



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

1. Agenda Item Number:

**27**

2. Council Meeting Date:

March 22, 2007

**TO: MAYOR & COUNCIL**

**3. Date Prepared:** February 26, 2007

**THROUGH: CITY MANAGER**

**4. Requesting Department:** Community Services

**5. SUBJECT:** The award of a contract to Aquatic Consulting & Testing, Inc, for Lake Maintenance Service, for two years, Contract No. CS7-926-2414, in an amount not to exceed \$50,000.

**6. RECOMMENDATION:** Recommend the award of a contract to Aquatic Consulting & Testing, Inc., for Lake Maintenance Service, for two years, Contract No. CS7-926-2414, in an amount not to exceed \$50,000.

**7. HISTORICAL BACKGROUND/DISCUSSION:** Contractor shall provide the City of Chandler a service contract for the treatment of Desert Breeze Lake, Hummingbird Fountain, and the future Veterans Oasis Park Lake. Service includes the monitoring and treatment of water to control algae, filamentous moss and other aquatic weeds. The contractor will provide perimeter cleaning of the lakes to ensure it is free of trash and debris. This service will be performed three times per week. The contractor will keep accurate reports that will be submitted to the City and Arizona Game and Fish Department on a monthly basis.

**8. EVALUATION PROCESS:** The Invitation for Bids (IFB) was advertised and one hundred thirty-five (135) registered vendors were notified of the solicitation. Six (6) vendors requested copies and one (1) vendor submitted an offer. The following is a summary of bids received:

<u>Bidder</u>	<u>Total</u>
Aquatic Consulting & Testing, Inc.	\$50,000

For the past three years, Aquatic Consulting & Testing Inc. has held the contract at the City Reverse Osmosis Facility for midgefly control and Staff is satisfied with their performance. Therefore, Staff recommends an award be made to Aquatic Consulting & Testing, Inc. the low, responsive, and responsible bidder.

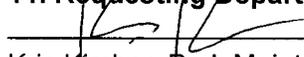
The contract is for a period of two (2) years with an option for four (4) one-year extensions. The contract term will begin April 1, 2007.

**9. FINANCIAL IMPLICATIONS:** Funds for this service will be from the General Fund, Parks Maintenance for Buildings and Grounds Repair and Maintenance, account number 101.4530.0000.5410 in the amount of \$25,000 per year.

**10. PROPOSED MOTION:** Move to award a contract to Aquatic Consulting & Testing, Inc., for Lake Maintenance Service, for two years, Contract No. CS7-926-2414, in an amount not to exceed \$50,000.

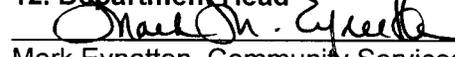
**APPROVALS**

**11. Requesting Department**

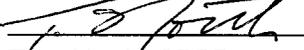
  
Kris Kircher, Park Maintenance Superintendent

3-12-07

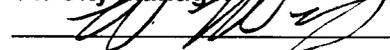
**12. Department Head**

  
Mark Eynatten, Community Services Director

**13. Procurement Officer**

  
Tom North, CPPB

**14. City Manager**

  
W. Mark Pentz

**CITY OF CHANDLER SERVICES AGREEMENT  
LAKE MAINTENANCE SERVICE – CITY PARKS  
BID NO. CS7-926-2414**

THIS AGREEMENT is made and entered into this [REDACTED] day of [REDACTED], 2007, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Aquatic Consulting & Testing, Inc., hereinafter referred to as "CONTRACTOR".

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

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

**1. CONTRACT ADMINISTRATOR:**

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Kris Kircher, Parks Maintenance Superintendent /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Subcontractors.** 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 the City of Chandler a service contract for the maintenance of the lake, pond and garden at Desert Breeze Park located at 660 N. Desert Breeze Boulevard East, Chandler, Arizona, and the future Veteran's Oasis Park, all as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference.

- 2.1. **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.
- 2.2. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements. CONTRACTOR's personnel must be certified by the State Pest Control Commission for chemical application for aquatic use.
- 2.3. **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.

**3. ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.

**4. PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed Fifty Thousand Dollars

(\$50,000.00) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.

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

4.2. **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.

5. **TERM:** The base term of the Contract term from 4/1/07 through 3/31/09 but may be extended by mutual agreement of the parties for up to four (4) additional successive terms of one year each.

## 6. CITY'S CONTRACTUAL REMEDIES:

6.1. **Right to Assurance.** If the Contract Administrator, 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.

6.2. **Stop Work Order.** The Contract Administrator 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.

6.2.1 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

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

6.4. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.

6.5. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

## 7. TERMINATION:

8.1. **Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with 10 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. 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.
- 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 set forth in Exhibit D 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.

**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. 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. 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).

#### **12.6. Worker's Compensation and Employer's Liability**

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

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

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

**In the case of the CITY**

Contract Administrator: Parks Superintendent  
 Contact: Kris Kircher  
 Mailing Address: PO Box 4008 – MS 501  
 Physical Address: 125 E. Commonwealth Ave.  
 City, State, Zip: Chandler, AZ 85225  
 Phone: 480-782-2759  
 FAX: 480-782-2713

**In the case of the CONTRACTOR**

Firm Name: Aquatic Consulting & Testing, Inc.  
 Contact: Fredrick A. Amalfi, Ph. D., C.L.M.  
 Address: 1525 w. University Dr. Suite 106  
 City, State, Zip: Tempe, AZ 85281  
 Phone: 480-921-8044  
 FAX: 480-921-0049  
 EMAIL: Ramalfiaquaticconsulting.com

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

**14. CONFLICT OF INTEREST:**

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

**15. GENERAL TERMS:**

- 15.1. **Entire Agreement.** This Agreement, including Exhibits A, B, C and D attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with

respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

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

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this [redacted] day of [redacted] 20[redacted].

FOR THE CITY OF CHANDLER  
\_\_\_\_\_  
MAYOR

FOR THE CONTRACTOR  
By: *Elizabeth McAtkinson*  
Signature

ATTEST:  
\_\_\_\_\_  
City Clerk

ATTEST: If Corporation  
*Juduel Amalfi*  
Secretary

\_\_\_\_\_  
City Attorney *JSC* SEAL

## EXHIBIT A SCOPE OF WORK

CONTRACTOR shall provide the City of Chandler a service contract for the maintenance of the lake, Hummingbird Pond, and Garden at Desert Breeze Park located at 660 N. Desert Breeze Boulevard East, and the 7-acre lake at Veteran's Oasis Park. The service requirement for the 7-acre lake at Veteran's Oasis Park is estimated to begin in September 2007.

CONTRACTOR shall furnish all labor, materials, tools and vehicles necessary to comply with this contract as outlined herein, except that which is specifically designated herein being the responsibility of the Parks Maintenance Division of CITY. All work shall be done in a workmanlike manner and up to the highest standards of the industry.

1. CONTRACTOR shall maintain both lakes, and Hummingbird Pond and Garden maintenance system as described. The service shall include all chemicals necessary for control of algae, filamentous moss and other aquatic weeds at the Desert Breeze Lake and Hummingbird Pond and Garden, and Veteran's Oasis Park Lake.
  - 1.1 CITY will maintain a permit for the use of White Amur fish. CONTRACTOR shall provide **approximately eighty (80)** 9"-12" long fish per year, during the months of March-April and provide documentation of purchase and installation.
2. CONTRACTOR shall provide all equipment and labor to maintain the ecology and water maintenance of Desert Breeze Lake, Hummingbird Pond, Garden, and Veteran's Oasis Park Lake. This service shall include all sprayers, boats, spreaders and safety equipment required for the chemical applications.
  - 2.1 The treatment of Desert Breeze Lake, and Veteran's Oasis Park Lake must be regulated so as not to kill off all algae since the fish feed on this material. A balance must be maintained, as this lake is part of the Urban Fishing Program, which is under the control of the Arizona Game and Fish Department. The CONTRACTOR shall conduct cleaning and chemical applications as needed to properly maintain the areas of treatment. In the course of normal maintenance if the CONTRACTOR discovers Golden Algae or has other major maintenance problems the CONTRACTOR shall notify the City of Chandler contract administrator/designee and the Arizona Game and Fish Department at 602-789-3263 for discussions on a remedy of the problem. The CONTRACTOR shall be aware of the Arizona Game and Fish Department "Clinics and fishing activity's" scheduled for the areas the CONTRACTOR is maintaining. CONTRACTOR shall closely monitor the lakes for the presents of Golden Algae weekly during the months of October – April.
    - 2.2. CONTRACTOR shall:
      - 2.2.1. Monthly, field-test the water for temperature, pH (SU) avg., dissolved oxygen content, transparency (secchi dept, ft.), odor, color, and other tests as may be necessary. Test results shall be sent to the contract administrator/designee as soon as possible.
      - 2.2.2. Quarterly, in addition to the above testing a more complete field-test shall include testing for ammonia, metal content, and other tests that would be necessary to insure the lake is being properly maintained at its highest level. Test results shall be sent to the contract administrator/designee as soon as possible.
  3. CONTRACTOR shall also service the lake perimeters to ensure that it is free of trash, construction debris and grass clippings. This service shall be done three times a week.
    - 3.1 A log of expired (dead) and removed fish will be kept by the CONTRACTOR and reported on the bi-monthly report. This report will include date, type of fish and quantity removed for CITY's report to Game & Fish. This service shall be done twice per month.
    - 3.2 CONTRACTOR shall provide CITY with MSDS sheets on all chemicals to be utilized for the lake

treatment service, prior to commencement of service.

- 3.3 CONTRACTOR shall maintain and establish a regular service schedule, and submit schedule to Contract Administrator/designee. CONTRACTOR shall forward service reports to Contract Administrator/designee twice per month, with specifics on services rendered, problems encountered, and remedies.
- 3.4 All work by CONTRACTOR, and any phase thereof, is subject to inspection by Contract Administrator/designee. Should any discrepancies or deviations from this contract be noted at any time, such discrepancies or deviations shall be corrected to the satisfaction of Contract Administrator/designee. Should any conflict as to specifications in this contract occur, the Contract Administrator/designee would make the final determination on said conflict. Such determination shall in no way affect the original price of the contract as bid by CONTRACTOR.
- 3.4.1 **Acceptance:** Any additional work required shall be pre-approved Contract Administrator/designee. Contract Administrator/designee shall be the final approving authority before payment of any additional work.
- 3.4.2 **Additions and Deletions:** CITY retains the right to delete or add maintenance areas and items to this contract.
- 3.4.2.1 Charges for areas or items deleted will be dropped from the monthly billing. CITY may delete an item or area at any time and will prorate charges for services already performed.
- 3.4.2.2 Charges for maintenance items or areas added to this contract are subject to the approval by Contract Administrator/designee.
- 3.4.3 **Vandalism:** All cases of vandalism shall be reported to CITY when discovered and CITY shall determine the course of action to be taken.
- 3.4.4 **Quality Control:** CONTRACTOR shall establish a complete quality control program to assure the requirements of the contract are provided as specified. One copy of the CONTRACTOR's quality control program shall be provided to the City for approval within ten (10) days after receiving the Notice of Award. CITY will approve or disapprove CONTRACTOR's program within 10 working days of submittal. CONTRACTOR shall have an approved program before work starts. The program shall include but not be limited to the following:
- 3.4.4.1 **Weekly Schedule of Performance**
- 3.4.4.2 **Performance Requirements Summary Report:** This report will provide such information so as to insure compliance of quality control standards. CONTRACTOR shall submit, to the City, the format that CONTRACTOR intends to use for approval. Upon approval of CONTRACTOR's format, CONTRACTOR shall submit Performance Requirement Summary Report on a weekly basis. Any vandalism shall be reported within two (2) hours after it is noted and vandalism report form submitted.
- 3.4.4.3 CONTRACTOR will be required to provide a schedule for weekly maintenance of all areas, specifying when each area will be maintained and no changes to the schedule shall be made without prior approval of Contract Administrator/designee.
- 3.4.4.4 **Monthly Performance Meeting:** CONTRACTOR will be required to attend a monthly meeting to discuss performance, services rendered, review of reports and to discuss lake conditions including any problems encountered.
- 3.4.5 **Quality Assurance:** CITY will monitor CONTRACTOR's performance by random sampling to

insure CONTRACTOR compliance with the requirements of the contract. In the event a contract deficiency exists, CONTRACTOR will be required to explain in writing why performance was unacceptable, how performance will be returned to acceptable levels, and how reoccurrence of the problem will be prevented in the future. CONTRACTOR will not be paid for services not rendered in accordance with the standards set forth in this contract, notwithstanding that CONTRACTOR shall be required to rework services that were unsatisfactorily performed.

3.4.6 **Holidays:** The following is a list of holidays on which contract service will not be performed:

New Year's Eve Night  
New Year's Day  
Martin Luther King's Birthday in January  
President's Day - Third Monday in February  
Memorial Day - Last Monday in May  
Independence Day - July 4  
Labor Day - First Monday in September  
Veteran's Day  
Thanksgiving Holiday - Fourth Thursday and the following Friday in November  
Christmas Eve from 12:00 Noon - December 24  
Christmas Day - December 25

When a holiday named herein falls on Sunday, it shall be observed on the following Monday, and when a holiday named herein falls on Saturday, it shall be observed on the preceding Friday. During the week of a holiday, CONTRACTOR shall adjust his weekly schedule so as to return to the normal weekly schedule the following week.

3.4.7 **CONTRACTOR/City Communications:**

3.4.7.1 **City Contact:**

CITY's point of contact will be Kris Kircher, Park Maintenance Superintendent or Designee, in all matters pertaining to the performance of this contract.

3.4.7.2 **Field Supervisor:**

CONTRACTOR shall have a field supervisor available during working hours for coordination with the City. CONTRACTOR shall provide a digital beeper to CONTRACTOR's field supervisors to enhance communications between CITY and CONTRACTOR's field representative.

3.4.7.3 **Key Personnel:**

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

3.4.7.3.1 CONTRACTOR agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City.

3.4.7.3.2 If key personnel are not available for work under this contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace each personnel with personnel of substantially equal ability and qualifications.

3.4.8 **CONTRACTOR's Employees:** CONTRACTOR's employees shall be required to wear a clean uniform bearing the CONTRACTOR's name. Employees who normally and regularly come into

direct contact with the public shall bear some means of individual identification, such as a nametag or identification card.

- 3.4.9 **Driver's License:** Employees driving the CONTRACTOR's vehicles shall at all times possess and carry a valid vehicle operator's license issued by the State of Arizona.
- 3.4.10 **Conduct:** CONTRACTOR's employees, officers and subcontractors shall not identify themselves as being employees of CITY. Employees shall conduct themselves in such a manner as to avoid embarrassment to CITY, and shall be courteous to the public.
- 3.4.11 **CONTRACTOR's Equipment:** CONTRACTOR shall provide and maintain during the entire period of this contract, equipment sufficient in number, condition and capacity to efficiently perform the work and render the services required by this contract.
  - 3.4.11.1 CONTRACTOR shall provide evidence of his ability to furnish equipment and personnel.
  - 3.4.11.2 All vehicles must be maintained in good repair, appearance and sanitary condition at all times. CITY reserves the right to inspect CONTRACTOR's vehicles at any time to ascertain said condition.
  - 3.4.11.3 CONTRACTOR shall furnish the Contract Administrator/designee with a list identifying all equipment to be used in fulfilling this agreement and notify the Contract Administrator/designee of any additions or deletions. Any changes in CONTRACTOR's equipment from the proposed equipment must have prior approval of the Contract Administrator/designee.
- 3.4.12 **Equipment Identification:** All vehicles used by CONTRACTOR must be clearly identified with the name of the company, address of local office and phone number of local office on each side of the equipment, including personnel transportation vehicles. The letters shall be of such size that they are distinguishable from a reasonable distance.

**EXHIBIT B  
PRICE LIST**

SECTION A <u>Desert Breeze Park</u>	Unit Measure	Est. <u>Qty</u>	Unit <u>Price</u>	Extended <u>Price (annual)</u>
1. Desert Breeze Lake, Hummingbird Garden, Pond maintenance service, <b><u>(Includes Normal Chemical Applications)</u></b>	mo	12	<u>\$750.00</u>	<u>\$9,000.00</u>
2. White Amur fish, per spec	each	30	<u>\$12.00</u>	<u>\$ 360.00</u>
3. Fat head minnows*	Lbs	100	<u>\$16.00</u>	<u>\$ 1,600.00</u>
4. Chemical applications for Special circumstances (i.e. golden algae)	each	2	<u>\$495.0</u>	<u>\$ 990.00</u>
SECTION A, ANNUAL TOTAL OF ALL ITEMS				<u>\$11,950.00</u>

SECTION B <u>Veteran's Oasis Park</u>	Unit Measure	Est. <u>Qty</u>	Unit <u>Price</u>	Extended <u>Price (annual)</u>
1. Lake maintenance service; <b><u>(Includes Normal Chemical Applications)</u></b>	mo	12	<u>\$750.00</u>	<u>\$ 9,000.00</u>
2. White Amur fish, per spec	each	50	<u>\$12.00</u>	<u>\$ 600.00</u>
3. Fat head minnows*	Lbs	150	<u>\$16.00</u>	<u>\$ 2,400.00</u>
4. Chemical applications for Special circumstances (i.e. golden algae)	each	2	<u>\$495.00</u>	<u>\$ 990.00</u>
SECTION B, ANNUAL TOTAL OF ALL ITEMS				<u>\$12,990.00</u>

**GRAND TOTAL SECTION A & B    \$24,940.00**

**\* Price varies with size of fish; 1-3" fish quoted.**