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MEMORANDUM

Public Works Department – Council Memo No. ST08-18

DATE: DECEMBER 12, 2007

TO: MAYOR & COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
PAT MCDERMOTT, ASSISTANT CITY MANAGER
R.J. ZEDER, PUBLIC WORKS DIRECTOR
DANIEL W. COOK, DEPUTY PUBLIC WORKS DIRECTOR
MIKE NORMAND, ACTING ASSISTANT PUBLIC WORKS DIRECTOR/
TRANSPORTATION & OPERATIONS

FROM: DAVID E. FERN, TRANSPORTATION OPERATIONS MANAGER

SUBJECT: MARICOPA ASSOCIATION OF GOVERNMENTS PM-10 (PARTICULATE MATTER) EMISSION 5% REDUCTION PLAN

At the study session on December 10, City staff recommended award of an alley way/arterial roadway shoulder asphalt milling rehabilitation contract to G & G Construction Company in the amount of \$545,740. The City's rehabilitation contract will place asphalt millings in approximately 10 miles of alley way and on about 12 miles of arterial roadway shoulders. All valley governmental agencies committed through Ordinances in their respective governing bodies to assist with the goal of achieving an annual 5% particulate matter reduction over the next three (3) years.

The MAG Regional Council added suggested measures to reduce PM-10 Particulate Matter on May 23, 2007. Currently, there are 55 suggested measures available for air quality improvement efforts. The City's contribution includes implementation of nine (9) of the recommended MAG measures, including two of the reduction measures in this annual project.

The contract award prompted questions from Mayor and Council relative to Maricopa County's contribution to the overall regional PM-10 emission 5% reduction plan effort. The County's commitments include the following:

- 91 new positions added to the Maricopa County Air Quality Department
51 of the new positions will be dust inspectors (bringing the total to 81)

- Implementation of 38 of the PM-10 Five Percent Reduction Plan Measures combined within 24 individual implementation groups

The total cost of this Maricopa County commitment is currently estimated at around \$11 million dollars for this year and about \$13 million dollars for next year. Attachment A lists the PM-10 five percent reduction measures that will be implemented by the County; Attachment B lists all currently suggested PM-10 Particulate Matter Reduction Measures; and Attachment C is a Board of Supervisor's Air Quality Resolution news release noting the County's resource commitment to this effort.

Attachments: A: Board of Supervisors of Maricopa County Five Percent Plan Resolution
B: MAG Suggested List of PM-10 Particulate Matter Reduction Measures
C: Maricopa County Board of Supervisors News Release

ATTACHMENT A

**MARICOPA COUNTY BOARD OF SUPERVISORS
RESOLUTION TO IMPLEMENT MEASURES IN THE MAG 2007 FIVE
PERCENT PLAN FOR PM₁₀ FOR THE MARICOPA COUNTY, ARIZONA
NONATTAINMENT AREA**

RESOLUTION TO IMPLEMENT MEASURES IN THE MAG 2007 FIVE PERCENT PLAN FOR PM₁₀ FOR THE MARICOPA COUNTY, ARIZONA NONATTAINMENT AREA

C. 05.08.004.6.00

WHEREAS, Maricopa Association of Governments (MAG) has been designated by the Governor of Arizona, as the regional air quality planning agency in Maricopa County; and

WHEREAS, the Maricopa County nonattainment area is classified as a Serious Nonattainment Area for PM₁₀ particulate matter according to the Clean Air Act; and

WHEREAS, the Clean Air Act required the Maricopa County nonattainment area to attain the PM₁₀ particulate matter standard by December 31, 2006; and

WHEREAS, the Maricopa County nonattainment area failed to attain the PM₁₀ particulate matter standard by December 31, 2006; and

WHEREAS, due to the Maricopa County nonattainment areas failure to meet the PM₁₀ particulate matter standard MAG as the regional air quality planning agency is required to develop a plan to reduce PM₁₀ emissions by five percent per year until the standard is met ("the Five Percent Plan"); and

WHEREAS, the Five Percent Plan contains commitments by MAG members, including Maricopa County, to implement control measures to reduce PM₁₀ particulate matter emissions; and

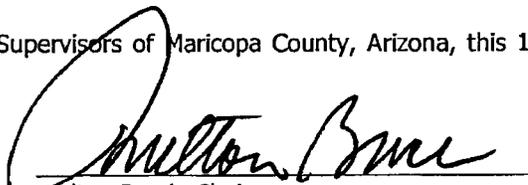
WHEREAS, Arizona Revised Statutes 49-406 G. requires that each agency that commits to implement a control measure describe that commitment in a resolution adopted by the governing body which specifies its authority for implementing the measures as provided in statute, ordinance, or rule; a program for enforcement of the measure; and the level of personnel and funding allocated to the implementation of the measure.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF SUPERVISORS, MARICOPA COUNTY (BOARD) as follows:

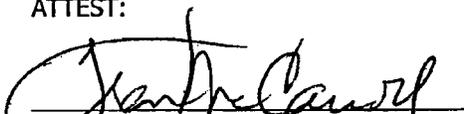
SECTION 1. That the BOARD agrees to proceed with a good faith effort to implement the measures identified in Exhibit A, which is part of this resolution.

SECTION 2. That the BOARD commits to implement the measures as scheduled and with the funding sources identified. Recognizing, however, that the availability of necessary funding may depend on the funding programs or processes of various state and federal agencies, Maricopa County agrees to consider modifications of the funding or schedules for implementation actions, if necessary. Maricopa County agrees to submit any modification to the commitments in Exhibit A to EPA for approval as a SIP revision.

PASSED AND ADOPTED by the Board of Supervisors of Maricopa County, Arizona, this 10th day of September 2007.


Fulton Brock, Chairman

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:

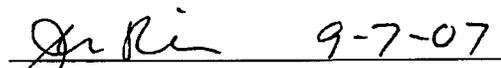
 9-7-07
Deputy County Attorney

EXHIBIT A

MARICOPA COUNTY MEASURES FOR THE MAG 2007 FIVE PERCENT PLAN FOR PM₁₀	
Maricopa County Measure 1	MAG Measure 1. Public education and outreach with assistance from local governments
Maricopa County Measure 2	MAG Measure 2. Extensive dust control training program
Maricopa County Measure 3	MAG Measure 3. Dust managers required at construction sites of 50 acres and greater MAG Measure 6. Better defined tarping requirements in Rule 310 to include enclosure of the bed MAG Measure 16. Require dust coordinators at earthmoving sites of 5-50 acres MAG Measure 43. Require barriers for construction where all activity has ceased MAG Measure 44. Reduce tolerance of trackout to 25 feet MAG Measure 45. No visible emissions across the property line
Maricopa County Measure 4	MAG Measure 4. Dedicated enforcement coordinator for unpaved roads, unpaved parking, and vacant lots MAG Measure 37. Strengthen and increase enforcement of Rule 310.01 for vacant lots
Maricopa County Measure 5	MAG Measure 5. Establish a certification program for dust free developments to serve as an industry standard
Maricopa County Measure 6	MAG Measure 7. Conduct mobile monitoring to measure PM ₁₀ and issue NOVs
Maricopa County Measure 7	MAG Measure 8. Conduct nighttime and weekend inspections
Maricopa County Measure 8	MAG Measure 9. Increase inspection frequency for permitted facilities MAG Measure 10. Increase number of proactive inspections in areas of highest PM ₁₀ emissions densities MAG Measure 55. Increase enforcement in the areas where PM ₁₀ violations continue to occur, along with efforts throughout the region.
Maricopa County Measure 9	MAG Measure 11. Notify violators more rapidly to promote immediate compliance
Maricopa County Measure 10	MAG Measure 12. Provide timely notification regarding high pollution days
Maricopa County Measure 11	MAG Measure 13. Develop a program for subcontractors
Maricopa County Measure 12	MAG Measure 14. Reduce dragout and trackout emissions from nonpermitted sources MAG Measure 32. Pave or stabilize existing public dirt roads and alleys MAG Measure 40. Ability to assess liens on parcels to cover the costs of stabilizing them MAG Measure 45. No visible emissions across the property line
Maricopa County Measure 13	MAG Measure 18. Fully implement Rule 316
Maricopa County Measure 14	MAG Measure 21. Ban or discourage use of leaf blowers on high pollution advisory days
Maricopa County Measure 15	MAG Measure 25. Ban leaf blowers from blowing debris into streets
Maricopa County Measure 16	MAG Measure 29. Sweep streets with PM ₁₀ certified street sweepers
Maricopa County Measure 17	MAG Measure 31. Pave or stabilize existing unpaved parking lots
Maricopa County Measure 18	MAG Measure 32. Pave or stabilize existing public dirt roads and alleys
Maricopa County Measure 19	MAG Measure 33. Limit speeds to 15 miles per hour on high traffic dirt roads
Maricopa County Measure 20	MAG Measure 35. Pave or stabilize unpaved shoulders
Maricopa County Measure 21	MAG Measure 36. Create a fund for paving and stabilizing in high pollution areas
Maricopa County Measure 22	MAG Measure 22. Reduce off-road vehicle use in areas with high off-road vehicle activity MAG Measure 38. Restrict vehicular use and parking on vacant lots MAG Measure 39. Enhanced enforcement of trespass ordinances and codes
Maricopa County Measure 23	MAG Measure 41. Increase fines for open burning MAG Measure 42. Restrict use of outdoor fireplaces and pits and ambience fireplaces in the hospitality industry
Maricopa County Measure 24	MAG Measure 46. Modeling cumulative impacts

MEASURES WHICH ARE NOT FEASIBLE FOR IMPLEMENTATION

MAG Measure 17. Create a dedicated funding source for the Maricopa County Air Program

MAG Measure 26. Implement a leaf blower outreach program

MAG Measure 30. Retrofit onroad diesel engines with particulate filters

MAG Measure 34. Prohibit new dirt roads including those associated with lot splits

MAG Measure 50. Support Maricopa County in receiving statutory authority to prohibit new dirt roads including those associated with lot splits.

MAG Measure 53. The Arizona State Legislature provide funding to this region for paving dirt roads and shoulders and provide a funding source to local governments for the enforcement of non-permitted sources.

MAG Measure 54. Required to install two or more continuous PM₁₀ monitors at larger construction and mineral production facilities in excess of 50 acres

ATTACHEMENT B
MAG SUGGEST LIST OF MEASURES TO REDUCE PM₁₀ PARTICULATE
MATTER (CURRENT THROUGH 5-23-2007)

SUGGESTED LIST OF MEASURES TO REDUCE PM-10 PARTICULATE MATTER

These measures may or may not be feasible
and available to the implementing entities

MEASURE	POTENTIAL IMPLEMENTING ENTITY
Fugitive Dust Control Rules	
1. Public education and outreach (e.g., Clark County) with assistance from local governments - This measure would involve publicity campaigns (e.g., Bring Back Blue) that increase public awareness of the PM-10 problem and discourage citizens from participating in activities that generate airborne dust.	County, local governments
2. Extensive Dust Control Training Program (e.g., Clark County) - This measure would involve conducting more frequent dust control training classes and implementing a formal certification program. The County would provide advanced training to representatives of trade associations to qualify them to conduct classes and issue certifications. The County video on dust control rules and practices will be updated and distributed to public agencies and private companies for use in training their employees.	County, private sector
3. Dust Managers required at construction sites of 50 acres and greater (e.g., Clark County) - This measure would require a dust manager to be present on construction sites where 50 or more acres of soil are disturbed.	County
4. Dedicated enforcement coordinator for unpaved roads, unpaved parking, and vacant lots (e.g., Clark County) - This measure would require that additional resources be dedicated to strengthen enforcement of Rule 310.01 for unpaved roads, unpaved parking lots, and vacant disturbed lots.	County
5. Establish a certification program for Dust Free Developments to serve as an industry standard - This measure would create a program to certify and publicize companies that routinely demonstrate exceptional efforts to reduce airborne dust.	State, County
6. Better defined tarping requirements in Rule 310 to include enclosure of the bed - This measure would modify Rule 310 to require that the cargo compartments of trucks whether loaded or empty be fully enclosed prior to traveling on paved public roads.	County

MEASURE	POTENTIAL IMPLEMENTING ENTITY
7. Conduct mobile monitoring to measure PM-10 and issue NOVs - This measure involves deployment of a vehicle that has been instrumented to monitor PM-10 and meteorological conditions, so that sources can be identified, and immediate remediation and/or enforcement actions taken.	County
8. Conduct nighttime and weekend consistent inspections - This measure would involve proactive consistent inspections of nonpermitted and permitted PM-10 sources during non-daylight hours and on weekends.	County
9. Increase consistent inspection frequency for permitted facilities - This measure would increase the number of proactive consistent inspections conducted at permitted facilities.	County
10. Increase number of proactive consistent inspections in areas of highest PM-10 emissions densities - intensify training and education - incentive program for compliance - This measure would focus on the areas of highest PM-10 emissions density by increasing the number of inspectors and proactive consistent inspections, conducting on-site training, offering incentives to reduce PM-10, and performing community outreach.	County
11. Notify violators more rapidly to promote immediate compliance - This measure would require inspectors that observe visible dust (e.g., opacity or trackout levels that are approaching rule limits) to call the permit holder and make reasonable efforts to inform a person on-site, so that measures can be taken to prevent, reduce, or mitigate dust generation before a violation occurs.	County
12. Provide timely notification regarding high pollution days - This measure would provide timely notification to permitted and nonpermitted sources when a High Pollution Advisory or High Pollution Watch is issued by ADEQ.	County
13. Develop a program for subcontractors - This measure would develop a program to register, educate, and give notices of violation (NOVs) to subcontractors through Rule 310. This program would not preclude the issuance of NOVs to the permit holder.	County
14. Reduce dragout and trackout emissions from nonpermitted sources - This measure would add dragout provisions to Rules 310 and 310.01 and enforce dragout and trackout provisions for nonpermitted sources. For example, trackout from salvage yards would be enforced by the County.	County

MEASURE	POTENTIAL IMPLEMENTING ENTITY
15. Cover loads/haul trucks in Apache Junction - This measure would require loaded and empty haul trucks to be covered in the City of Apache Junction.	City of Apache Junction
16. Require dust coordinators at earthmoving sites of 5-50 acres - This measure would require an onsite dust control coordinator to be present on sites of 5 to 50 acres during active soil and rock excavation, soil and rock removal, and construction operations, including road construction operations, and related transport activities at access points to paved or unpaved roads. This person could also perform other tasks, but would be responsible for managing dust prevention and control on the site.	County
General	
17. Create a dedicated funding source for the Maricopa County Air Program - This measure would create a dedicated funding source for the County Air Program to support increased enforcement of Rule 310.01, and other air programs, as necessary. Example: Restore In-Lieu funding or some other fee to emissions testing, or other approach.	State, County
Industry	
18. Fully implement Rule 316 - This measure would enforce the provisions of Rule 316, adopted by Maricopa County in June 2005, for nonmetallic mineral processing sources of PM-10.	County, private sector
19. Require private companies to use PM-10 certified street sweepers on paved areas including parking lots (e.g., Clark County) - This measure will require paved surfaces (e.g., parking lots) owned by private companies to be swept using PM-10 certified street sweepers.	State, private sector
20. Provide incentives to shift hours of operation during stagnant conditions in November through February - This measure would provide incentives to postpone activities that generate dust until after 9 a.m. on days between November 1 and February 15 when ADEQ issues a High Pollution Advisory (HPA) under stagnant conditions.	State
Nonroad Activities	
21. Ban or discourage use of leaf blowers on high pollution advisory days - This measure would restrict or prohibit the use of leaf blowers on days when ADEQ issues a High Pollution Advisory (HPA).	State, County
22. Reduce off-road vehicle use in areas with high off-road vehicle activity (e.g., Goodyear Ordinance) - impoundment or confiscation of vehicles for repeat violations - This measure would involve development and enforcement of ordinances or implementation of other actions to prevent or discourage off-road vehicle use in the PM-10 nonattainment area.	State, County, local governments

MEASURE	POTENTIAL IMPLEMENTING ENTITY
23. Create a fund to provide incentives to retrofit nonroad diesel engines and encourage early replacements with advanced technologies - This measure would establish funding to offer incentives for owners of older nonroad diesel equipment to retrofit or repower existing engines or replace with newer, less-polluting technology.	State
24. Encourage early implementation of clean fuels for nonroad equipment. - This measure would provide incentives for nonroad equipment to be retrofitted with diesel retrofit kits, newer clean diesel technologies and fuels; or “green diesel” biodiesel fuel, or other fuels that are cleaner than petroleum diesel.	State
25. Ban leaf blowers from blowing debris into streets - This measure would ban leaf blowers from blowing debris into the streets in Maricopa County.	State, County
26. Implement a leaf blower outreach program - This measure would involve the development and distribution of educational materials on reducing leaf blower dust and would require the private sector to provide the printed materials to customers who purchase or rent leaf blowers.	County, private sector
27. Regulate and increase enforcement of ATV use on State land - This measure would require the State to regulate and increase enforcement of all-terrain and off-highway vehicle use on State lands located in Area A.	State
28. Ban ATV use on high pollution days - This measures would ban ATV use on High Pollution Advisory days in Area A.	State
Paved Roads	
29. Sweep streets with PM-10 certified street sweepers - This measure would require all public paved roads in the PM-10 nonattainment area to be swept with purchased or contracted PM-10 certified sweepers.	County, local governments
30. Retrofit onroad diesel engines with particulate filters - This measure would establish a program with financial incentives to encourage the voluntary retrofit pre-2007 onroad diesel vehicles with particulate filters and oxidation catalysts.	State, County
Unpaved Parking Lots	
31. Pave or stabilize existing unpaved parking lots (e.g., upgrade to Phoenix Parking Code) - strengthen enforcement - This measure would involve strengthening and proactively enforcing dust control rules or ordinances that reduce fugitive dust and PM-10 emissions from existing unpaved parking and vehicle maneuvering areas.	County, local governments

MEASURE	POTENTIAL IMPLEMENTING ENTITY
Unpaved Roads	
32. Pave or stabilize existing public dirt roads and alleys - This measure would revise Rule 310.01 to require paving or stabilizing of public dirt roads that carry less than 150 vehicles per day (e.g., more than 50 vehicles per day).	County, local governments
33. Limit speeds to 15 miles per hour on high traffic dirt roads - This measure would require 15 mph speed limit signs to be posted on dirt roads in the PM-10 nonattainment area that carry high traffic (e.g., 50-150 vehicles per day).	County, local governments
34. Prohibit new dirt roads including those associated with lot splits - This measure would prevent the construction of new dirt roads (e.g., prohibit wildcat subdivisions; require paving of roads before issuing a building permit) in the PM-10 nonattainment area.	State, County
Unpaved Shoulders	
35. Pave or stabilize unpaved shoulders - This measure would require paving or stabilizing dirt shoulders on paved public roads that carry a high level of traffic (e.g., more than 2,000 vehicles or 50 heavy duty trucks per average weekday).	County, local governments
Unpaved Surfaces	
36. Create a fund for paving and stabilizing in high pollution areas - This measure would create a particulate mitigation fund to pave and stabilize land surfaces in and around high pollution areas - Establish a grant program for private businesses to stabilize and pave - Direct fine monies from Maricopa County for stabilization efforts.	State, County, private sector
Vacant Lots	
37. Strengthen and increase enforcement of Rule 310.01 for vacant lots - This measure would increase the frequency of inspections and enforcement actions to reduce dust emitted by vacant lots.	County
38. Restrict vehicular use and parking on vacant lots (e.g., Phoenix) - This measure would strengthen existing rules and ordinances that prohibit vehicle trespass on vacant land.	State ¹ , County, local governments
39. Enhanced enforcement of trespass ordinances and codes - This measure would increase the enforcement of vehicle trespass ordinances and codes for vacant lots.	County, local governments

¹State was added by the Regional Council on March 28, 2007.

MEASURE	POTENTIAL IMPLEMENTING ENTITY
40. Ability to assess liens on parcels to cover the costs of stabilizing them² - This measure would give the County the authority to provide that the costs of stabilizing the disturbed areas on any vacant lot be assessed upon the property to which the stabilization was applied.	State, County
Woodburning	
41. Increase fines for open burning (currently \$25) - This measure would increase the maximum fine for open burning in ARS Title 49-501 from \$25 per occurrence to a level that would serve as a deterrent (e.g., \$500 per occurrence).	State, County
42. Restrict use of outdoor fireplaces and pits and ambience fireplaces in the hospitality industry - This measure would prohibit burning in outdoor fireplaces, outdoor pits, and ambience fireplaces in the hospitality industry, and ban other nonessential wood fires on days during the period November 1 - February 15 when ADEQ issues a High Pollution Advisory (HPA).	State, County
Additional PM-10 Measures Approved by the MAG Regional Council on May 23, 2007, with the understanding that the actions would receive further refinement and input in the implementation process	
43. Require barriers in addition to Rule 310 stabilization requirements for construction where all activity has ceased, except for sites in compliance with storm water permits.	County
44. Reduce the tolerance of trackout to 25 feet before immediate cleanup is required for construction sites be placed in Maricopa County Rule 310.	County
45. No visible emissions across the property line be placed in Maricopa County Rule 310 and 310.01, and in local ordinances for nonpermitted sources as appropriate.	County, local governments
46. Modeling cumulative impacts - This measure would need further definition by Maricopa County and the Arizona Department of Environmental Quality and be subject to input to ensure that unintended consequences for temporary uses are not created.	State, County
47. MAG member agencies reexamine existing ordinances to ensure that nonpermitted sources, such as unpaved parking, unpaved staging areas, unpaved roads, unpaved shoulders, vacant lots and open areas, receive priority attention.	Local governments

²This measure was added by the MAG Regional Council on March 28, 2007.

MEASURE	POTENTIAL IMPLEMENTING ENTITY
48. Forward to the Governor's Agricultural Best Management Practices Committee that cessation of tilling be required on high wind days and that agricultural best management practices be required in existing Area A.	State
49. The Arizona State Legislature provide funding to the Arizona Department of Environmental Quality for four agriculture dust compliance officers for a total of five inspectors.	State
50. Support Maricopa County in receiving statutory authority to prohibit new dirt roads including those associated with lot splits. At a minimum, this would be within the Maricopa County PM-10 Nonattainment Area.	State, County
51. Each year the Maricopa Association of Governments conduct an inventory of dirt roads and estimated traffic counts by jurisdiction to measure progress in eliminating dirt roads. Also each year, MAG would issue a report on the status of the implementation of the committed measures for this region by the cities, towns, Maricopa County and the State. The reports would be made available to the Governor's Office, Legislature, the Arizona Department of Environmental Quality and the Environmental Protection Agency.	MAG, State, County, local governments
52. MAG allocate \$5 million in FY 2007 MAG federal funds matched on a 50/50 basis by MAG member agencies for paving dirt roads and shoulders projects and that these projects be immediately submitted to MAG for consideration at the July meetings of the MAG Management Committee and Regional Council for an amendment to the Transportation Improvement Program. These funds would be on a nonsupplanting basis for new projects.	MAG, County, local governments
53. The Arizona State Legislature provide funding to this region for paving dirt roads and shoulders and provide a funding source to local governments for the enforcement of nonpermitted sources, such as unpaved parking, unpaved vehicle staging areas, unpaved roads, unpaved shoulders, vacant lots and open areas. Also to provide funding to Maricopa County for additional inspectors for the enforcement of Maricopa County Rule 310.	State, County, local governments
54. Maricopa County Rules 310 and 316 be amended to provide that larger construction and mineral production facilities in excess of 50 acres be required to install two or more PM-10 samplers certified by the County. These samplers will be operated simultaneously for five consecutive hours during operating hours for the site or facility. These samplers will not meet EPA approved methods for ambient air quality monitoring.	County

MEASURE	POTENTIAL IMPLEMENTING ENTITY
55. Maricopa County should increase consistent enforcement in the areas where PM-10 violations continue to occur, along with efforts throughout the region. When an area continually experiences higher PM-10 concentrations than other areas, increased enforcement in areas experiencing high monitor readings is needed to protect public health.	County

Special Notes:

1. Further refinement of these measures may be made as additional information becomes available through the planning process. During the summer of 2007, the Maricopa Association of Governments will use the Maricopa County 2005 Periodic Emissions Inventory, finalized in May 2007, as well as commitments for measures received from the implementing entities, to quantify emission reductions and conduct air quality modeling for the Five Percent Plan.
2. The Governor's Agricultural Best Management Practices Committee is in the process of evaluating potential measures to further reduce PM-10 emissions from agriculture for consideration for the Five Percent Plan for PM-10. This Committee was established by law in 1998 (Arizona Revised Statutes, Title 49-457) to develop an agricultural PM-10 general permit that would address the need for controls on agricultural operations. The potential agricultural measures will be presented to the MAG Air Quality Technical Advisory Committee for consideration.

ATTACHMENT C

MARICOPA COUNTY BOARD OF SUPERVISORS NEWS RELEASE

NEWS

for immediate release



MARICOPA COUNTY
Clerk of the Board of Supervisors
301 W. Jefferson , 10th Floor
Phoenix, AZ 85003

www.maricopa.gov

Unprecedented Air Quality Resolution Approved by Supervisors

A resolution of unprecedented magnitude has been approved by the Maricopa County Board of Supervisors. The Board committed to 38 measures of the Maricopa Association of Governments' (MAG) *Five Percent Plan*, designed to reduce PM 10 emissions by five percent per year until the EPA standard is met. The increased staffing and funding dedicated to improving the quality of our air is monumental, indicating the Board's commitment to battling this severe issue.

\$11 million dollars have been committed to this effort for this year and \$13 million for next year. The measures include public education and outreach, dedicated enforcement for unpaved roads and parking, mobile monitoring and notification of high-pollution days.

A key measure approved by the Supervisors adds 91 new positions to the Maricopa County Air Quality Department. 51 of those positions are dust inspectors, which brings the total number of dust inspectors to 81. With the number of inspectors in the field more than doubled, more enforcement and education can be accomplished. The new employees will be hired in phases and the Air Quality Department hopes to complete all hiring and training by June 2008.

Director of the Maricopa County Air Quality Department, Bob Kard, says, "These inspectors will be trained to take enforcement action whenever a violation is seen and they will also be able to provide even more on-site dust control training. Furthermore, we will assign inspectors to go out at various hours of the night and on weekends to ensure we know just what is going on in this region."

According to the federal Clean Air Act, Maricopa County has been classified as a serious non-attainment area for PM 10 particulate matter. Maricopa County has responded by creating an Air Quality Department and developing and expanding efforts to clear the air via inspections, enforcing compliance, education and outreach.

The Bring Back Blue skies campaign is a part of the comprehensive plan. To find out more, please visit www.bringbackblue.org.

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**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. ST08-015**

1. Agenda Item Number:
39
2. Council Meeting Date:
December 13, 2007

TO: MAYOR & COUNCIL
THROUGH: CITY MANAGER

3. Date Prepared: November 26, 2007
4. Requesting Department: Public Works

5. SUBJECT: Award Contract No. PW8-745-2536 for Alley & Road Shoulder Rehabilitation/Dust Control to G & G Construction Company in the amount of \$545,740 for one year with the option to renew for two (2) additional one-year periods and approve a contingency reserve account transfer of \$545,740 from Management Services Contingency and Reserves Fund (Account Number 101.1290.0000.5911) into Street Division Asphaltic Pavement Fund (Account Number 101.3300.0000.6513).

6. RECOMMENDATION: Recommend approval of Contract No. PW8-745-2536 for Alley & Road Shoulder Rehabilitation/Dust Control to G & G Construction Company in the amount of \$545,740 for one-year with the option to renew for two (2) additional one-year periods and approve a contingency reserve account transfer of \$545,740 from Management Services Contingency and Reserves Fund (Account Number 101.1290.0000.5911) into Street Division Asphaltic Pavement Fund (Account Number 101.3300.0000.6513).

7. BACKGROUND/DISCUSSION: The City will be performing alley and road shoulder dust suppression and rehabilitation throughout the City as part of the County's regional particulate material 10 micron and larger (PM-10) 5% reduction plan required by the Environmental Protection Agency through the State of Arizona. The work will consist of lowering the alleys and road shoulder grades and replacing the existing aggregate material with crushed asphalt millings, an approved treatment to reduce PM-10 dust. The asphalt millings will be graded, compacted, and alleys sealed with an asphalt sealer to rejuvenate the asphalt. This process will significantly reduce dust emissions in the alleys and on the road shoulders. The first phase of the project consists of placing asphalt millings on approximately 10 miles of alleys and 11.5 miles of arterial road shoulder. The three phases over the three (3) year period will complete a total of approximately 30 miles of alley and 36 miles of roadway shoulder dust stabilization.

8. EVALUATION: On November 7, 2007, nine (9) bids were received and eight bids (8) opened on November 8, 2007 with the results as follows:

G & G Construction Company	\$545,740
Cactus Asphalt	\$864,790
Rummel Construction	\$874,475
DBA Construction, Inc.	\$1,194,775
Standard Construction Company	\$1,736,100
Knochel Brothers, Inc.	\$1,861,400
Markham	\$1,919,600
International Surfacing Systems	\$2,678,552
Silver Eagle Western	Pulled Bid

The engineer's estimate is \$1,376,000. The total contract time will be 365 calendar days.

9. FINANCIAL IMPLICATIONS:

Cost: \$545,740
Savings: N/A
Long Term Costs: N/A
Fund Source:

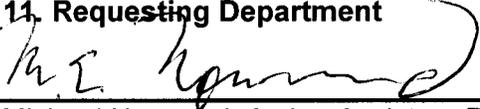
<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
101.3300.0000.6513	General Fund	Street Maintenance	N/A	\$545,740

10. PROPOSED MOTION: Move that Council award Contract No. PW8-745-2536 to G & G Construction Company for Alley & Road Shoulder Rehabilitation/Dust Control to G & G Construction Company in the amount of \$545,740, authorize a contingency reserve account transfer of \$545,740 from Management Services Contingency and Reserves Fund (Account Number 101.1290.0000.5911) into Street Division Asphaltic Pavement Fund (Account Number 101.3300.0000.6513), and authorize the Mayor to sign the contract documents.

ATTACHMENTS: Location Map

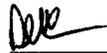
APPROVALS

11. Requesting Department



Michael Normand, Acting Assistant Public Works
Director/Transportation & Operations

13. Department Head



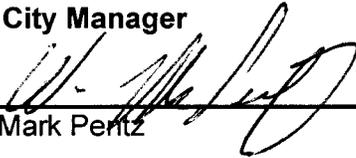
R.J. Zeder, Public Works Director

12. Procurement Officer



Sharon Brause, CPPB

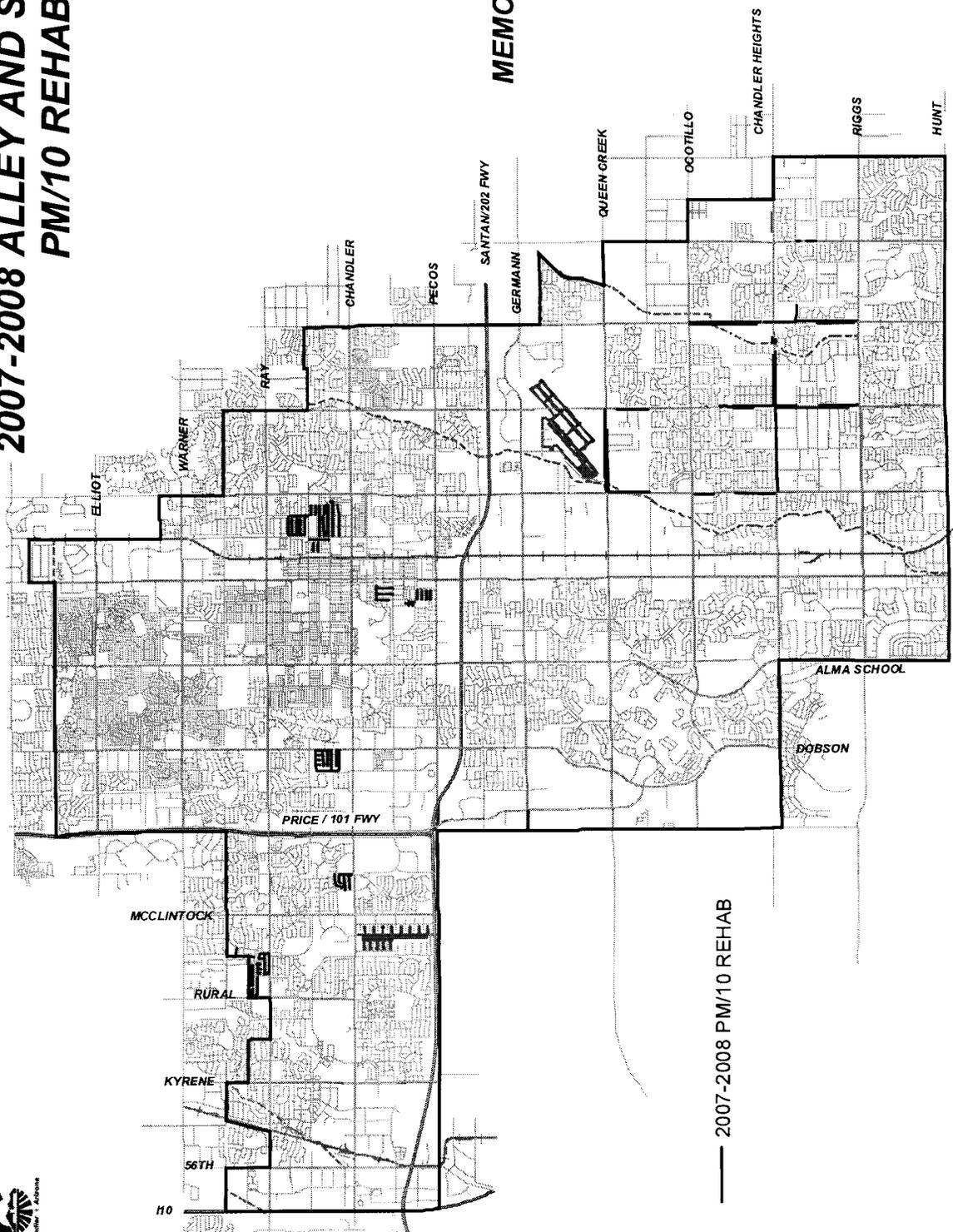
14. City Manager



W. Mark Pentz

2007-2008 ALLEY AND SHOULDER PM/10 REHAB

MEMO NO. ST08-015



—— 2007-2008 PM/10 REHAB

**CITY OF CHANDLER SERVICES AGREEMENT
ALLEY & ROAD SHOULDER REHABILITATION / DUST CONTROL
CONTRACT NO.: PW8-745-2536**

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 **G&G CONSTRUCTION CO.**, a Corporation of the State of Arizona, hereinafter referred to as "CONTRACTOR".

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

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

1. CONTRACT ADMINISTRATOR:

1.1. Contract Administrator. CONTRACTOR shall act under the authority and approval of the Sr. Street Maintenance Coordinator /designee (Contract Administrator), to provide the services required by this Agreement.

1.2. Key Staff. This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

1.3. Subcontractors. During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

1.4. Subcontracts. CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide alley and shoulder rehabilitation / dust control work 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 Specifications and details included therein.

2.1. Non-Discrimination. The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.2. Licenses. CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.

2.3. Advertising, Publishing and Promotion of Contract. The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.

2.4. Compliance With Applicable Laws. CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.

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.

3.5 **PRICE:**

CITY shall pay to CONTRACTOR an amount not to exceed Five Hundred Forty Five Thousand Seven Hundred Forty Dollars (\$545,740) for the completion of all the work and services described herein, which sum shall include all costs or expenses (excluding tax) incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.

4. **TAXES**

- 4.1 CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.2 **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.
- 4.3 **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.4. **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.
- 4.6. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.7. **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If

CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.

4.8. Price Reduction. CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.

5. TERM:

5.1. The term of the Contract is one (1) year, commencing on the 14th of December, 2007 and terminating on unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to two (2) additional terms of one-year each.

5.2. The work must be completed within one hundred eighty (180) calendar days from the Notice to Proceed.

6. USE OF THIS CONTRACT:

6.1 The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.

6.2 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.

6.3 Emergency Purchases. CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. CITY'S CONTRACTUAL REMEDIES:

7.1. Right to Assurance. If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

7.2. Stop Work Order. The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

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

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

- 7.5. Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.
- 8. TERMINATION:**
- 8.1. Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and SUBCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the **Management Services Director** shall determine the percentage of work performed 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 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 non-prevailing party, except as provided for herein. The determination of prevailing and non-prevailing 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 there from;
- 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: Public Works
Contact: Rex Hartmann
Mailing Address: PO Box 4008 – MS 909
Physical Address: 975 E Armstrong Way
Bldg C
City, State, Zip Chandler AZ 85249
Phone: 480-782-3493
FAX: 480782-3495

In the case of the CONTRACTOR

Firm Name: G&G Construction Co
Contact: Monica Hills
Address: 9001 E Eagle Feather
City, State, Zip Tucson, AZ 85749
Phone: 520-749-2998
FAX: 520-749-8480

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

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

Arizona.

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

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

FOR THE CITY OF CHANDLER

MAYOR

ATTEST:

City Clerk

Approved as to form:

City Attorney
pm

FOR THE CONTRACTOR

By: *Monica Gear*
Signature

ATTEST: If Corporation

SEAL

Maria Jean
Secretary

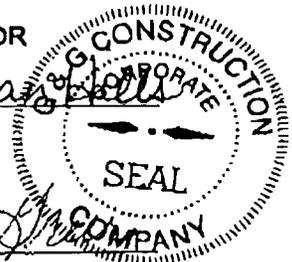


EXHIBIT A SCOPE OF WORK

1. STANDARDS & SPECIFICATIONS:

- 1.1 Alley or alley right-of-ways** shall be cut by CONTRACTOR and over-excavated 4" to 6" below the current surface grade at an average of 14' wide.
- 1.2 Arterial and collector street shoulders and shoulder right-of-ways** shall be cut and over-excavated 2" to 3" below edge of pavement grade by CONTRACTOR at an average of 10' wide.
- 1.3** The **alley** sub-grade shall be compacted to 90% by CONTRACTOR as outlined in Maricopa Association of Governments (MAG) standard specification 301.
- 1.4** The **road shoulder** sub-grade shall be compacted to 95% by CONTRACTOR as outlined in Maricopa Association of Governments (MAG) standard specification 301.
- 1.5** The **alley** asphalt millings shall be sealed with a fog seal coat (ss-1h, css-1h or cqsh or approved equal or approved superior product) by CONTRACTOR as outlined in MAG 333 standard specification or as specified by the Street Division.
- 1.6** The finished **shoulders** shall be compacted to 100% relative density by CONTRACTOR as determined in MAG 310 and 313 standard specifications or until compaction has met its optimum density as approved by the engineer or contracting agency using typical rolling patterns.
- 1.7** The finished **alleys** shall be compacted to 100% relative density by CONTRACTOR as determined in MAG 310 and 313 standard specifications or until compaction has met its optimum density as approved by the Street Division inspector using typical rolling patterns.
- 1.8** All (water valves, manhole lids, survey monuments, water meters, etc...) shall be protected, adjusted to grade and collared in concrete when existing or required by CONTRACTOR.
- 1.9** CONTRACTOR shall, at their cost, replace all property, materials or equipment both private and public that is destroyed, damaged, ruined or left contaminated.

2. NOTIFICATION OF PUBLIC:

- 2.1** CONTRACTOR shall notify all affected citizens and businesses by door flyer 48 hours prior to work beginning and include any and all pertinent information, description of work, time, schedules and CONTRACTORS name with 24-hour contact numbers. The flyer information shall be submitted to the CONTRACT ADMINISTRATOR / designee for approval before distribution.
- 2.2** Extreme care shall be taken by CONTRACTOR to ensure that all alley access (gates, garage doors, etc...) is clear and free of material that would obstruct operation or admission.

3. INSPECTION, COORDINATION & SAFETY:

- 3.1** CONTRACTOR shall identify (Blue Stake) and coordinate all work with any and all solid waste, utility or communication companies, CITY departments and the CITY Utility Coordinator for scheduling and work conflicts. All utilities or communications shall be marked, protected, adjusted and repaired as needed and as supervised by CONTRACTOR. CONTRACTOR shall establish meetings with utility, communication companies (Cox, Qwest, SRP, APS etc...) and CITY's Solid Waste garbage pick-up prior to start of work. CONTRACTOR shall maintain weekly schedules and coordinate work with solid waste, utility, communication companies and CITY Utility Coordinators. CONTRACTOR shall have utility and communication companies verify depth, location and repair all lines not buried to the proper

depths or in inappropriate right-of-ways.

CITY utility contacts are:

Lori Ali:	480-782-3310 (Office)	480-277-2252 (Mobile)
Adan Clemente:	480-782-3325 (Office)	480-215-9266 (Mobile)
Joe Velasquez:	480-782-3358 (Office)	480-215-9259 (Mobile)

1.2 CITY's Street Division will assist with the alley trash container removal and replacement with a 72-hour notice, to be coordinated by CONTRACTOR.

1.3 All traffic control, traffic control plans and project information signs shall be submitted and approved by CITY's Traffic Department by CONTRACTOR before any work shall progress. Uniformed Police officers shall be required only if shoulder work impedes traffic within 300' of lit intersections or as determined by the CITY's Traffic Department and paid for by CONTRACTOR.

1.4 Final and daily progress inspections will be conducted by CONTRACT ADMINISTRATOR / designee and CONTRACTOR.

4. MATERIAL:

4.1 The over-excavated **alley** waste material shall be hauled off and disposed of by CONTRACTOR at their expense.

4.2 The fill material used by CONTRACTOR shall consist of asphalt millings provided by CITY from stockpiles located at the Roosevelt well site (S. Roosevelt Ave just south of W. Frye Road).

4.3 CONTRACTOR shall screen (size), load, transport, place, water, grade, compact and fog seal the **alley** asphalt millings.

4.4 The **alley** asphalt milling maximum size shall not be greater than materials that shall pass freely through a 3" power screen or stationary grizzly type screen to be supplied by CONTRACTOR.

4.5 The asphalt millings shall replace the material in the **alleys** and be placed in a uniformed manner by CONTRACTOR.

4.6 The excavated **shoulder** waste material shall be hauled off and disposed of by CONTRACTOR at their expense.

4.7 The fill material used by CONTRACTOR shall consist of asphalt millings provided by CITY from stockpiles located at the Roosevelt well site (S. Roosevelt Ave just south of W. Frye Road).

4.8 The **shoulder** asphalt milling maximum size used by CONTRACTOR shall not be greater than materials that will pass freely through a 2" power screen or stationary grizzly type screen.

4.9 CONTRACTOR shall screen (size), load, transport, place, water, grade and compact the **shoulder** asphalt millings.

4.10 The asphalt millings shall replace the over-excavated waste material on the **shoulders** and be placed in a uniformed manner by CONTRACTOR.

4.11 Extreme care shall be taken by CONTRACTOR to the graded **shoulder** to provide a presentable and well-drained area.

5. PROTECTION OF PROPERTY & TREATED SURFACE:

- 5.1.1** Extreme care shall be taken by CONTRACTOR to the graded **alley** to provide a presentable and well-drained area.
- 5.1.2** Extreme care shall be taken by CONTRACTOR to the graded **shoulder** to provide a presentable and well-drained area.
- 5.1.3** CONTRACTOR shall conduct clean up after each day and at the end of the project to include streets, grates, and sidewalks and around all gates or entrances.
- 5.1.4** All property, both CITY and public, shall be protected by CONTRACTOR from equipment, manpower, materials and fog seal oils.
- 5.1.5** **Alley** fog seals shall be protected by CONTRACTOR with barricades from the public, vehicle traffic and all other interrelated work.
- 5.1.6** CONTRACTOR shall clean up all fog seal track out from the **alleys** and adjust flow rates when required or directed by the CONTRACT ADMINISTRATOR / designee.
- 5.1.7** Any large or unsecured materials shall be removed and replaced by CONTRACTOR at the CONTRACT ADMINISTRATOR / designee's discretion.

**EXHIBIT B
PRICING**

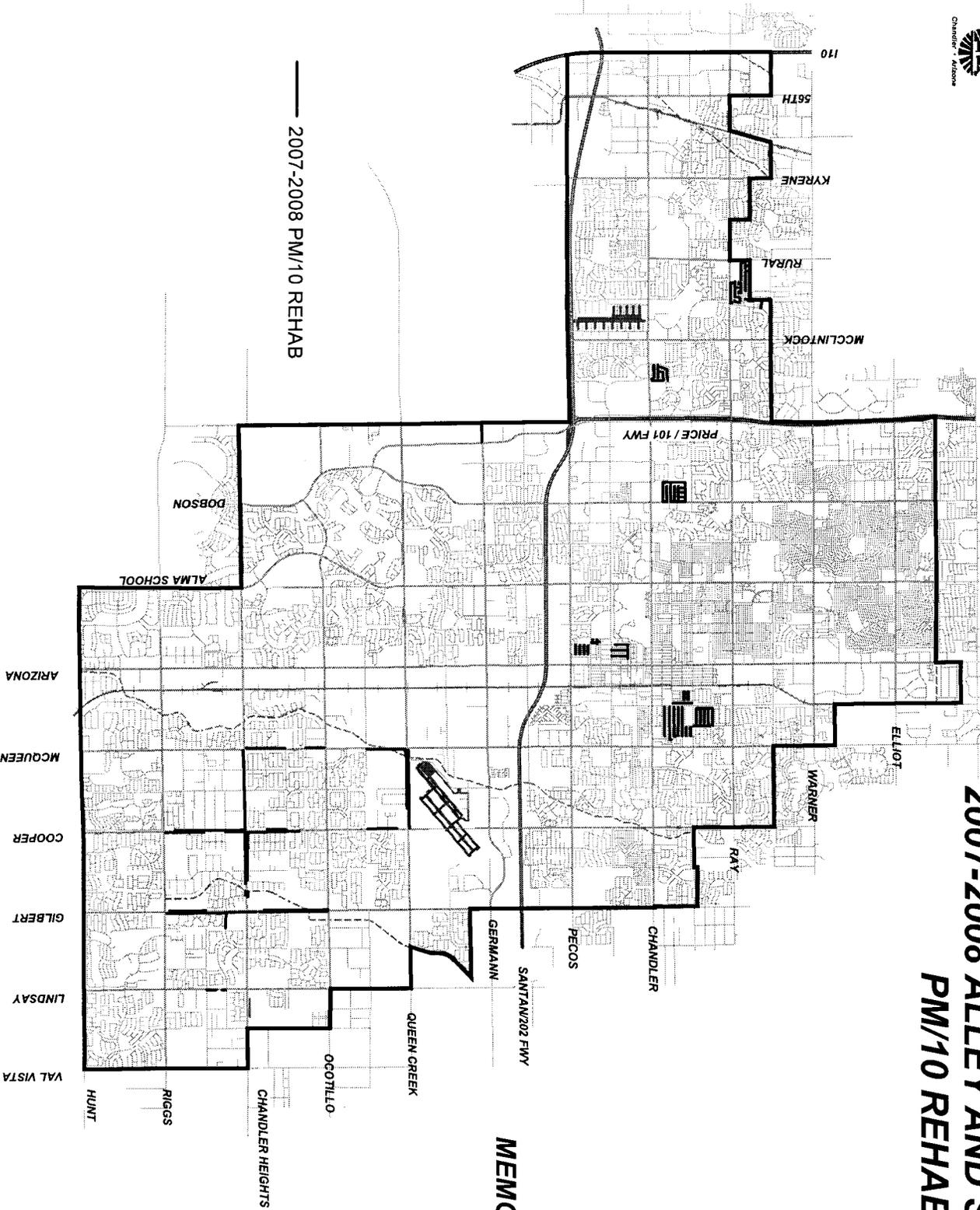
No.	Description	Est. Qty.	Unit	Unit Price	Extended Price
1	Cut / over-excavate alley 4"-6"	110,000	SY	\$1.71	\$188,100.00
2	Cut / over-excavate shoulder 2"-3"	80,000	SY	\$0.97	\$77,600.00
3	Alley asphalt millings (prepared & placed)	110,000	SY	\$1.47	\$161,700.00
4	Shoulder asphalt millings (prepared & placed)	80,000	SY	\$0.85	\$68,000.00
5	Asphalt Emulsion (Fog Seal)	11,000	GL	\$1.54	\$16,940.00
6	Pre-video Alley Conditions	1	LS	\$3,500.00	\$3,500.00
7	Traffic Control Per Job	1	LS	\$10,500.00	\$10,500.00
8	Project Signs	1	LS	\$2,400.00	\$2,400.00
9	Information Signs	1	LS	\$1,500.00	\$1,500.00
10	Adjust Manholes	50	Ea	\$100.00	\$5,000.00
11	Adjust Valve Boxes	70	Ea	\$100.00	\$7,000.00
12	Survey Monuments	5	Ea	\$700.00	\$3,500.00

TOTAL (Items 1- 12 inclusive)	\$545,740.00 + tax
Five Hundred Forty Five Thousand Seven Hundred Forty Dollars and 00/100 plus any applicable tax.	(In Numbers)
_____	Dollars
(In Words)	
_____	Cents
(In Words)	



2007-2008 ALLEY AND SHOULDER PM/10 REHAB

MEMO NO. ST08-015



City Estimate
AC Millings on Arterial Road Shoulders and in Alleys

\$545,700	}	Eight (8) Bidders
\$864,790		
\$874,475		
\$1,194,775		
\$1,736,100		
\$1,861,400		
\$1,919,600		
\$2,678,552		
<u>\$1,459,424</u>		Average of (8) Bids
<u>\$1,376,000</u>		Engineer's Estimate

Program Submittal Through Maricopa County to EPA as Part of 5% Reduction Plan

Large CIP Contractor:

City Est. \$1,376,000 →

10 Miles of Alley Ways: \$939,000

12 Miles of 8' Shoulders: \$437,000

Three Year Program:

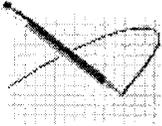
30 Miles Total-Alleys

36 Miles Total-Shoulders

Small Overhead Contractor:

City Est. \$530,000 →

\$3,500/day x 150 Days = \$525,000



David Fern/COC
11/29/2007 04:49 PM

To Michael Normand/COC@ci.chandler.az.us
cc Karen DeMember/COC@ci.chandler.az.us, Gretchen
Holman/COC@ci.chandler.az.us
bcc
Subject 12-13-2007 ST08-015 Council Memo for AC Milling
Placements

Mike,

One last change on AC Milling Placement Contract Award to G & G. I put in Contingency Reserve transfer into account number changed on Council Memo. I noted in agenda collection that the City Manager was OK with this transfer when it was discussed as part of the PM-10 5% reduction plan commitments last summer, since we did not have funds available to do the work and has missed budget season.

This one is in the N: Drive as No. 9a.....(former one is still No. 9 for comparison). Greg Westrum noted in earlier meeting to note the transfer with Dan, so he can advise Pat M./red flag prior to going to City Mgr. for approval.

Let me know if you need more on this.
Thanks



No. 9a - ST08-015 Alley and Shoulder AC Millings Contract (2).doc

David E. Fern
Transportation Operations Manager
City of Chandler
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Mbl: 480-262-0132
Fax: 480-782-3495
david.fern@chandleraz.gov