furnish all water. There are potable water systems and reclaimed water systems within the City's maintenance areas.
- D. ACCEPTANCE: All work specified shall be completed under the direction of and to the satisfaction of the Utility Systems Manager /designee.
- E. ADDITIONS AND DELETIONS: City retains the right to delete or add maintenance areas and items to this contract. Charges for areas or items deleted will be dropped from the monthly billing. The City may delete an item or area at any time and will prorate charges for services already performed. Charges for maintenance items or areas added to this contract are subject to the approval by the Utility Systems Manager /designee. Charges for areas added shall be priced comparably to similar areas. Any such changes shall be documented by a Contract Amendment executed by authorized representatives of both parties.
- F. SPECIAL WORK: The City may require the CONTRACTOR to perform work in addition to items specified in the contract including but not limited to repair of accident damage to landscaping and one-time cleanup.
- All extra work ordered on the basis that hourly rates would be used, shall be compensated for in accordance with the schedule entitled "Hourly Rate for Special Work", which contains hourly rates submitted by the CONTRACTOR with the bid.
- The CONTRACTOR shall not perform any Extra Work until authorization is obtained from the Utility Systems Manager /designee. This authorization will be in the form of a Change Order or a numbered and executed authorization form. Extra Work performed without authorization will not be paid.
- G. VANDALISM: All cases of vandalism via a vandalism report form shall be reported to the Utility Systems Manager /designee when discovered and the Utility Systems Manager /designee shall determine the course of action to be taken.

H. QUALITY CONTROL: The CONTRACTOR shall establish a complete quality control program to assure the requirements of the contract are provided as specified. One copy of the CONTRACTOR's quality control program shall be provided to the Utility Systems Manager /designee at the time of notice of award of contract. The Utility Systems Manager /designee will approve or disapprove the CONTRACTOR's program within ten (10) working days of submittal. The CONTRACTOR MUST have an approved program before the contract start date. The program shall include but not be limited to the following:

1. Weekly Schedule of Performance
2. Performance Requirements Summary Report: This report will provide such information so as to insure compliance of quality control standards. The CONTRACTOR may use the Utility Systems Manager /designee format or may submit their own format to the City for approval. Any vandalism shall be reported within two (2) hours after it is noted and a vandalism report form submitted.
3. The CONTRACTOR will be required to provide a schedule for weekly maintenance of all areas, specifying when each area will be maintained. No changes shall be made to the schedule without prior approval of the Utility Systems Manager /designee.

I. QUALITY ASSURANCE: The CONTRACTOR's performance will monitor by periodic inspections using the specifications section of this contract as a guide. In the event of a contract deficiency, and after having been notified of the deficiency, the CONTRACTOR will be required to explain in writing why the deficiency occurred, how performance will be returned to an acceptable level and how recurrence of the problem will be prevented in the future. The CONTRACTOR will not be paid for services not rendered in accordance with the standards set forth in this contract, notwithstanding that the CONTRACTOR is required to rework services that were unsatisfactorily performed.

J. HOLIDAYS: The following is a list of holidays on which contract service will not be performed:

1. New Year's Eve Night
2. New Year's Day
3. MLK Day – Third Monday in January
4. President's Day - Third Monday in February
5. Memorial Day - Last Monday in May
6. Independence Day - July 4
7. Labor Day - First Monday in September
8. Veterans Day
9. Thanksgiving Holiday - Fourth Thursday and the following Friday in November
10. Christmas Eve from 12:00 Noon - December 24
11. Christmas Day - December 25

When the holiday named herein falls on Sunday, it shall be observed on the following Monday, and when a holiday named herein falls on Saturday, it shall be observed on the preceding Friday.

During the week of a holiday, the CONTRACTOR shall adjust his weekly schedule so as to return to the normal weekly schedule the following week.

K. CONTRACTOR/CITY COMMUNICATIONS:

1. CITY CONTACT:

The City's point of contact will be the Utility Systems Manager /designee, in all matters pertaining to the performance of this contract.

2. FIELD SUPERVISOR:

The CONTRACTOR shall have a field supervisor available during working hours for coordination with the City. The CONTRACTOR shall provide a digital beeper to the CONTRACTOR's field supervisor(s) to enhance communication between the City and the CONTRACTOR's field representative(s).

3. KEY PERSONNEL:

It is essential that the CONTRACTOR provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The CONTRACTOR must agree to assign specific individuals to the key positions.

- a. The CONTRACTOR agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without prior written approval by the City.
- b. If key personnel are not available for work under this contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the CONTRACTOR shall immediately notify the City, and shall, subject to the concurrence of the City, replace each personnel with personnel of substantially equal ability and qualifications.

L. CONTRACTOR'S PERSONNEL:

1. List of Employees:

The CONTRACTOR, upon execution of this contract, shall supply the City with a current list of employees assigned to City contracts. The list must include: full names, driver's license number with expiration date, job title, and where applicable, certified pesticide applicator's license number and expiration date or any other pertinent or required certification or registration. The list shall be kept current. All company officers and employees working on this contract must be listed.

2. Identification: CONTRACTOR's employees shall be required to wear a clean uniform bearing the CONTRACTOR's name. Employees who normally and regularly come into direct contact with the public shall bear some means of individual identification, such as a nametag or identification card. New employees shall be in uniform within ten working days after their start date.

3. Driver's License: Employees driving the CONTRACTOR's vehicles shall at all times possess and carry a valid Vehicle Operator's license issued by the State of Arizona.

4. Conduct: CONTRACTOR's employees, officers and SUBCONTRACTORS shall not identify themselves as being employees of the City of Chandler. Employees shall conduct themselves in such a manner as to avoid embarrassment to the City of Chandler, and shall be courteous to the public.

M. CONTRACTOR'S EQUIPMENT: The CONTRACTOR shall provide and maintain during the entire period of this contract, equipment sufficient in number, condition and capacity to efficiently perform the work and render the services required by this contract.

All vehicles must be maintained in good repair, appearance and sanitary condition at all times. The City reserves the right to inspect the CONTRACTOR's vehicles at any time to ascertain said condition.

The CONTRACTOR shall furnish the Contract Administrator with a list identifying all equipment to be used in fulfilling this agreement and notify the Contract Administrator of any additions or deletions in

writing. Any changes in the CONTRACTOR's contract from the equipment originally listed must have prior approval of the City.

N. SUB-CONTRACTORS: If the CONTRACTOR intends to subcontract any portion of this contract, the identity of the SUBCONTRACTOR shall be provided to the Contract Administrator and use of the SUBCONTRACTOR must be approved before work starts. No such approval will be construed as making the City a party of or to such subcontract, or subjecting the City to liability of any kind to any subcontractor. No SUBCONTRACT shall, under any circumstances, relieve the CONTRACTOR of liability and obligation under this contract; and despite and such subletting the City shall deal through the CONTRACTOR. SUBCONTRACTORS will be dealt with as workmen and representatives of the CONTRACTOR.

O. CONDITION OF LANDSCAPE AT BEGINNING OF CONTRACT: Upon execution of this contract, the CONTRACTOR shall inspect the area for identification of pre-existing conditions that would prevent or adversely affect completion of any normal specific deficiencies found at each contract area and submit the list to the City for review before a notice to proceed will be issued. The City will evaluate each problem listed to determine if extra compensation is warranted for repair work prior to starting routine maintenance.

The City may authorize the CONTRACTOR to make extra cost repairs or may determine that the items listed represent normal conditions that might be expected at any time during the contract period.

The determination of disposition of all items listed shall be the responsibility of the City and the City's decision shall be final and binding upon the CONTRACTOR.

All repairs to pre-existing conditions deemed necessary and authorized by the City shall be made prior to the start of normal maintenance for the identified areas.

P. CONDITION OF LANDSCAPE AT END OF CONTRACT: Four weeks prior to this contract expiration, the City and the CONTRACTOR (if CONTRACTOR or City desires) will make a final inspection to determine the condition of all landscape areas. Items found to be improperly maintained by the outgoing CONTRACTOR will be listed and evaluated by the City. If corrective action is not taken by the CONTRACTOR, the City will arrange for repairs to be made and the costs for making repairs to the areas will be deducted from final payments to the outgoing CONTRACTOR. The same will apply even if the current (outgoing) CONTRACTOR has been awarded a new contract for the same areas.

SECTION III - SCHEDULE OF PAYMENTS

A. The CONTRACTOR will provide invoices reflecting work completed. The City shall pay the CONTRACTOR as agreed to in Exhibit B. Payment will be made monthly on the basis of invoices submitted or as agreed to in Exhibit B. The CONTRACTOR shall indicate on the invoices the location or areas the charge has been applied to.

B. DEDUCTIONS TO PAYMENTS DUE:

If the CONTRACTOR fails to perform the work in accordance with the contract, the City may hold part or all payments due to the CONTRACTOR. Part payment may be withheld (never paid) if the CONTRACTOR has performed poorly.

The City shall establish the payment amount. If the CONTRACTOR has not taken action to correct the deficiency within the time listed below ("Correction Time Limit Schedule") the City may withhold all payments for the area affected until correction is made. Upon completion of the corrective action, payment will be released for work completed satisfactorily. Unsatisfactory work will not be paid for.

- C. Failure to correct areas identified as deficient by the City within the limits of this correction time limit schedule, unless written extensions have been authorized, may result in cause for termination of the contract in accordance with provisions of this document.

Correction Time Limit Schedule:

*	Water & Sprinkler Repair	2	Working Days	
	Weed Control	3	"	"
	Mowing	2	"	"
	Cleaning	2	"	"
	Fertilization	5	"	"
	Trimming	3	"	"
	Pruning	10	"	"
*	Hazard Removal (sight obstruction)	1	"	"
	Replanting	10	"	"
	Dead Plant Removal	2	"	"

Correction Time Limit Schedule (cont.):

	Schedules	2	"	"
*	Total Neglect of Area	1	"	"

The items denoted with an asterisk are considered serious deficiencies. If after the second inspection the City Inspector still finds the deficiency, a \$50.00 re-inspection fee will be assessed for each item found in this condition. If repeat deficiency are noted in a given area within a 30 day time frame, then this condition will be construed as a serious deficiency and the re-inspection fee will be assessed. Accumulated re-inspection fees will be deducted from the CONTRACTOR's monthly payments.

If multiple deficiencies or re-inspection charges are evident, inspector may require a weekly status report for each site each week indicating condition, tree/plant health, irrigation status, pest treatments, chemical application, or any other relevant information to the site.

SECTION IV - AMENDMENTS:

Whenever a change in the scope of work contemplated in this contract is determined to be necessary, the work will be performed in accordance with the contract provided; however, **before** such work is started, a contract amendment shall be executed by the City and the CONTRACTOR. Additions to, modifications of, or deletions from the project provided herein may be made and the compensation to be paid to the CONTRACTOR may be adjusted accordingly by mutual agreement of the contracting parties. It is distinctly understood and agreed that no claim for extra work done or materials furnished by the CONTRACTOR will be allowed by the City except as provided herein, nor shall the CONTRACTOR do any work or furnish any materials not covered by the agreement unless such work is first ordered in writing.

- A. SCOPE: The CONTRACTOR shall provide all labor and equipment necessary to maintain areas located at the Reverse Osmosis Facility and Brine Evaporation Ponds as specified herein.
- B. STANDARDS: The specifications listed below are the minimum requirements and are intended to govern, in general, the requirements desired. The City of Chandler reserves the right to evaluate variations from these specifications.

GENERAL STATEMENTS: All work shall be performed Monday through Friday, from 7:00 a.m. until 5:00 p.m.

1. CLEANING: Shall include, but is not limited to removal of trash such as paper, cans, bottles, dried or dead plants or parts of plants (leaves, fronds, branches, etc.) accumulated in contracted areas as a result of littering, wind or rain storms. Tumbleweeds accumulating in landscape areas are also included in this. This is to include sidewalks, walls and areas

adjacent to the walls and any area where such debris is collecting. All material collected shall be disposed of by the CONTRACTOR and in accordance with all City, County, State, and Federal requirements.

Raking will be considered part of the cleaning. Raking will be done quarterly (4 times during the contract term).

Debris shall be removed to the Landfill for final disposal the same day. The CONTRACTOR shall be solely responsible for any disposal fees (dumping charges).

CONTRACTOR shall repair minor erosion around plants or landscape areas. Excessive erosion, traffic damage, or vandalism (when determined to be such), shall be repaired at extra cost, at the discretion of the Utility Systems Manager/designee.

2. WEED CONTROL: CONTRACTOR shall keep all areas free from weeds. It will be the responsibility of the CONTRACTOR to maintain the areas with herbicide (see schedule below) and manual labor on a weekly basis as follows:

Two (2) complete applications of Surflan applied at a rate of 4 quarts per acre to the landscaped areas. CONTRACTOR shall apply Surflan in February and October and additional applications of pre-emergent as needed at the CONTRACTOR's expense.

A minimum of two (2) applications of post-emergent Roundup at a volume of 2% shall be used for weed control. CONTRACTOR shall remove all dead weeds and rake out, or drag the area.

Any additional herbicide needed, other than the 4 applications of each type herbicide, the CONTRACTOR is required to purchase and will not be reimbursed by the City for those additional applications.

All herbicide uses other than mentioned above will be considered a weed management tool and therefore excluded from reimbursement, i.e. using herbicides instead of hoeing to eliminate weeds. The CONTRACTOR shall submit applicable material safety data sheets, a letter naming the herbicides that are proposed for use, where and how they are to be applied, and a copy of the product label. The CONTRACTOR shall complete and furnish copies of an Herbicide Spray Log with the billing invoices monthly.

Roundup shall be used as needed for a systemic weed killer. Surflan shall be used as the pre-emergent. No other chemical may be used unless approved by City. The CONTRACTOR shall supply all labor and material to control the weeds. Weeds may also be controlled manually by hoe. This will be on an as needed basis.

3. PEST CONTROL: Spraying or dusting shall only be required when necessary to prevent a plant or tree from being damaged by an organism that can normally be controlled only by spraying or dusting. When spraying or dusting is required, CONTRACTOR shall exercise special care to prevent unnecessary discomfort to the people in the area.

The CONTRACTOR shall establish a continuing program to control ants and rodents and submit this program to the Utility Systems Manager for approval. Request for approval must include the following information: the pest to be controlled, method of control, and product labels. The CONTRACTOR shall complete a Pesticide Spray Log for any pesticides used and submit with monthly payment invoices.

When spraying or dusting, the instructions on the label shall be followed and special care shall be exercised in application.

4. REPLANTING: Whenever a plant, shrub or tree dies as a result of vandalism, storm damage, age, or uncontrollable pest or disease, the CONTRACTOR shall remove and replace the plant, shrub or tree at the City's expense. The City reserves the right to furnish the replacement or to direct that a different tree variety be planted.

If the plant, shrub or tree dies as a direct result of neglect, inadequate care or inadequate maintenance, the CONTRACTOR at his expense shall provide the replacement item and required labor. Replacement tree, plant or shrub shall be the same size and type as the tree, plant or shrub that was damaged or died.

5. IRRIGATION MAINTENANCE: The City shall furnish all water.
- a. The CONTRACTOR is responsible to see that all plant materials owned by the City, which are either planted within contract boundaries or under the CONTRACTOR's care at other locations, received the proper amount of water to maintain health and vigor. This applies regardless of the method of payment applicable for care of specific plant material. It is the responsibility of the CONTRACTOR to bring to the City's attention in writing: special watering needed for any area, plant materials that are damaged due to lack of water or over watering (when the CONTRACTOR has control) plants shall be replaced or returned to health at the CONTRACTOR's expense. The CONTRACTOR shall submit to the City for approval replacement and plant recovery procedures.
 - b. When watering, the CONTRACTOR shall not water to a point of runoff. If runoff is occurring, adjustment of the watering schedule or use of a wetting agent may be necessary.
 - c. For efficient use of water, the guidelines below should be followed, unless the CONTRACTOR can justify, to the City's satisfaction, deviation from the guidelines:
 1. Adjustment must be made to maintain growth at the desired rate.
 2. Water between 9:00 p.m. and 6:00 a.m. is preferred but other nighttime hours are approved if necessary.
 3. The City must be approved any water usage after 6:00 a.m.
 - d. All the sprinkler systems shall be operated at an appropriate seasonal frequency using the least amount of water necessary to maintain the growth, health and vigor of all landscape plant materials.
 - e. When sprinkler systems are out of service due to routine repairs, the CONTRACTOR is required to water by hand or by other means in accordance with plant needs and it shall be considered routine work.
 - f. Upon written notification from the CONTRACTOR of system failure involving electric supply and/or water supply from the City's main lines, the City will assume the cost for necessary hand watering done in accordance with the special watering provisions stated below.
 - g. The CONTRACTOR shall maintain a log of current sprinkler timing. A copy of the log shall be maintained at the site, properly protected from the elements. The log shall include, but not be limited to, the following items: (a) days of week system is on; (b) start times; (c) station timing; (d) station description information.
 - h. The CONTRACTOR's personnel shall turn off all sprinkler systems when rain occurs or is forecast with some certainty, for more than a one-day period.

- i. Special watering (when ordered by the City) will be paid for at the rate agreed upon by extra work authorization. The payment for special watering shall only be made for reasonable amounts of time required to set up equipment, adjust for coverage, occasional monitoring and breakdown of equipment. Equipment and methods used for special watering will be subject to approval by the City.

6. SPRINKLER MAINTENANCE

- a. CONTRACTOR shall maintain all sprinkler systems so that all component features are operating as designed. Pumps, backflow prevention units, chemical injectors, controllers, valves, pressure regulators, filters, water lines, sprinklers, bubblers, and trickle emitters shall be checked on a bi-weekly basis and services as required. Repairs must be made within two (2) days unless the City in writing authorizes a delay.
- b. The CONTRACTOR is required to employ the necessary qualified sprinkler repairpersons to maintain and repair all watering systems within the contract boundaries.
- c. The City will pay for or provide the following parts for repair of the sprinkler systems: Controllers, electric valves, vacuum breakers, turf spray heads. The CONTRACTOR will supply all other parts. All of the broken or defective parts, which the City is replacing, must be returned to the City.
- d. If sprinkler equipment presently in service malfunctions but is repairable, it is the CONTRACTOR's responsibility, at no additional cost to the City, to supply the labor to repair all such equipment. If timer malfunctions and cannot be repaired in the field, the City upon notification, will determine the best course of action.
- e. If new equipment is installed, it shall be with the City's prior approval and equipment removed shall be marked for identification and returned to the City along with all excess parts. Installation or replacement equipment, whether new or rebuilt, shall be considered routine work.
- f. Payment for sprinkler maintenance shall be part of the monthly cost for each area as stated in the contract. Special repairs or watering shall be paid for at the price agreed upon by extra work authorization.
- g. Brine Evaporation Pond Site may require hand watering if reuse water is not available. This would be considered a contingency item to be determined by the City of Chandler.
- h. This contract does not include the booster pump and motor. CONTRACTOR responsibility will begin at the male adapter coming off the pump side.

7. TRIMMING: CONTRACTOR shall trim all shrubs and hedges in such a manner that they present a pleasing appearance -- year round. This may require more than 1 trimming.

8. PRUNING: CONTRACTOR shall prune all trees yearly, but may require touch up trimming or pruning throughout the year and shall remove undergrowth and dead leaves from the planters. Undergrowth must be pruned from the trees in the sidewalk/parking area planters as often as required to permit unobstructed passage to pedestrians. All plantings and trees shall be trimmed so as not to conflict with pedestrian or vehicular traffic. Sidewalks shall remain clear at all times, tree limbs shall have a minimum eight (8) foot clearance over the traveled way. CONTRACTOR shall dispose of all trimmings as debris.

**REVERSE OSMOSIS FACILITY & BRINE EVAPORATION PONDS LANDSCAPE
Areas of Maintenance and Frequency**

REVERSE OSMOSIS FACILITY

MAINTENANCE TYPE/FREQUENCY

1. Plant Site including Old
Price Rd. frontage

Cleaning – once / week
Remove weeds – Once/Week
Weed Control - 4 times/yr. & as needed
Pest - as required
Prune trees as needed
Trimming - as needed
Irrigation Maintenance - on-going

2. Emergency Retention Basin

Weed Control - 4 times/yr. & as needed
Remove weeds – Once/Week
Pest - as required
Prune trees as needed
Trimming - as needed
Irrigation Maintenance - on-going

3. INSIDE EVAP POND

Weed Control - 4 times/yr. & as needed
Remove weeds – Once/Week
Pest - as required

4. OUTSIDE EVAP POND

Weed Control - 4 times/yr. & as needed
Remove weeds – Once/Week
Pest - as required
Prune trees as needed
Trimming - as needed
Irrigation Maintenance - on-going

BRINE EVAPORATION PONDS

MAINTENANCE TYPE/FREQUENCY

All areas inside fence and including
right of way berm outside of fence

Cleaning – once / week
Weed Control - 4 times/yr. & as needed
Remove weeds – Once/Week
Pest - as required
Prune trees as needed
Trimming - as needed
Irrigation Maintenance - on-going

EXHIBIT B
PRICING

REVERSE OSMOSIS FACILITY

<u>Item</u>	<u>Description</u>	<u>Cost per Week</u>	<u>Weeks</u>	<u>Annual (Extended)</u>
1.	All areas	<u>\$380.00</u>	52	<u>\$ 19,760.00</u>

EVAPORATION POND SITE

2.	All areas	<u>\$ 180.00</u>	52	<u>\$ 9,360.00</u>
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BRINE PONDS

3.	All areas	<u>\$ 90.00</u>	52	<u>\$ 4,680.00</u>
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Prompt Payment Terms: 1% net 30

Annual total **\$33,800.00**

Hourly Rate for Special Work \$ 38.00 /hr

Hourly Rate for Irrigation Work \$ 42.00 /hr