



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

24

2. Council Meeting Date:

March 5, 2007

TO: MAYOR & COUNCIL

3. Date Prepared: February 7, 2007

THROUGH: CITY MANAGER

4. Requesting Department: Municipal Utilities

5. SUBJECT: Award Invitation For Bid (IFB) WA7-936-2409 for water/wastewater equipment repair and maintenance to Weber Group, L.C., Gilbert Pump and Equipment Co., Layne Christensen Company, and Foster Electric/Arizona Pump Company, Inc., in an amount not to exceed \$837,350.

6. RECOMMENDATION: Recommend award of IFB WA7-936-2409 for water/wastewater equipment repair and maintenance to Weber Group, L.C., Gilbert Pump and Equipment Co., Layne Christensen Company, and Foster Electric/Arizona Pump Company, Inc., in an amount not to exceed \$837,350.

7. HISTORICAL BACKGROUND/DISCUSSION: The Water and Wastewater Divisions require an ongoing contract for repair and maintenance of pumps and pumping equipment. The equipment serviced includes the City's water production wells and booster pumps, and the raw water and high service pumps at the Surface Water Treatment Plant. Also included are injection wells and pressure pumps at the Reverse Osmosis Facility, the submersible pumps, vertical pump turbines, mixers, and sludge pumps at the Airport Water Reclamation Facility, and the submersible pumps and aerators at the Lone Butte Water Reclamation Facility. Wastewater Collections requires an ongoing maintenance contract for the City's lift stations. The contract is also used to repair storm water pumps for the Streets Division.

8. EVALUATION PROCESS: On November 30, 2006, staff issued IFB WA7-936-2409 for water/wastewater equipment repair and maintenance. The bid was advertised and all registered vendors were notified. Staff received four bids, which are summarized on the attached spreadsheet. Staff is recommending Category One, well work, be awarded to Weber Group, L.C. and Layne Christensen Company. Foster Electric/Arizona Pump Company submitted the low bid in this category, but they did not have the license required by the Arizona Registrar of Contractors. Staff is recommending Category Two, pump work, be awarded to Weber Group, L.C. and Gilbert Pump and Equipment Co. Foster Electric/Arizona Pump Company submitted the second low bid in this category, but they did not have the license required by the Arizona Registrar of Contractors. Staff is recommending Category Three, water, wastewater, and collection repair and maintenance, be awarded to Foster Electric/Arizona Pump Company.

9. FINANCIAL IMPLICATIONS:

Costs: \$837,350

Savings: N/A

Long Term Costs: N/A

Fund Source:

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
605.3830.0000.5419	Water Operating, Water Treatment	Other Equipment R&M	N/A	\$ 65,000
605.3860.0000.5419	Water Operating, Water Prod Facilities	Other Equipment R&M	N/A	\$ 265,000
605.3860.0000.6713	Water Operating, Water Prod Facilities	Wells	N/A	\$ 50,000
616.3930.0000.5316	WW Ind Process Treatment, RO	Machinery & Equipment	N/A	\$ 96,350
615.3940.0000.5316	Wastewater Operating, Lone Butte	Machinery & Equipment	N/A	\$ 120,000
615.3960.0000.5316	Wastewater Operating, AWRP	Machinery & Equipment	N/A	\$ 200,000
615.3900.0000.5219	Wastewater Operating, Wastewater	Other Prof/Cont Services	N/A	\$ 33,000
215.3300.0000.5219	Highway User Fund, Streets	Other Prof/Cont Services	N/A	\$ 8,000
				<u>\$ 837,350</u>

10. PROPOSED MOTION: Move to award IFB WA7-936-2409 for water/wastewater equipment repair and maintenance to Weber Group, L.C., Gilbert Pump and Equipment Co., Layne Christensen Company, and Foster Electric/Arizona Pump Company, Inc., in an amount not to exceed \$837,350.

ATTACHMENT: Bid Summary

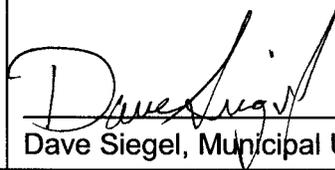
APPROVALS

11. Requesting Department



Robert Mulvey, Assistant Municipal Utilities Director

13. Department Head



Dave Siegel, Municipal Utilities Director

12. Buyer/Contract Admin.



Mike Mandt, Procurement Officer

14. City Manager



W. Mark Pentz

Bid Tab
 WA7-936-2409
 WATERWASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

Item	Description	Estimated Quantity	Unit of Measure	Foster Electric		Gilbert Pump		Webber Group		Layne Christensen	
				Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
1 WELL WORK											
A	Mob and De Mob of Equipment (unit price includes both)	4	EA	\$ 300.00	\$ 1,200.00			\$ 1,500.00	\$ 6,000.00	\$ 1,000.00	\$ 4,000.00
B	Rig, Equipment and 2 man crew for swabbing and brushing and clean out of wells	400	Hour	\$ 160.00	\$ 64,000.00			\$ 185.00	\$ 74,000.00	\$ 165.00	\$ 66,000.00
C	Mark Up on Subcontracted repairs (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	\$ 40,000.00	%	1.10	\$ 44,000.00			1.10	\$ 44,000.00	1.15	\$ 46,000.00
D	Mark Up on Saturday, Labor (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	\$ 5,000.00	%	1.00	\$ 5,000.00			1.00	\$ 5,000.00	1.40	\$ 7,000.00
E	Mark Up on Sunday Labor (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	\$ 5,000.00	%	1.00	\$ 5,000.00			1.00	\$ 5,000.00	1.40	\$ 7,000.00
F	Mark Up on Holiday Labor (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	\$ 5,000.00	%	1.00	\$ 5,000.00			1.20	\$ 6,000.00	1.40	\$ 7,000.00
	Sub Total				\$ 124,200.00				\$ 140,000.00		\$ 137,000.00
2 PUMP WORK											
A	Pump rig and crew for removing and installing of deep well pump up to 1000' (12"X3 1/2 X 2 3/16" column tube shaft)	150	Hour	\$ 160.00	\$ 24,000.00	\$ 140.00	\$ 21,000.00	\$ 185.00	\$ 27,750.00	\$ 155.00	\$ 23,250.00
B	Hydraulic crane truck and 3 man crew	300	Hour	\$ 125.00	\$ 37,500.00	\$ 110.00	\$ 33,000.00	\$ 120.00	\$ 36,000.00	\$ 125.00	\$ 37,500.00
C	Three man crew stand by time after 30 minutes	60	Hour	\$ 75.00	\$ 4,500.00	\$ 20.00	\$ 1,200.00	\$ 50.00	\$ 3,000.00	\$ 50.00	\$ 3,000.00
D	Hydraulic crane truck and 2 man crew	375	Hour	\$ 105.00	\$ 39,375.00	\$ 100.00	\$ 37,500.00	\$ 110.00	\$ 41,250.00	\$ 110.00	\$ 41,250.00
E	Two man crew stand by time after thirty minutes	60	Hour	\$ 50.00	\$ 3,000.00	\$ 20.00	\$ 1,200.00	\$ 40.00	\$ 2,400.00	\$ 35.00	\$ 2,100.00
F	Flat bed truck or semi w/driver for transporting large pumps	200	Hour	\$ 70.00	\$ 14,000.00	\$ 55.00	\$ 11,000.00	\$ 50.00	\$ 10,000.00	\$ 75.00	\$ 15,000.00
G	Shop labor	800	Hour	\$ 40.00	\$ 32,000.00	\$ 45.00	\$ 36,000.00	\$ 50.00	\$ 40,000.00	\$ 45.00	\$ 36,000.00
H	Machinist	450	Hour	\$ 40.00	\$ 18,000.00	\$ 50.00	\$ 22,500.00	\$ 60.00	\$ 27,000.00	\$ 60.00	\$ 27,000.00
I	Welder (shop)	50	Hour	\$ 40.00	\$ 2,000.00	\$ 22.50	\$ 1,125.00	\$ 30.00	\$ 1,500.00	\$ 45.00	\$ 2,250.00
J	Welder (field)	50	Hour	\$ 40.00	\$ 2,000.00	\$ 22.50	\$ 1,125.00	\$ 30.00	\$ 1,500.00	\$ 55.00	\$ 2,750.00
K	Field tech or field electrician 1 truck and 1 man	150	Hour	\$ 50.00	\$ 7,500.00	\$ 35.00	\$ 5,250.00	\$ 65.00	\$ 9,750.00	\$ 75.00	\$ 11,250.00
L	Annual well pump efficiency test	15	Each	\$ 120.00	\$ 1,800.00	\$ 100.00	\$ 1,500.00	\$ 100.00	\$ 1,500.00	\$ 150.00	\$ 2,250.00
M	Annual booster pump efficiency test	15	Each	\$ 120.00	\$ 1,800.00	\$ 100.00	\$ 1,500.00	\$ 100.00	\$ 1,500.00	\$ 150.00	\$ 2,250.00
N	Mark Up on Parts (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	200,000.00	%	1.20	\$ 240,000.00	1.20	\$ 240,000.00	1.20	\$ 240,000.00	1.25	\$ 250,000.00
O	Mark Up on Subcontracted repairs (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	\$ 100,000.00	%	1.10	\$ 110,000.00	1.10	\$ 110,000.00	1.10	\$ 110,000.00	1.15	\$ 115,000.00
P	Mark Up on Saturday, Labor (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	\$ 10,000.00	%	1.00	\$ 10,000.00	1.00	\$ 10,000.00	1.00	\$ 10,000.00	1.40	\$ 14,000.00
Q	Mark Up on Sunday Labor (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	\$ 10,000.00	%	1.00	\$ 10,000.00	1.10	\$ 11,000.00	1.00	\$ 10,000.00	1.40	\$ 14,000.00
R	Mark Up on Holiday Labor (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	\$ 10,000.00	%	1.00	\$ 10,000.00	1.10	\$ 11,000.00	1.20	\$ 12,000.00	1.40	\$ 14,000.00
S	WELL PHOTOGRAPHY AND SONAR JET	18	EA	\$ 650.00	\$ 11,700.00	\$ 400.00	\$ 7,200.00	\$ 700.00	\$ 12,600.00	\$ 450.00	\$ 8,100.00
T	TV tapes up to 1600' Sonor, jet occurrences at 250'	1200	FT	\$ 12.00	\$ 14,400.00	\$ 10.00	\$ 12,000.00	\$ 12.00	\$ 14,400.00	\$ 12.00	\$ 14,400.00
	Sub total				\$ 593,575.00		\$ 575,100.00		\$ 613,900.00		\$ 635,350.00

Bid Tab
WA7-936-2409
WATER/WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

3 Item	WATER, WASTEWATER AND COLLECTION REPAIR AND MAINTENANCE Description	Estimated Quantity	Unit of Measure	Foster Electric		Gilbert Pump	Webber Group	Layne Christensen
				Unit Price	Extended Price			
A	Removal of Aerator Include all labor and materials required to remove and prepare for transport.	15	Each					
B	Installation of Aerator Include all labor and materials required to install sewage pump and return to service.	15	Each	100	1500			
C	Aerator inspection and Repair Estimate Include all labor and materials required to disassemble and provide complete condition report and repair estimate.	15	Each	150	2250			
D	Removal of Submersible Sewage Pump and Motor for repair Include all labor and materials required to remove and prepare for transport.	20	Hours	120	1800			
E	Installation of Submersible Sewage Pump and Motor after repair Include all labor and materials required to install sewage pump and return to service.	20	Hours	100	2000			
F	Pump and Motor Inspection and Repair Estimate Include all labor and materials required to disassemble and provide complete condition report and repair estimate.	20	Each	120	2400			
G	Semi Annual Maintenance and Inspection labor and material required to perform manufacturers recommended inspection and maintenance including oil changes, cleaning, meg ohm, amperage readings on all legs and visual inspection of submersible sewage pumps and Motors including removal and reinstallation.	60	Each	120	2400			
H	Shop Labor	600	Hours	225	13500			
I	Field Labor labor rate for unforeseen on site repairs(prior approval required)	100	Hours	\$ 40.00	\$ 24,000.00			
J	Mark Up on Parts _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	\$ 100,000.00	%	\$ 50.00	\$ 5,000.00			
K	Mark Up on Subcontracted repairs _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	\$ 50,000.00	%	1.10	\$ 110,000.00			
L	Mark Up on Saturday Labor _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	\$ 2,500.00	%	1.10	\$ 55,000.00			
M	Mark Up on Sunday Labor _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	\$ 2,500.00	%	1.00	\$ 2,500.00			
N	Mark Up on Holiday Labor _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	\$ 2,500.00	%	1.00	\$ 2,500.00			
Sub Total				1.00	\$ 227,350.00			

CITY OF CHANDLER SERVICES AGREEMENT
Water/Wastewater Equipment Repair
CONTRACT NO.:WA7-936-2409

THIS AGREEMENT is made and entered into this 23rd day of April, 2019, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **Weber Group a Limited Liability Corporation**, hereinafter referred to as "CONTRACTOR".

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

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

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Assistant Municipal Utilities Director /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide repair and maintenance of water and wastewater equipment 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.
- 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.
- 2.5. **Warranties.**
- 2.6. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.
- 2.7. **Warranty (Equipment).** All parts and equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one (1) year from the date of acceptance by CITY. Any

defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
 - 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
 - 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
 - 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
 - 3.4. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
4. **PRICE:** The total amount payable to Contractor by City pursuant to this Agreement, when added to the total amount payable by the City pursuant to companion agreements to the Agreement herein shall not exceed the sum of Eight Hundred Thirty Seven Thousand Three Hundred and Fifty Dollars, (\$837,350) 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. The CONTRACTOR may charge the CITY tax on parts associated with repairs if the parts are not eligible for tax exemption.
 - 4.2. **Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall identify tax exempt items and shall not charge tax on the exempt parts.
 - 4.3. **Payment.** CONTRACTOR shall submit to the Contract Administrator, after completion of the task or combination of tasks listed in the Project Agreement, a statement of charges for the work completed under that Project Agreement, in conformance with the pricing schedule set forth in Exhibit B, the Contract Administrator shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
 - 4.4. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
 - 4.5. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.

5. TERM:

- 5.1. The term of the Contract is one (1) year (s), commencing on the April 1, 2007 and terminating on March 31, 2008 unless sooner terminated in accordance with the provisions herein. CITY reserves the right, with mutual agreement from the Contractor, to extend the Contract for up to four (4) additional terms of one year each.

6. USE OF THIS CONTRACT:

- 6.1. CONTRACTOR is aware that there is more than one Contractor who has been awarded a Services Agreement for this type of services. CITY reserves the right and will issue requests for services based on ability of CONTRACTOR to meet CITY's work schedule and the availability of trades and expertise in relation to each project.
- 6.2. 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.
- 6.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. **Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the

CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. TERMINATION:

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

12.7. 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.

12.8. Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

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	In the case of the CONTRACTOR
Contract Administrator: <u>Purchasing</u>	Firm Name: <u>Weber Group</u>
Contact: <u>Mike Mandt</u>	Contact: <u>Fred Tregaskes</u>
Mailing Address: <u>PO Box 4008 – MS 901</u>	Address: <u>16825 South Weber Drive</u>
Physical Address: <u>249 E Chicago St</u>	City, State, Zip: <u>Chandler, Z 85226-4112</u>
City, State, Zip: <u>Chandler AZ 85244</u>	Phone: <u>480-461-1141</u>
Phone: <u>480-782-2406</u>	FAX: <u>480-961-0290</u>
FAX: <u>480-782-2410</u>	

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

14. CONFLICT OF INTEREST:

14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure

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

- 14.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
15. **GENERAL TERMS:**
- 15.1. **OWNERSHIP.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 15.2. **Entire Agreement.** This Agreement, including Exhibits A, B and C attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.5. **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.
16. **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.
17. **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.

18. **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

MAYOR

FOR THE CONTRACTOR
By: _____
Signature

ATTEST:

City Clerk

ATTEST: If Corporation
SEAL _____
Secretary

Approved as to form:

City Attorney

Exhibit A
Scope of Work

1. SCOPE

The purpose of this contract is to provide equipment repair for various City departments, which currently include Water Production, Wastewater Treatment, Wastewater Collection, Reverse Osmosis, and Streets. The contract is separated into three categories as indicated below.

1.1. WELL WORK

Well Work will include rehabilitation and repairing of wells relating to City operations which currently include water production wells, wastewater injection wells, aquifer storage wells, monitor wells, and dry wells.

1.2. PUMP WORK

Pump Work will include removal and repair and reinstallation of equipment at various City Facilities, which currently include Water Production, Reverse Osmosis and Wastewater Facilities.

1.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

Water and wastewater equipment repair and maintenance will include repair and maintenance of pumps, aerators, electric motors and related equipment for various City departments, which currently include Water, Wastewater Treatment and Wastewater Collection.

2. EQUIPMENT AND PERSONNEL

2.1. WELL WORK

CONTRACTOR shall have equipment and personnel capable of cleaning, swabbing, bailing and repairing of Water Production and ASR wells and Recharge wells including a Bucyrus Erie 28L or equal cable tool rig. Wells range from 6" to 20" diameter with depths up to 1600'. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

2.2. PUMP WORK

At a minimum, CONTRACTOR must have equipment capable of lifting a 900 H.P. motor, pulling and or installing a well pump up to 1000 feet with 12" column pipe, 3-1/2" tubing, and 2-3/16" shafting. CONTRACTOR shall have a shop equipped to work on all aspects of booster pumps and down the hole flow control pumps. CONTRACTOR must have a shop, which is equipped and staffed to complete all required machine work. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

2.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

CONTRACTOR, at a minimum, must have one (1) truck mounted crane capable of lifting a 125 H.P. submersible sewage pump, a truck for transporting this size pump to the shop for repair and all necessary support equipment for entering a confined space. CONTRACTOR shall have a shop equipped to work on all aspects of submersible sewage pumps. The shop shall include a machine shop with at least one full time machinist. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

3. EXPERIENCE

CONTRACTOR shall have a minimum of five (5) years experience working on pressurized potable water systems such as those used by municipalities, and the necessary trained personnel certified to work on explosion proof pumps.

4. RESPONSE TIME

4.1. WELL WORK

CONTRACTOR shall commence work within 10-calendar days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

4.2. PUMP WORK

CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

4.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

5. REPLACEMENT PARTS

CITY may purchase replacement pumps, motors, and other related equipment from CONTRACTOR. The price to be paid to CONTRACTOR by CITY will be billed at the invoice price multiplied by the factor listed on Exhibit B. The factor listed will be CONTRACTOR's compensation for handling. CONTRACTOR shall include invoices for any parts for which he is seeking reimbursement. All replacement parts supplied must meet all manufacturer's specifications.

CONTRACTOR may be required to provide pricing of repair parts for specific jobs prior to CITY authorizing purchase of the parts from CONTRACTOR. CITY reserves the right to purchase pumps, motors, and other related equipment directly from the manufacturer or from other vendors if it is in CITY's best interest.

6. SUPERVISION BY THE CONTRACTOR

CONTRACTOR will supervise and direct all work. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures performed. CONTRACTOR will employ and maintain on the work a qualified supervisor or superintendent, which shall be designated in writing by CONTRACTOR as CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as of given to CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

7. WORK ESTIMATES AND COMPLETION TIME

Prior to CONTRACTOR performing any repair work, CONTRACTOR will be required to provide CITY a written report including condition of equipment, recommended repairs and cost of repairs. CONTRACTOR will be allowed to remove and disassemble the equipment prior to providing CITY written estimate. The written estimate will be required 72 hours after equipment has been removed.

CONTRACTOR will be required to repair and reinstall equipment within 10 working days from approval of the work. This requirement will be adjusted if parts delivery exceeds 10 days.

8. INSPECTION
CITY Staff may monitor the work site and report to the Contract Administrator as to the progress of the Work, the manner in which it is being performed, and if material furnished and work performed by CONTRACTOR fails to fulfill the requirements of the Contract. CITY Staff may direct the attention of CONTRACTOR to such failure or infringement but such inspection shall not relieve CONTRACTOR from any obligation to furnish acceptable materials or to provide completed work that complies with the Contract.
- In the case of any dispute arising between CITY staff and the CONTRACTOR as to material furnished or the manner of performing work, CITY Staff shall have the authority to reject materials or suspend the work until the question and issue can be resolved
9. VIBRATION ANALYSIS
Repairs performed under this contract will be subject to vibration analysis and must comply with manufacturers specifications.
10. SAFETY PROCEDURES
CONTRACTOR will be responsible for coordinating their activities with CITY. Prior to the start of work, CONTRACTOR and CITY will perform a Pre-job briefing to discuss and plan for dealing with relevant safety issues such as lockout tag-out and confined space exposures. CONTRACTOR will be responsible to properly lockout tag- out electrical hazards and ensure there is a plan to deal with other work related hazards.
11. DISINFECTION
CONTRACTOR will be responsible for disinfection of all potable water equipment with NSF approved products prior to and during installation in accordance with Maricopa County Health Code, Chapter V, Water Supply R9-8-266.
12. CLEANUP
CONTRACTOR shall remove all debris and other materials from the work site after the completion of work.
13. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK
CONTRACTOR shall properly guard the work site and protect all finished or partially finished work.
14. DISPOSAL OF WASTE
CONTRACTOR will be responsible for disposal of all waste products including but not limited to oil baled from a well, debris, etc. at a legal off-site location. ANY DISPOSAL OF WASTE PRODUCTS OR UNUSED MATERIALS SHALL CONFORM TO APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS. Copies of disposal documentation shall be provided to CITY upon request.
15. WRITTEN COMPLETION REPORTS
CONTRACTOR shall submit a written completion report to CITY within 30 days of completion of work, which details work completed on wells or equipment. The report for pump repair shall include depth of setting, bowl size and make, tube and shaft size and make, depth of well water level and other pertinent information. CITY will not make payment prior to receiving this report.
16. HOURLY RATES
CONTRACTOR will charge hourly rates listed in Exhibit B for time on scene only. CONTRACTOR may charge premium rates as listed in Exhibit B for work performed on Saturdays, Sundays and Holidays. Any work on Saturdays, Sundays or Holidays will require advance approval form CITY.

EXHIBIT B – PRICE SHEET

1	WELL WORK		
<i>Item</i>	<i>Description</i>	<i>Unit of Measure</i>	<i>Unit Price</i>
A	Mob and De Mob of Equipment (unit price includes both)	EA	\$ 1,500.00
B	Rig, Equipment and 2 man crew for swabbing and brushing and clean out of wells	Hour	\$ 185.00
C	Mark Up on Subcontracted repairs _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.10
D	Mark Up on Saturday, Labor _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.00
E	Mark Up on Sunday Labor _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.00
F	Mark Up on Holiday Labor _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.20
2	PUMP WORK		
<i>Item</i>	<i>Description</i>	<i>Unit of Measure</i>	<i>Unit Price</i>
A	Pump rig and crew for removing and installing of deep well pump up to 1000' (12"X3 1/2 X 2 3/16" column tube shaft)	Hour	\$ 185.00
B	Hydraulic crane truck and 3 man crew	Hour	\$ 120.00
C	Three man crew stand by time after 30 minutes	Hour	\$ 50.00
D	Hydraulic crane truck and 2 man crew	Hour	\$ 110.00
E	Two man crew stand by time after thirty minutes	Hour	\$ 40.00
F	Flat bed truck or semi w/driver for transporting large pumps	Hour	\$ 50.00
G	Shop labor	Hour	\$ 50.00
H	Machinist	Hour	\$ 60.00
I	Welder (shop)	Hour	\$ 30.00
J	Welder (field)	Hour	\$ 65.00
K	Field tech or field electrician 1 truck and 1 man	Hour	\$ 65.00
L	Annual well pump efficiency test	Each	\$ 100.00
M	Annual booster pump efficiency test	Each	\$ 100.00
N	Mark Up on Parts _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.20
O	Mark Up on Subcontracted repairs _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.10
P	Mark Up on Saturday, Labor _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.00
Q	Mark Up on Sunday Labor _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.00
R	Mark Up on Holiday Labor _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.20
WELL PHOTOGRAPHY AND SONAR JET			
S	TV tapes up to 1600'	EA	\$ 700.00
T	Sonar jet occurrences at 250'	FT	\$ 12.00

CITY OF CHANDLER SERVICES AGREEMENT
Water/Wastewater Equipment Repair
CONTRACT NO.:WA7-936-2409

THIS AGREEMENT is made and entered into this _____ day of _____, 200____, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **Layne Christensen Company a Delaware corporation**, hereinafter referred to as "CONTRACTOR".

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

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

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Assistant Municipal Utilities Director /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide repair and maintenance of water and wastewater equipment 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.
- 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.
- 2.5. **Warranties.**
- 2.6. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.
- 2.7. **Warranty (Equipment).** All parts and equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one (1) year from the date of acceptance by CITY. Any

defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
 - 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
 - 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
 - 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
 - 3.4. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
4. **PRICE:** The total amount payable to Contractor by City pursuant to this Agreement, when added to the total amount payable by the City pursuant to companion agreements to the Agreement herein shall not exceed the sum of Eight Hundred Thirty Seven Thousand Three Hundred and Fifty Dollars, (\$837,350) 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. The CONTRACTOR may charge the CITY tax on parts associated with repairs if the parts are not eligible for tax exemption.
 - 4.2. **Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall identify tax exempt items and shall not charge tax on the exempt parts.
 - 4.3. **Payment.** CONTRACTOR shall submit to the Contract Administrator, after completion of the task or combination of tasks listed in the Project Agreement, a statement of charges for the work completed under that Project Agreement, in conformance with the pricing schedule set forth in Exhibit B, the Contract Administrator shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
 - 4.4. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
 - 4.5. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.

5. TERM:

- 5.1. The term of the Contract is one (1) year (s), commencing on the April 1, 2007 and terminating on March 31, 2008 unless sooner terminated in accordance with the provisions herein. CITY reserves the right, with mutual agreement from the Contractor, to extend the Contract for up to four (4) additional terms of one year each.

6. USE OF THIS CONTRACT:

- 6.1. CONTRACTOR is aware that there is more than one Contractor who has been awarded a Services Agreement for this type of services. CITY reserves the right and will issue requests for services based on ability of CONTRACTOR to meet CITY's work schedule and the availability of trades and expertise in relation to each project.
- 6.2. 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.
- 6.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. **Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the

CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

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

12.7. 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.

12.8. Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

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

In the case of the CITY

Contract Administrator: Purchasing

Contact: Mike Mandt
Mailing Address: PO Box 4008 – MS 901
Physical Address: 249 E Chicago St
City, State, Zip Chandler AZ 85244
Phone: 480-782-2406
FAX: 480-782-2410

In the case of the CONTRACTOR

Firm Name: Layne Christensen Company

Contact: David Paszli
Address: 12030 E. Riggs Road
City, State, Zip Chandler, AZ 85249
Phone: 480-895-9404
FAX: 480-895-8699

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

14. CONFLICT OF INTEREST:

14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or

contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.

- 14.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
15. **GENERAL TERMS:**
 - 15.1. **OWNERSHIP.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
 - 15.2. **Entire Agreement.** This Agreement, including Exhibits A, B and C attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
 - 15.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
 - 15.4. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
 - 15.5. **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.
16. **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.
17. **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.

18. **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

MAYOR

By: _____
Signature

ATTEST:

City Clerk

SEAL

ATTEST: If Corporation

Secretary

Approved as to form:

City Attorney

Exhibit A Scope of Work

1. SCOPE

The purpose of this contract is to provide equipment repair for various City departments, which currently include Water Production, Wastewater Treatment, Wastewater Collection, Reverse Osmosis, and Streets. The contract is separated into three categories as indicated below.

1.1. WELL WORK

Well Work will include rehabilitation and repairing of wells relating to City operations which currently include water production wells, wastewater injection wells, aquifer storage wells, monitor wells, and dry wells.

1.2. PUMP WORK

Pump Work will include removal and repair and reinstallation of equipment at various City Facilities, which currently include Water Production, Reverse Osmosis and Wastewater Facilities.

1.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

Water and wastewater equipment repair and maintenance will include repair and maintenance of pumps, aerators, electric motors and related equipment for various City departments, which currently include Water, Wastewater Treatment and Wastewater Collection.

2. EQUIPMENT AND PERSONNEL

2.1. WELL WORK

CONTRACTOR shall have equipment and personnel capable of cleaning, swabbing, bailing and repairing of Water Production and ASR wells and Recharge wells including a Bucryus Erie 28L or equal cable tool rig. Wells range from 6" to 20" diameter with depths up to 1600'. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

2.2. PUMP WORK

At a minimum, CONTRACTOR must have equipment capable of lifting a 900 H.P. motor, pulling and or installing a well pump up to 1000 feet with 12" column pipe, 3-1/2" tubing, and 2-3/16" shafting. CONTRACTOR shall have a shop equipped to work on all aspects of booster pumps and down the hole flow control pumps. CONTRACTOR must have a shop, which is equipped and staffed to complete all required machine work. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

2.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

CONTRACTOR, at a minimum, must have one (1) truck mounted crane capable of lifting a 125 H.P. submersible sewage pump, a truck for transporting this size pump to the shop for repair and all necessary support equipment for entering a confined space. CONTRACTOR shall have a shop equipped to work on all aspects of submersible sewage pumps. The shop shall include a machine shop with at least one full time machinist. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

3. EXPERIENCE

CONTRACTOR shall have a minimum of five (5) years experience working on pressurized potable water systems such as those used by municipalities, and the necessary trained personnel certified to work on explosion proof pumps.

4. RESPONSE TIME

- 4.1. WELL WORK
CONTRACTOR shall commence work within 10-calendar days of notification from CITY for all non-emergency calls.
- CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.
- CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.
- 4.2. PUMP WORK
CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.
- CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.
- CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.
- 4.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE
CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.
- CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.
- CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.
5. REPLACEMENT PARTS
CITY may purchase replacement pumps, motors, and other related equipment from CONTRACTOR. The price to be paid to CONTRACTOR by CITY will be billed at the invoice price multiplied by the factor listed on Exhibit B. The factor listed will be CONTRACTOR's compensation for handling. CONTRACTOR shall include invoices for any parts for which he is seeking reimbursement. All replacement parts supplied must meet all manufacturer's specifications.
- CONTRACTOR may be required to provide pricing of repair parts for specific jobs prior to CITY authorizing purchase of the parts from CONTRACTOR. CITY reserves the right to purchase pumps, motors, and other related equipment directly from the manufacturer or from other vendors if it is in CITY's best interest.
6. SUPERVISION BY THE CONTRACTOR
CONTRACTOR will supervise and direct all work. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures performed. CONTRACTOR will employ and maintain on the work a qualified supervisor or superintendent, which shall be designated in writing by CONTRACTOR as CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as of given to CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.
7. WORK ESTIMATES AND COMPLETION TIME
Prior to CONTRACTOR performing any repair work, CONTRACTOR will be required to provide CITY a written report including condition of equipment, recommended repairs and cost of repairs. CONTRACTOR will be allowed to remove and disassemble the equipment prior to providing CITY written estimate. The written estimate will be required 72 hours after equipment has been removed.
- CONTRACTOR will be required to repair and reinstall equipment within 10 working days from approval of the work. This requirement will be adjusted if parts delivery exceeds 10 days.

8. INSPECTION
CITY Staff may monitor the work site and report to the Contract Administrator as to the progress of the Work, the manner in which it is being performed, and if material furnished and work performed by CONTRACTOR fails to fulfill the requirements of the Contract. CITY Staff may direct the attention of CONTRACTOR to such failure or infringement but such inspection shall not relieve CONTRACTOR from any obligation to furnish acceptable materials or to provide completed work that complies with the Contract.

In the case of any dispute arising between CITY staff and the CONTRACTOR as to material furnished or the manner of performing work, CITY Staff shall have the authority to reject materials or suspend the work until the question and issue can be resolved
9. VIBRATION ANALYSIS
Repairs performed under this contract will be subject to vibration analysis and must comply with manufacturers specifications.
10. SAFETY PROCEDURES
CONTRACTOR will be responsible for coordinating their activities with CITY. Prior to the start of work, CONTRACTOR and CITY will perform a Pre-job briefing to discuss and plan for dealing with relevant safety issues such as lockout tag-out and confined space exposures. CONTRACTOR will be responsible to properly lockout tag- out electrical hazards and ensure there is a plan to deal with other work related hazards.
11. DISINFECTION
CONTRACTOR will be responsible for disinfection of all potable water equipment with NSF approved products prior to and during installation in accordance with Maricopa County Health Code, Chapter V, Water Supply R9-8-266.
12. CLEANUP
CONTRACTOR shall remove all debris and other materials from the work site after the completion of work.
13. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK
CONTRACTOR shall properly guard the work site and protect all finished or partially finished work.
14. DISPOSAL OF WASTE
CONTRACTOR will be responsible for disposal of all waste products including but not limited to oil baled from a well, debris, etc. at a legal off-site location. ANY DISPOSAL OF WASTE PRODUCTS OR UNUSED MATERIALS SHALL CONFORM TO APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS. Copies of disposal documentation shall be provided to CITY upon request.
15. WRITTEN COMPLETION REPORTS
CONTRACTOR shall submit a written completion report to CITY within 30 days of completion of work, which details work completed on wells or equipment. The report for pump repair shall include depth of setting, bowl size and make, tube and shaft size and make, depth of well water level and other pertinent information. CITY will not make payment prior to receiving this report.
16. HOURLY RATES
CONTRACTOR will charge hourly rates listed in Exhibit B for time on scene only. CONTRACTOR may charge premium rates as listed in Exhibit B for work performed on Saturdays, Sundays and Holidays. Any work on Saturdays, Sundays or Holidays will require advance approval from CITY.

EXHIBIT B – PRICE SHEET

1	WELL WORK		
<i>Item</i>	<i>Description</i>	<i>Unit of Measure</i>	<i>Unit Price</i>
A	Mob and De Mob of Equipment (unit price includes both)	EA	\$1,000.00
B	Rig, Equipment and 2 man crew for swabbing and brushing and clean out of wells	Hour	\$ 165.00
C	Mark Up on Subcontracted repairs _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.15
D	Mark Up on Saturday, Labor _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.40
E	Mark Up on Sunday Labor _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.40
F	Mark Up on Holiday Labor _____% (add percentage offered to 1 to establish unit price. Ex. mark up = 10% unit price would be 1.1)	%	1.40

CITY OF CHANDLER SERVICES AGREEMENT
Water/Wastewater Equipment Repair
CONTRACT NO.:WA7-936-2409

THIS AGREEMENT is made and entered into this _____ day of _____, 200____, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **Gilbert Pump and Equipment Company** an Arizona Corporation, hereinafter referred to as "CONTRACTOR".

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

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

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Assistant Municipal Utilities Director /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide repair and maintenance of water and wastewater equipment 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.
- 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.
- 2.5. **Warranties.**
- 2.6. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.
- 2.7. **Warranty (Equipment).** All parts and equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one (1) year from the date of acceptance by CITY. Any

defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
 - 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
 - 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
 - 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
 - 3.4. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
4. **PRICE:** The total amount payable to Contractor by City pursuant to this Agreement, when added to the total amount payable by the City pursuant to companion agreements to the Agreement herein shall not exceed the sum of Eight Hundred Thirty Seven Thousand Three Hundred and Fifty Dollars, (\$837,350) 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. The CONTRACTOR may charge the CITY tax on parts associated with repairs if the parts are not eligible for tax exemption.
 - 4.2. **Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall identify tax exempt items and shall not charge tax on the exempt parts.
 - 4.3. **Payment.** CONTRACTOR shall submit to the Contract Administrator, after completion of the task or combination of tasks listed in the Project Agreement, a statement of charges for the work completed under that Project Agreement, in conformance with the pricing schedule set forth in Exhibit B, the Contract Administrator shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
 - 4.4. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
 - 4.5. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.

5. TERM:

- 5.1. The term of the Contract is one (1) year (s), commencing on the April 1, 2007 and terminating on March 31, 2008 unless sooner terminated in accordance with the provisions herein. CITY reserves the right, with mutual agreement from the Contractor, to extend the Contract for up to four (4) additional terms of one year each.

6. USE OF THIS CONTRACT:

- 6.1. CONTRACTOR is aware that there is more than one Contractor who has been awarded a Services Agreement for this type of services. CITY reserves the right and will issue requests for services based on ability of CONTRACTOR to meet CITY's work schedule and the availability of trades and expertise in relation to each project.
- 6.2. 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.
- 6.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. **Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the

CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. TERMINATION:

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

12.7. 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.

12.8. Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

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

In the case of the CITY
Contract Administrator: Purchasing

Contact: Mike Mandt
Mailing Address: PO Box 4008 – MS 901

Physical Address: 249 E Chicago St
City, State, Zip Chandler AZ 85244
Phone: 480-782-2406
FAX: 480-782-2410

In the case of the CONTRACTOR
Firm Name: Gilbert Pump and Equipment Company
Contact: Tony McBee
Address: 1475 East Elwood Street
City, State, Zip Phoenix, AZ 85040
Phone: 602-273-1321
FAX: 602-276-5599

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

14. CONFLICT OF INTEREST:

- 14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.
- 14.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

- 15.1. **OWNERSHIP.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 15.2. **Entire Agreement.** This Agreement, including Exhibits A, B and C attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.5. **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.
16. **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.

- 17. **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.
- 18. **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

 MAYOR

FOR THE CONTRACTOR
 By: _____
 Signature

ATTEST:

 City Clerk

SEAL
 ATTEST: If Corporation

 Secretary

Approved as to form:

 City Attorney 

Exhibit A
Scope of Work

1. SCOPE

The purpose of this contract is to provide equipment repair for various City departments, which currently include Water Production, Wastewater Treatment, Wastewater Collection, Reverse Osmosis, and Streets. The contract is separated into three categories as indicated below.

1.1. WELL WORK

Well Work will include rehabilitation and repairing of wells relating to City operations which currently include water production wells, wastewater injection wells, aquifer storage wells, monitor wells, and dry wells.

1.2. PUMP WORK

Pump Work will include removal and repair and reinstallation of equipment at various City Facilities, which currently include Water Production, Reverse Osmosis and Wastewater Facilities.

1.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

Water and wastewater equipment repair and maintenance will include repair and maintenance of pumps, aerators, electric motors and related equipment for various City departments, which currently include Water, Wastewater Treatment and Wastewater Collection.

2. EQUIPMENT AND PERSONNEL

2.1. WELL WORK

CONTRACTOR shall have equipment and personnel capable of cleaning, swabbing, bailing and repairing of Water Production and ASR wells and Recharge wells including a Bucryus Erie 28L or equal cable tool rig. Wells range from 6" to 20" diameter with depths up to 1600'. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

2.2. PUMP WORK

At a minimum, CONTRACTOR must have equipment capable of lifting a 900 H.P. motor, pulling and installing a well pump up to 1000 feet with 12" column pipe, 3-1/2" tubing, and 2-3/16" shafting. CONTRACTOR shall have a shop equipped to work on all aspects of booster pumps and down the hole flow control pumps. CONTRACTOR must have a shop, which is equipped and staffed to complete all required machine work. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

2.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

CONTRACTOR, at a minimum, must have one (1) truck mounted crane capable of lifting a 125 H.P. submersible sewage pump, a truck for transporting this size pump to the shop for repair and all necessary support equipment for entering a confined space. CONTRACTOR shall have a shop equipped to work on all aspects of submersible sewage pumps. The shop shall include a machine shop with at least one full time machinist. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

3. EXPERIENCE

CONTRACTOR shall have a minimum of five (5) years experience working on pressurized potable water systems such as those used by municipalities, and the necessary trained personnel certified to work on explosion proof pumps.

4. RESPONSE TIME

- 4.1. WELL WORK
CONTRACTOR shall commence work within 10-calendar days of notification from CITY for all non-emergency calls.
- CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.
- CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.
- 4.2. PUMP WORK
CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.
- CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.
- CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.
- 4.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE
CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.
- CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.
- CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.
5. REPLACEMENT PARTS
CITY may purchase replacement pumps, motors, and other related equipment from CONTRACTOR. The price to be paid to CONTRACTOR by CITY will be billed at the invoice price multiplied by the factor listed on Exhibit B. The factor listed will be CONTRACTOR's compensation for handling. CONTRACTOR shall include invoices for any parts for which he is seeking reimbursement. All replacement parts supplied must meet all manufacturer's specifications.
- CONTRACTOR may be required to provide pricing of repair parts for specific jobs prior to CITY authorizing purchase of the parts from CONTRACTOR. CITY reserves the right to purchase pumps, motors, and other related equipment directly from the manufacturer or from other vendors if it is in CITY's best interest.
6. SUPERVISION BY THE CONTRACTOR
CONTRACTOR will supervise and direct all work. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures performed. CONTRACTOR will employ and maintain on the work a qualified supervisor or superintendent, which shall be designated in writing by CONTRACTOR as CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as of given to CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.
7. WORK ESTIMATES AND COMPLETION TIME
Prior to CONTRACTOR performing any repair work, CONTRACTOR will be required to provide CITY a written report including condition of equipment, recommended repairs and cost of repairs. CONTRACTOR will be allowed to remove and disassemble the equipment prior to providing CITY written estimate. The written estimate will be required 72 hours after equipment has been removed.
- CONTRACTOR will be required to repair and reinstall equipment within 10 working days from approval of the work. This requirement will be adjusted if parts delivery exceeds 10 days.

8. INSPECTION
CITY Staff may monitor the work site and report to the Contract Administrator as to the progress of the Work, the manner in which it is being performed, and if material furnished and work performed by CONTRACTOR fails to fulfill the requirements of the Contract. CITY Staff may direct the attention of CONTRACTOR to such failure or infringement but such inspection shall not relieve CONTRACTOR from any obligation to furnish acceptable materials or to provide completed work that complies with the Contract.
- In the case of any dispute arising between CITY staff and the CONTRACTOR as to material furnished or the manner of performing work, CITY Staff shall have the authority to reject materials or suspend the work until the question and issue can be resolved
9. VIBRATION ANALYSIS
Repairs performed under this contract will be subject to vibration analysis and must comply with manufacturers specifications.
10. SAFETY PROCEDURES
CONTRACTOR will be responsible for coordinating their activities with CITY. Prior to the start of work, CONTRACTOR and CITY will perform a Pre-job briefing to discuss and plan for dealing with relevant safety issues such as lockout tag-out and confined space exposures. CONTRACTOR will be responsible to properly lockout tag- out electrical hazards and ensure there is a plan to deal with other work related hazards.
11. DISINFECTION
CONTRACTOR will be responsible for disinfection of all potable water equipment with NSF approved products prior to and during installation in accordance with Maricopa County Health Code, Chapter V, Water Supply R9-8-266.
12. CLEANUP
CONTRACTOR shall remove all debris and other materials from the work site after the completion of work.
13. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK
CONTRACTOR shall properly guard the work site and protect all finished or partially finished work.
14. DISPOSAL OF WASTE
CONTRACTOR will be responsible for disposal of all waste products including but not limited to oil baled from a well, debris, etc. at a legal off-site location. ANY DISPOSAL OF WASTE PRODUCTS OR UNUSED MATERIALS SHALL CONFORM TO APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS. Copies of disposal documentation shall be provided to CITY upon request.
15. WRITTEN COMPLETION REPORTS
CONTRACTOR shall submit a written completion report to CITY within 30 days of completion of work, which details work completed on wells or equipment. The report for pump repair shall include depth of setting, bowl size and make, tube and shaft size and make, depth of well water level and other pertinent information. CITY will not make payment prior to receiving this report.
16. HOURLY RATES
CONTRACTOR will charge hourly rates listed in Exhibit B for time on scene only. CONTRACTOR may charge premium rates as listed in Exhibit B for work performed on Saturdays, Sundays and Holidays. Any work on Saturdays, Sundays or Holidays will require advance approval from CITY.

EXHIBIT B – PRICE SHEET

<i>Item</i>	<i>Description</i>	<i>Unit of Measure</i>	<i>Unit Price</i>
A	Pump rig and crew for removing and installing of deep well pump up to 1000' (12"X3 1/2 X 2 3/16" column tube shaft)	Hour	\$ 140.00
B	Hydraulic crane truck and 3 man crew	Hour	\$ 110.00
C	Three man crew stand by time after 30 minutes	Hour	\$ 20.00
D	Hydraulic crane truck and 2 man crew	Hour	\$ 100.00
E	Two man crew stand by time after thirty minutes	Hour	\$ 20.00
F	Flat bed truck or semi w/driver for transporting large pumps	Hour	\$ 55.00
G	Shop labor	Hour	\$ 45.00
H	Machinist	Hour	\$ 50.00
I	Welder (shop)	Hour	\$ 22.50
J	Welder (field)	Hour	\$ 22.50
K	Field tech or field electrician 1 truck and 1 man	Hour	\$ 35.00
L	Annual well pump efficiency test	Each	\$ 100.00
M	Annual booster pump efficiency test	Each	\$ 100.00
N	Mark Up on Parts _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.20
O	Mark Up on Subcontracted repairs _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.10
P	Mark Up on Saturday, Labor _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.00
Q	Mark Up on Sunday Labor _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.10
R	Mark Up on Holiday Labor _____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.10
WELL PHOTOGRAPHY AND SONAR JET			
S	TV tapes up to 1600'	EA	\$ 400.00
T	Sonor jet occurrences at 250'	FT	\$ 10.00

CITY OF CHANDLER SERVICES AGREEMENT
Water/Wastewater Equipment Repair
CONTRACT NO.:WA7-936-2409

THIS AGREEMENT is made and entered into this 15th day of August, 2008, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **Foster Electric – Arizona Pump Company**, an Arizona Corporation, hereinafter referred to as "CONTRACTOR".

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

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

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Assistant Municipal Utilities Director /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide repair and maintenance of water and wastewater equipment 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.
- 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.
- 2.5. **Warranties.**
- 2.6. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.
- 2.7. **Warranty (Equipment).** All parts and equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one (1) year from the date of acceptance by CITY. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract

specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
 - 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
 - 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
 - 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
 - 3.4. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
4. **PRICE:** The total amount payable to Contractor by City pursuant to this Agreement, when added to the total amount payable by the City pursuant to companion agreements to the Agreement herein shall not exceed the sum of Eight Hundred Thirty Seven Thousand Three Hundred and Fifty Dollars, (\$837,350) 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. The CONTRACTOR may charge the CITY tax on parts associated with repairs if the parts are not eligible for tax exemption.
 - 4.2. **Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall identify tax exempt items and shall not charge tax on the exempt parts.
 - 4.3. **Payment.** CONTRACTOR shall submit to the Contract Administrator, after completion of the task or combination of tasks listed in the Project Agreement, a statement of charges for the work completed under that Project Agreement, in conformance with the pricing schedule set forth in Exhibit B, the Contract Administrator shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
 - 4.4. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
 - 4.5. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
5. **TERM:**
 - 5.1. The term of the Contract is one (1) year (s), commencing on the April 1, 2007 and terminating on March

31, 2008 unless sooner terminated in accordance with the provisions herein. CITY reserves the right, with mutual agreement from the Contractor, to extend the Contract for up to four (4) additional terms of one year each.

6. USE OF THIS CONTRACT:

- 6.1. CONTRACTOR is aware that there is more than one Contractor who has been awarded a Services Agreement for this type of services. CITY reserves the right and will issue requests for services based on ability of CONTRACTOR to meet CITY's work schedule and the availability of trades and expertise in relation to each project.
- 6.2. 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.
- 6.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. **Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. TERMINATION:

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

12.7. **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.

12.8. Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

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

In the case of the CITY

Contract Administrator: Purchasing
Contact: Mike Mandt
Mailing Address: PO Box 4008 – MS 901
Physical Address: 249 E Chicago St
City, State, Zip Chandler AZ 85244
Phone: 480-782-2406
FAX: 480-782-2410

In the case of the CONTRACTOR

Firm Name: Foster Electric-Arizona Pump
Contact: Gary Rollefstad
Address: 490 East Fry Road
City, State, Zip Chandler, AZ 85225
Phone: 480-963-5416
FAX: 480-899-5980

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

14. **CONFLICT OF INTEREST:**

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

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

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

15. GENERAL TERMS:

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

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

15.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

15.4. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

15.5. **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.

16. **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.

17. **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.

18. **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

MAYOR

FOR THE CONTRACTOR
By: _____
Signature

ATTEST:

City Clerk

ATTEST: If Corporation

Secretary

SEAL

Approved as to form:

City Attorney

Exhibit A
Scope of Work

1. SCOPE

The purpose of this contract is to provide equipment repair for various City departments, which currently include Water Production, Wastewater Treatment, Wastewater Collection, Reverse Osmosis, and Streets. The contract is separated into three categories as indicated below.

1.1. WELL WORK

Well Work will include rehabilitation and repairing of wells relating to City operations which currently include water production wells, wastewater injection wells, aquifer storage wells, monitor wells, and dry wells.

1.2. PUMP WORK

Pump Work will include removal and repair and reinstallation of equipment at various City Facilities, which currently include Water Production, Reverse Osmosis and Wastewater Facilities.

1.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

Water and wastewater equipment repair and maintenance will include repair and maintenance of pumps, aerators, electric motors and related equipment for various City departments, which currently include Water, Wastewater Treatment and Wastewater Collection.

2. EQUIPMENT AND PERSONNEL

2.1. WELL WORK

CONTRACTOR shall have equipment and personnel capable of cleaning, swabbing, bailing and repairing of Water Production and ASR wells and Recharge wells including a Bucryus Erie 28L or equal cable tool rig. Wells range from 6" to 20" diameter with depths up to 1600'. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

2.2. PUMP WORK

At a minimum, CONTRACTOR must have equipment capable of lifting a 900 H.P. motor, pulling and or installing a well pump up to 1000 feet with 12" column pipe, 3-1/2" tubing, and 2-3/16" shafting. CONTRACTOR shall have a shop equipped to work on all aspects of booster pumps and down the hole flow control pumps. CONTRACTOR must have a shop, which is equipped and staffed to complete all required machine work. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

2.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

CONTRACTOR, at a minimum, must have one (1) truck mounted crane capable of lifting a 125 H.P. submersible sewage pump, a truck for transporting this size pump to the shop for repair and all necessary support equipment for entering a confined space. CONTRACTOR shall have a shop equipped to work on all aspects of submersible sewage pumps. The shop shall include a machine shop with at least one full time machinist. CONTRACTOR shall have capability to communicate from the job site to CONTRACTOR's Main Office without leaving the site, i.e. 2-way radio, cellular phone, etc.

3. EXPERIENCE

CONTRACTOR shall have a minimum of five (5) years experience working on pressurized potable water systems such as those used by municipalities, and the necessary trained personnel certified to work on explosion proof pumps.

4. RESPONSE TIME

4.1. WELL WORK

CONTRACTOR shall commence work within 10-calendar days of notification from CITY for all non-

emergency calls.

CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

4.2. PUMP WORK

CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

4.3. WATER AND WASTEWATER EQUIPMENT REPAIR AND MAINTENANCE

CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

5. REPLACEMENT PARTS

CITY may purchase replacement pumps, motors, and other related equipment from CONTRACTOR. The price to be paid to CONTRACTOR by CITY will be billed at the invoice price multiplied by the factor listed on Exhibit B. The factor listed will be CONTRACTOR's compensation for handling. CONTRACTOR shall include invoices for any parts for which he is seeking reimbursement. All replacement parts supplied must meet all manufacturer's specifications.

CONTRACTOR may be required to provide pricing of repair parts for specific jobs prior to CITY authorizing purchase of the parts from CONTRACTOR. CITY reserves the right to purchase pumps, motors, and other related equipment directly from the manufacturer or from other vendors if it is in CITY's best interest.

6. SUPERVISION BY THE CONTRACTOR

CONTRACTOR will supervise and direct all work. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures performed. CONTRACTOR will employ and maintain on the work a qualified supervisor or superintendent, which shall be designated in writing by CONTRACTOR as CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as of given to CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

7. WORK ESTIMATES AND COMPLETION TIME

Prior to CONTRACTOR performing any repair work, CONTRACTOR will be required to provide CITY a written report including condition of equipment, recommended repairs and cost of repairs. CONTRACTOR will be allowed to remove and disassemble the equipment prior to providing CITY written estimate. The written estimate will be required 72 hours after equipment has been removed.

CONTRACTOR will be required to repair and reinstall equipment within 10 working days from approval of the work. This requirement will be adjusted if parts delivery exceeds 10 days.

8. INSPECTION

CITY Staff may monitor the work site and report to the Contract Administrator as to the progress of the Work, the manner in which it is being performed, and if material furnished and work performed by CONTRACTOR fails to fulfill the requirements of the Contract. CITY Staff may direct the attention of

CONTRACTOR to such failure or infringement but such inspection shall not relieve CONTRACTOR from any obligation to furnish acceptable materials or to provide completed work that complies with the Contract.

In the case of any dispute arising between CITY staff and the CONTRACTOR as to material furnished or the manner of performing work, CITY Staff shall have the authority to reject materials or suspend the work until the question and issue can be resolved

9. VIBRATION ANALYSIS
Repairs performed under this contract will be subject to vibration analysis and must comply with manufacturers specifications.
10. SAFETY PROCEDURES
CONTRACTOR will be responsible for coordinating their activities with CITY. Prior to the start of work, CONTRACTOR and CITY will perform a Pre-job briefing to discuss and plan for dealing with relevant safety issues such as lockout tag-out and confined space exposures. CONTRACTOR will be responsible to properly lockout tag- out electrical hazards and ensure there is a plan to deal with other work related hazards.
11. DISINFECTION
CONTRACTOR will be responsible for disinfection of all potable water equipment with NSF approved products prior to and during installation in accordance with Maricopa County Health Code, Chapter V, Water Supply R9-8-266.
12. CLEANUP
CONTRACTOR shall remove all debris and other materials from the work site after the completion of work.
13. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK
CONTRACTOR shall properly guard the work site and protect all finished or partially finished work.
14. DISPOSAL OF WASTE
CONTRACTOR will be responsible for disposal of all waste products including but not limited to oil baled from a well, debris, etc. at a legal off-site location. ANY DISPOSAL OF WASTE PRODUCTS OR UNUSED MATERIALS SHALL CONFORM TO APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS. Copies of disposal documentation shall be provided to CITY upon request.
15. WRITTEN COMPLETION REPORTS
CONTRACTOR shall submit a written completion report to CITY within 30 days of completion of work, which details work completed on wells or equipment. The report for pump repair shall include depth of setting, bowl size and make, tube and shaft size and make, depth of well water level and other pertinent information. CITY will not make payment prior to receiving this report.
16. HOURLY RATES
CONTRACTOR will charge hourly rates listed in Exhibit B for time on scene only. CONTRACTOR may charge premium rates as listed in Exhibit B for work performed on Saturdays, Sundays and Holidays. Any work on Saturdays, Sundays or Holidays will require advance approval from CITY.

EXHIBIT B – PRICE SHEET

3	WATER, WASTEWATER AND COLLECTION REPAIR AND MAINTENANCE			
<i>Item</i>	<i>Description</i>	<i>Unit of Measure</i>	<i>Unit Price</i>	
A	Removal of Aerator Include all labor and materials required to remove and prepare for transport.	Each	\$ 100.00	
B	Installation of Aerator Include all labor and materials required to install sewage pump and return to service.	Each	\$ 150.00	
C	Aerator inspection and Repair Estimate Include all labor and materials required to disassemble and provide complete condition report and repair estimate.	Each	\$ 120.00	
D	Removal of Submersible Sewage Pump and Motor for repair Include all labor and materials required to remove and prepare for transport.	Hours	\$ 100.00	
E	Installation of Submersible Sewage Pump and Motor after repair. Include all labor and materials required to install sewage pump and return to service.	Hours	\$ 120.00	
F	Pump and Motor Inspection and Repair Estimate. Include all labor and materials required to disassemble and provide complete condition report and repair estimate.	Each	\$ 120.00	
G	Semi Annual Maintenance and Inspection labor and material required to perform manufacturers recommended inspection and maintenance including oil changes, cleaning, meg ohm, amperage readings on all legs and visual inspection of submersible sewage pumps and Motors, including removal and reinstallation.	Each	\$ 225.00	
H	Shop Labor	Hours	\$ 40.00	
I	Field Labor. labor rate for unforeseen on site repairs (prior approval required)	Hours	\$ 50.00	
J	Mark Up on Parts ____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.10	
K	Mark Up on Subcontracted repairs ____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.10	
L	Mark Up on Saturday, Labor ____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.00	
M	Mark Up on Sunday Labor ____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.00	
N	Mark Up on Holiday Labor ____% (add percentage offered to 1 to establish unit price . Ex. mark up = 10% unit price would be 1.1)	%	1.00	