Chandler - Arizona
Where Values Make The Difference

PURCHASING ITEM FOR COUNCIL AGENDA

1. Agenda Item Number: 27

2. Council Meeting Date: January 31, 2008

TO: MAYOR & COUNCIL

THROUGH: CITY MANAGER

3. Date Prepared: January 16, 2008

4. Requesting Department: Municipal Utilities

5. SUBJECT: Extend Electrical Supplies Contract No. WU6-988-2221 for one-year to Summit Electric Supply, Border States Electric Supply, and Axiom Southwest, Inc. for a combined total not to exceed $425,000.

6. RECOMMENDATION: Recommend extension of Electrical Supplies Contract No. WU6-988-2221 for one-year to Summit Electric Supply, Border States Electric Supply, and Axiom Southwest, Inc. for a combined total not to exceed $425,000.

7. HISTORICAL BACKGROUND/DISCUSSION: The Water and Wastewater Divisions require an ongoing contract to provide equipment not stocked in Central Supply such as, variable frequency drives and programmable logic controllers. The equipment is used at the Surface Water Treatment Plant, Water Production Wells, Airport Water Reclamation Facility, Lone Butte Water Reclamation Facility, Aquifer Storage and Recovery Wells, and Wastewater Collection Lift Stations.

8. EVALUATION PROCESS: In February 2006, City Council approved the award of Bid No. WU6-988-2221 for one-year with an option for four one-year extensions to Summit Electric Supply, Border States Electric Supply, and Axiom Southwest, Inc. for the purchase of electrical repair parts. This is the third year of the contract. The vendors have agreed to extend the contracts with price increases due to the increases for steel, copper, aluminum, silver, zinc, plastics, energy, transportation and labor. Staff is in agreement with the various price adjustment requests.

9. FINANCIAL IMPLICATIONS:

Costs: $425,000

Fund Source:

Acct. Name:	Fund Name:	Program Name:	Year Funded:	Funds:
605.3830.0000.5412	Water Operating/Water Treatment	Communications Equipment	FY 07/08	$100,000
605.3860.0000.5329	Water Operating/Water Production	Electrical Supplies	FY 07/08	$ 45,000
615.3940.0000.5329	WW Operating/Lone Butte	Electrical Supplies	FY 07/08	$ 50,000
615.3960.0000.5322	WW Operating/AWRF	Other Supplies	FY 07/08	$ 80,000
615.3960.0000.5329	WW Operating/AWRF	Electrical Supplies	FY 07/08	$100,000
615.3900.0000.5316	WW Operating/Wastewater Collection	Machinery and Equipment	FY 07/08	$ 50,000

10. PROPOSED MOTION: Move to approve extension of Electrical Supplies Contract No. WU6-988-2221 for one-year to Summit Electric Supply, Border States Electric Supply, and Axiom Southwest, Inc. for a combined total not to exceed $425,000.

ATTACHMENTS: Contract Amendments

APPROVALS

11. Requesting Department

Robert Mulvey, Assistant Municipal Utilities Director

13. Department Head

Dave Siegel, Municipal Utilities Director

12. Buyer/Contract Admin.

Sharon Brause, CPPB

14. City Manager

W. Mark Pentz

CITY OF CHANDLER PURCHASE CONTRACT

THIS AGREEMENT is made and entered into this 23 day of February, 2006, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Axiom Southwest, LLC., hereinafter referred to as "CONTRACTOR".

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

1. **CONTRACT ADMINISTRATION AND OPERATION:**

1.1. **Contract Administrator:** CONTRACTOR shall act under the authority and approval of the Procurement Officer/designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order.

1.3. Ordering Process. Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a contract Purchase Order to the appropriate CONTRACTOR. Each contract Purchase Order must cite the correct Chandler contract number.

1.4. Usage Report. Annually CONTRACTOR shall furnish CITY a usage report delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

2. **GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit A, all as more specifically set forth in the Specifications and details included therein.

2.1. **Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

2.2. **Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

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

2.4. **Purchase Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all purchase orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

2.5. **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 Procurement Officer.

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

2.7. 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.

3. **Warranties:**

3.1. **Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

3.2. **Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:

3.2.1. Of a quality to pass without objection in the trade under the Contract description;

3.2.2. Fit for the intended purposes for which the materials are used;

3.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

3.2.4. Adequately contained, packaged and marked as the Contract may require; and

3.2.5. Conform to the written promises or affirmations of fact made by CONTRACTOR.

3.3. **Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR.

3.4. **Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.

3.5. One-Year Warranty. CONTRACTOR must provide a one-year warranty on all goods or equipment supplied pursuant to this Contract.

4. **ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of and shall be paid for by CONTRACTOR. All replacement products must be received by CITY within two (2) weeks of initial notification

4.1. Records. The CONTRACTOR shall 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.

4.2. Audit. At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.

4.3. Delivery. Delivery shall be made as soon as possible but at least within twelve (12) weeks of receipt of a Contract Release Order.

5. **PRICE:** CITY shall pay CONTRACTOR an amount not to exceed One Hundred Ninety Five Thousand Dollars ($195,000) at the rates shown on Exhibit A.

5.1. **Pricing:** Prices stated include, warranty costs, and any other applicable costs, but do not include shipping costs. CONTRACTOR shall add the cost of shipping and shipping insurance to the invoice and CITY shall reimburse CONTRACTOR for same.

5.2. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable.

5.3. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance.

5.4. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.

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

5.6. IRS W9 Form. In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.

6. TERM: The term of the Contract is one year but may be extended by mutual agreement of the parties for up to four (4) additional successive terms of one year each.

7. USE OF THIS CONTRACT: The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.

7.1. Emergency Purchases: CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the contract CONTRACTOR.

8. CITY'S CONTRACTUAL REMEDIES:

8.1. Right to Assurance: If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Non-exclusive Remedies: The rights and the remedies of CITY under this Contract are not exclusive.

8.3. Nonconforming Tender: Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.4. Right of Offset: CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. TERMINATION:

9.1. Termination for Convenience: CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. CONTRACTOR shall receive payment for the goods and materials already shipped to CITY.

9.2. Termination for Cause: CITY may, upon written notice, terminate this Contract for CONTRACTOR'S failure to comply with the terms of this Contract.

9.3. Termination for Misrepresentation. CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically

awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

9.4. **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 CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

9.5. **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 the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. 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 the CONTRACTOR.

9.6. **Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the 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 Sub-CONTRACTOR 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 the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.

9.7. **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.

9.8. **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.

10. **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.

11. **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 CITY and CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance 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.

11.1. **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 they occur and not postponed until the end of the Contract nor lumped together with other pending claims.

11.2. **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 CITY'S position.

11.3. **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.

11.4. **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.

11.5. **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 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 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. l2-1501, 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.

12. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract 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 CITY		In the case of the CONTRACTOR	
Department:	Municipal Utilities	Firm Name:	Axiom Southwest
Contact:	David Clark	Contact:	Jim Powell
Mailing Address:	PO Box 4008, MS 396	Address:	2023 West Guadalupe Road Suite.11-307
Physical Address:	905 E. Queen Creek Rd.	City, State, Zip	Mesa, Arizona 85202
City, State, Zip	Chandler, Az	Phone:	480.814.7706
Phone:	602.885.5134	FAX:	480.857.2742
FAX:	480.782.3715		

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.

13. GENERAL TERMS:

13.1. **Entire Agreement:** This Contract, including Exhibit A 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.

13.2. **Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.

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

13.4. **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 CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes.

13.5. **Conflict of Interest:**

13.6. **No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.

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

13.8. **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.

13.9. **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.

13.10. **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.

13.11. Authority: Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 23 day of February, 2006.

FOR THE CITY OF CHANDLER

MAYOR

CITY OF CHANDLER CORPORATE SEAL ARIZONA

ATTEST:

City Clerk

Approved as to form:

City Attorney

SEAL

FOR THE CONTRACTOR

By:

Signature

ATTEST: If Corporation

Carol Ann Powell

Secretary

EXHIBIT A
PRICE SHEET

Axiom Southwest				
ITEM #	**MANUFACTURER**	**DESCRIPTION**	**Unit**	**Unit Price**
1	Bernard Controls	Electric Actuators - parts; 102609	EA	$ 1,425.00
2	Central Station Steam	Magnetic Flow Meter; CMAGGRCFHCSAAB	EA	$ 3,790.00
3	FUJI	Transmit time Flow Meter; FLVS12	EA	$ 3,750.00
4	Hitech	Isolator; OPV12	EA	$ 60.00
5	Ohmart Vega	Display; DIS12.XBAX	EA	$ 100.00
6	Ohmart Vega	Display; DIS371.xxx	EA	$ 664.00
7	Ohmart Vega	Level Gauge; PS65UXMNPHKNK	EA	$ 2,460.00
8	Ohmart Vega	Level Gauge; Well72.XXXaafV2FHT230	EA	$ 1,593.00
9	Ohmart Vega	Pressure Gauge; BAR52.XXGN1HPKNA	EA	$ 1,089.00
10	Precision Digital	Panel Meter; PD77N	EA	$ 539.00
11	Precision Digital	Panel Meter; PD697N	EA	$ 299.00
12	Wedgewood	Fitting; 1238	EA	$ 55.00
13	Wedgewood	Cable; 50086336	EA	$ 82.00
14	Wedgewood	Cable; 50089252	EA	$ 51.00
15	Wedgewood	Adaptor; 51506979	EA	$ 91.00
16	Wedgewood	TSS analyser; 870TS3110	EA	$ 1,630.00
17	Wedgewood	Membrane; COR3-0	EA	$ 75.00
18	Wedgewood	pH Probe; OPF11LH21C8	EA	$ 220.00
19	Wedgewood	Cable Set; OPH9NPA1A	EA	$ 83.00
20	Wedgewood	Cable Set; OPH9NPA1Y	EA	$ 91.00
21	Wedgewood	Probe, TSS; OSU41W4A	EA	$ 2,110.00
22	Yokogawa	Controller; UT420-00	EA	$ 510.00
23	Central Station Steam	pH meter; Alpha2000pH	EA	$ 1,030.00
24	Central Station Steam	Dissolved Oxygen; Alpha2000DO	EA	$ 2,280.00
25	Central Station Steam	Mag Meter, 4"; CMAGFRCFHCSAAB	EA	$ 3,475.00
26	Central Station Steam	Mag Meter, 8"; CMAGHRCFHCSAAB	EA	$ 4,190.00
27	Central Station Steam	Mag Meter, 10"; CMAGIRCFHCSAAB	EA	$ 4,850.00
28	Central Station Steam	Mag Meer, 12" CMAGJRCFHCSAAB	EA	$ 6,240.00
106	Precision Digital	Meter, 673-6	EA	$ 229.00
107	IEC	pH meter; IEC-860ph	EA	$ 470.00
108	Wika	gauges, 40-122-53-4	EA	$ 165.00
		Discount of similar items	**10%**	

CITY OF CHANDLER PURCHASE CONTRACT
Electrical Supplies
MU6-988-2221

THIS AGREEMENT is made and entered into this 23 day of February, 2006, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Border States Electric Supply, hereinafter referred to as "CONTRACTOR".

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

1. **CONTRACT ADMINISTRATION AND OPERATION:**

1.1. **Contract Administrator:** CONTRACTOR shall act under the authority and approval of the WW Facilities Superintendent /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order.

1.3. **Ordering Process.** Any designated department may procure the specific product, equipment or material awarded by the issuance of a contract Purchase Order to the CONTRACTOR. Each contract Purchase Order must cite the correct Chandler contract number.

1.4. **Usage Report. Annually** CONTRACTOR shall furnish CITY a usage report delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

2. **GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit A, all as more specifically set forth in the Specifications and details included therein.

2.1. **Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

2.2. **Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

2.2.1. A formal announcement from the manufacturer that the product or model has been discontinued.
2.2.2. Documentation from the manufacturer that names the replacement product or model.
2.2.3. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
2.2.4. Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

2.2.5. If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

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

2.4. Purchase Orders: CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all purchase orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

2.5. 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 Procurement Officer.

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

2.7. Current Products. All products supplied pursuant to this Contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

2.8. Catalogs/Contract Price Listing. As applicable, the CONTRACTOR(s) shall furnish to all requesting departments catalogs at no cost, which will outline contract prices and available products.

2.9. New Products. New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.

3. CONTRACT TERM. The term of the Contract is one year but may be extended by mutual agreement of the parties for up to four additional successive terms of one year each.

3.1. The City Manager/designee is authorized to approve and execute, on behalf of the City, any such future extensions to this Contract, on the same terms and conditions with any one-year contract amount not exceed One Hundred Five thousand dollars ($105,000) and the total with all future extensions not to exceed Five Hundred Twenty Five Thousand Dollars ($525,000).

4. Warranties:

4.1. Liens: CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

4.2. Quality: Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:

4.2.1. Of a quality to pass without objection in the trade under the Contract description;
4.2.2. Fit for the intended purposes for which the materials are used;
4.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
4.2.4. Adequately contained, packaged and marked as the Contract may require; and
4.2.5. Conform to the written promises or affirmations of fact made by CONTRACTOR.

4.3. Fitness: CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.

4.4. Inspection/Testing: The warranties set forth in this Section 4 herein are not affected by inspection or testing of or payment for the materials by CITY.

4.5. Warranty (Equipment). All equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one year from the date of acceptance by CITY. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

5. ACCEPTANCE AND DOCUMENTATION: All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification

5.1. Records. The CONTRACTOR shall 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.

5.2. Audit. At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.

5.3. Delivery. Delivery shall be made within seven (7) days of receipt of a Contract Purchase Order.

6. PRICE: Payment to the Contractor shall be as determined in accordance with the price list attached hereto as Exhibit A but the total contract amount shall not to exceed the sum of One Hundred and Five Thousand Dollars ($105,000) for the term of the contract.

6.1. Payment: A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, and contractual payment terms. Items are to be identified

by the name, model number, contract number, line item number, and serial number if applicable.

6.2. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.

6.3. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.

6.4. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.

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

6.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.

7. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.

7.1. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the contract CONTRACTOR.

8. **CITY'S CONTRACTUAL REMEDIES:**

8.1. **Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. **Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.

8.3. **Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY

may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.4. **Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. **TERMINATION:**

9.1. **Termination for Convenience:** CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. CONTRACTOR shall receive payment for the goods and materials already shipped to CITY.

9.2. **Termination for Cause:** CITY may, upon written notice, terminate this Contract for CONTRACTOR'S failure to comply with the terms of this Contract.

9.3. **Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

9.4. **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 CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

9.5. **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 the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. 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 the CONTRACTOR.

9.6. **Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the 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 Sub-CONTRACTOR 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 the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.

9.7. **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.

9.8. **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.

10. **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.

11. **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 CITY and CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance 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.

11.1. **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 they occur and not postponed until the end of the Contract nor lumped together with other pending claims.

11.2. **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 CITY'S position.

11.3. **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.

11.4. **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.

11.5. **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 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 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. I2-1501, 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.

12. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract 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 CITY		In the case of the CONTRACTOR	
Department:	Municipal Utilities	Firm Name:	Border States Electric Supply
Contact:	John Frikston	Contact:	Jan Vander Ark
Mailing Address:	MS 896, PO Box 4008	Address:	6519 E. Washington
Physical Address:	905 E. Queen Creek Rd.	City, State, Zip	Phoenix, AZ 85034
City, State, Zip	Chandler, AZ 85244	Phone:	(602) 244-0831
Phone:	(480) 872-3719	FAX:	(602) 231-8535
FAX:	(480) 872-3715	Email	jvanderark@borderstates.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.

13. GENERAL TERMS:

13.1. Entire Agreement: This Contract, including Exhibit A 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.

13.2. Arizona Law: This Contract shall be governed and interpreted according to the laws of the State of Arizona.

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

13.4. 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 CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes.

13.5. Conflict of Interest:

13.5.1. No Kickback: CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.

13.5.2. Kickback Termination: CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract

or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).

13.5.3. **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.

13.6. **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.

13.7. **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.

13.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 28th day of February 2006.

FOR THE CITY OF CHANDLER

MAYOR

FOR THE CONTRACTOR

By: _____
Signature

ATTEST:

City Clerk

ATTEST: If Corporation

Secretary

Approved as to form:

JS _____ for
City Attorney

CITY OF CHANDLER CORPORATE SEAL ARIZONA

EXHIBIT A
PRICING

ITEM #	MANUFACTURER	DESCRIPTION	Unit	Unit Price
29	Allen Bradley	1202-H10 Cable Option W7	EA	$ 32.49
30	Allen Bradley	1202-SSS Smart Serial Conterter	EA	$ 212.99
31	Allen Bradley	1746-N18 Exchange	EA	$ 757.15
32	Allen Bradley	1746-OW16 Relay Output Module	EA	$ 247.95
33	Allen Bradley	20-HIM-CS LCD Display Digital Keypad	EA	$ 220.21
34	Allen Bradley	20-HIM-H10 Remote HIM Cable 1M; 1175530	EA	$ 46.93
		Discount of similar items - 10 %		25%
35	Brady	44-833 Safety Lockout Tag, 5/crd	EA	$ 15.40
36	Brady	STD-0-9-(FILLED) Wire Marker Disp.	EA	$ 26.70
37	Brady	WM-0-45 0-THRU45 Wire Marker Book	EA	$ 7.90
		Discount of similar items - 20 %		5%
42	Carlon	E(UHGRN 1G HORZ WP GRY COVER	EA	$ 7.49
		Discount of similar items - 10 %		1%
43	Christy	FL36T-Street Lighting Lid	EA	$ 84.00
		Discount of similar items - 20 %		1%
44	Conduit	2-in-intermediate-metal conduit	EA	$ 2.59
45	Conduit	1-1/2-intermediate-metal conduit	EA	$ 1.90
46	Conduit	3/4-galv-steel conduit	EA	$ 0.81
		Discount of similar items - 20 %		60%
53	Dottie	BT41-C Nylon Cable Tie	EA	$ 0.04
54	Dottie	BT4S-C Nylon Cable Tie	EA	$ 0.04
55	Dottie	W14-314 2DP Wedge Anchor	EA	$ 0.72
56	Dottie	ZA-125 1/4-DI anchor	EA	$ 0.29
		Discount of similar items - 10 %		5%
57	Edwards	5000 Ionization Smoke Alarm	EA	$ 11.46
		Discount of similar items - 10 %		5%
69	Ideal	45300 Cable tie gun	EA	$ 51.80
70	Ideal	45-616 Reflex Stripper	EA	$ 13.85
		Discount of similar items - 10 %		5%
79	LittleFuse	CCMR.500 Midget Fuse	EA	$ 6.10
80	LittleFuse	GMA-63MA Miniature Fuse	EA	$ 1.25
		Discount of similar items - 10 %		5%
83	MTE	RL-30503 20HP Reactor	EA	$ 165.00
84	MTE	RL-13003 5-input line reactors 480V	EA	$ 130.00
		Discount of similar items - 10 %		20%
89	Red Dot	All-1 1/2 alum Cond. Body	EA	$ 2.80
90	Red Dot	SCV-1 1/2 alum. Cond. Body cover	EA	$ 0.75
91	Red Dot	OLK1RG 1/2 gask. Gkn-1 f/Rdot lb	EA	$ 1.35
		Discount of similar items - 10 %		5%
93	Rockwell	Custom Drive Assembly	EA	$ 1,800.00
		Discount of similar items - 10 %		1%
94	Siemens	ICGK Insulated Cu. Ground bus	EA	$ 9.20
		Discount of similar items - 10 %		60%
95	Sola	E100D Indust. Control Transformer	EA	$ 27.20
		Discount of similar items - 10 %		35%
115	Panduit	Panduit PLT4H-TL0 locking cable tie; 14.5" long, 4" bundle	EA	$ 0.32
		Discount of similar items - 20 %		20%

116	B-line	B line B22SH-GR slotted strut, 1-5/8X, 1-5/8:, 10 ft; green w/ 9/16 x 7/8"	EA	$	5.70
		Discount of similar items	10%		5%
117	Oz Gedney	OZ/EGS 7075ST EMT Connector, compress, 3/4", steel, insul throat	EA	$	0.38
		Discount of similar items	10%		80%
130	CRC Chemicals	02130 cleaner/degreaser, QD	EA	$	8.60
		Discount of similar items	%		5%
133	Arlington	Arlington 856A flex/AC/MC connector, 90 degree, 2" squeeze type	EA	$	11.30
		Discount of similar items	20 %		70%

CITY OF CHANDLER PURCHASE CONTRACT
Electrical Supplies
MU6-988-2221

THIS AGREEMENT is made and entered into this 23 day of February, 2006, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Summit Electric Supply, hereinafter referred to as "CONTRACTOR".

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

1. **CONTRACT ADMINISTRATION AND OPERATION:**

1.1. **Contract Administrator:** CONTRACTOR shall act under the authority and approval of the WW Facilities Superintendent /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order.

1.3. **Ordering Process.** Any designated department may procure the specific product, equipment or material awarded by the issuance of a contract Purchase Order to the CONTRACTOR. Each contract Purchase Order must cite the correct Chandler contract number.

1.4. **Usage Report. Annually** CONTRACTOR shall furnish CITY a usage report delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

2. **GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit A, all as more specifically set forth in the Specifications and details included therein.

2.1. **Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

2.2. **Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

2.2.1. A formal announcement from the manufacturer that the product or model has been discontinued.
2.2.2. Documentation from the manufacturer that names the replacement product or model.
2.2.3. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
2.2.4. Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

2.2.5. If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

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

2.4. Purchase Orders: CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all purchase orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

2.5. 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 Procurement Officer.

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

2.7. Current Products. All products supplied pursuant to this Contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

2.8. Catalogs/Contract Price Listing. As applicable, the CONTRACTOR(s) shall furnish to all requesting departments catalogs at no cost, which will outline contract prices and available products.

2.9. New Products. New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.

3. CONTRACT TERM. The term of the Contract is one year but may be extended by mutual agreement of the parties for up to four additional successive terms of one year each.

3.1. The City Manager/designee is authorized to approve and execute, on behalf of the City, any such future extensions to this Contract, on the same terms and conditions with any one-year contract amount not exceed thirty five thousand dollars ("$35,000) and the total with all future extensions not to exceed One Hundred Seventy Five Thousand Dollars ($175,000) .

4. Warranties:

4.1. Liens: CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

4.2. Quality: Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:

4.2.1. Of a quality to pass without objection in the trade under the Contract description;

4.2.2. Fit for the intended purposes for which the materials are used;
4.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
4.2.4. Adequately contained, packaged and marked as the Contract may require; and
4.2.5. Conform to the written promises or affirmations of fact made by CONTRACTOR.

4.3. Fitness: CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.

4.4. Inspection/Testing: The warranties set forth in this Section 4 herein are not affected by inspection or testing of or payment for the materials by CITY.

4.5. Warranty (Equipment). All equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one year from the date of acceptance by CITY. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

5. ACCEPTANCE AND DOCUMENTATION: All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification

5.1. Records. The CONTRACTOR shall 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.

5.2. Audit. At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.

5.3. Delivery. Delivery shall be made within seven (7) days of receipt of a Contract Purchase Order.

6. PRICE: Payment to the Contractor shall be as determined in accordance with the price list attached hereto as Exhibit A but the total contract amount shall not to exceed the sum of Eighty Five Thousand Dollars ($85,000) for the term of the contract.

6.1. Payment: A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, and contractual payment terms. Items are to be identified

by the name, model number, contract number, line item number, and serial number if applicable.

6.2. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.

6.3. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.

6.4. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.

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

6.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.

7. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.

7.1. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the contract CONTRACTOR.

8. **CITY'S CONTRACTUAL REMEDIES:**

8.1. **Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. **Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.

8.3. **Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY

may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.4. **Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. **TERMINATION:**

9.1. **Termination for Convenience:** CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. CONTRACTOR shall receive payment for the goods and materials already shipped to CITY.

9.2. **Termination for Cause:** CITY may, upon written notice, terminate this Contract for CONTRACTOR'S failure to comply with the terms of this Contract.

9.3. **Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

9.4. **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 CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

9.5. **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 the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. 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 the CONTRACTOR.

9.6. **Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the 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 Sub-CONTRACTOR 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 the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.

9.7. **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.

9.8. **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.

10. **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.

11. **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 CITY and CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance 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.

11.1. **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 they occur and not postponed until the end of the Contract nor lumped together with other pending claims.

11.2. **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 CITY'S position.

11.3. **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.

11.4. **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.

11.5. **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 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 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. l2-1501, 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.

12. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract 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 CITY		In the case of the CONTRACTOR	
Department:	Municipal Utilities	Firm Name:	Summit Electric Supply
Contact:	John Pinkston	Contact:	Carl Bouk
Mailing Address:	MS 896, PO Box 4008	Address:	205 S. 29th Street
Physical Address:	905 E. Queen Creek Rd.	City, State, Zip	Phoenix, AZ 85034
City, State, Zip	Chandler, AZ 85244	Phone:	(602) 267-1000 ext 4218
Phone:	(480) 812-3719	FAX:	(602) 271-1007
FAX:	(480) 812-3715	Email	cbouk@summit.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.

13. GENERAL TERMS:

13.1. Entire Agreement: This Contract, including Exhibit A 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.

13.2. Arizona Law: This Contract shall be governed and interpreted according to the laws of the State of Arizona.

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

13.4. 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 CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes.

13.5. Conflict of Interest:

13.5.1. No Kickback: CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.

13.5.2. Kickback Termination: CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the

subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).

13.5.3. **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.

13.6. **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.

13.7. **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.

13.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 26th day of February 2006.

FOR THE CITY OF CHANDLER

MAYOR

FOR THE CONTRACTOR

By: Carl Bank
Signature

ATTEST:

City Clerk

ATTEST: If Corporation

Secretary

Approved as to form:

JS for

City Attorney

CITY OF CHANDLER CORPORATE SEAL ARIZONA

EXHIBIT A
PRICING

ITEM #	MANUFACTURER	DESCRIPTION	Unit	Unit Price
44	Conduit	2-in-intermediate-metal conduit	EA	$ 2.40
45	Conduit	1-1/2-intermediate-metal conduit	EA	$ 1.80
46	Conduit	3/4-galv-steel conduit	EA	$ 1.10
		Discount of similar items		
47	Cord	SOOW-10/4-BLK-1000R	EA	$ 0.79
48	Cord	SOOW-6/3-BLK-1000R	EA	$ 1.65
		Discount of similar items		50%
58	Fluke	AC220 Suregrip Pincer Alligaor clips	EA	$ 18.56
59	Fluke	Fluke-333 Meter1	EA	$ 103.45
		Discount of similar items		
60	Greenlee	702-2-EG Cond Clamp	EA	$ 0.74
61	Greenlee	702-3/4-EG Cond Clamp	EA	$ 0.50
62	Greenlee	76502.18.02 White; 500' reel	FT	$ 0.04
63	Greenlee	7650218-03 Red; 500' reel	FT	$ 0.04
64	Greenlee	76502-18-06 Green; 500' reel	FT	$ 0.04
		Discount of similar items		40%
71	Klein	600-4 4" squareshank screwdriver	EA	$ 6.07
72	Klein	VB1 1/8 to 1/2 variable bit	EA	$ 16.08
		Discount of similar items		15%
81	3M	MV18BCX 22-18 ins butt splice	EA	$ 0.13
82	3M	33+Super 3/4 x 66' plastic tape 1" core	EA	$ 3.01
		Discount of similar items %		
87	Permacote	PRH Conduit - 3/4 conduit	EA	$ 2.80
88	Permacote	PRUNF205 3/4 Female to Female	EA	$ 2.73
		Discount of similar items		
97	Sylvania	100A-130V IF A19 med. Lamp, OSRA	EA	$ 0.38
		Discount of similar items		
103	Wire	MTW-16-BLK, STR-2/64-500SP	EA	$ 0.05
104	Wire	TFFN-16-BLK-19STR-CU-4@500CN	EA	$ 0.05
		Discount of similar items		
105	Woodhead	073031204 Strain relief grip	EA	$ 11.69
		Discount of similar items %		18%
109	Hubbell	Heavy Duty plus; HBL5266C, 15 amp, 125V, 2-pole; 3 wire	EA	$ 7.83
		Discount of similar items		15%
110	Fuses	Shawmut TRS30R class RK5 fuse, 30 amp, 600V, dual element, time delay	EA	$ 4.47
		Discount of similar items		40%
112	Channel lock	Channellock 806 wrench, 6", adj.	EA	$ 9.20
		Discount of similar items 10 %		10%
119	Pass & Seymour	Sier, 5266X plus, 15 amp, 125V, extra-hard use, spec. grade	EA	$ 4.69
		Discount of similar items		50%
122	Square D	Square D KAL36250 KAL Breaker, 250 amp, 3-pole; 600V	EA	$ 804.00

		Discount of similar items			20%
123	IDEC	IDEC PS5R-D24 50W 24V power supply	EA	$	81.25
		Discount of similar items	%		35%
124	Weidmuller	Weidmuller 51420 TS15 solid steel rail; 2 meters; 15 x 5.5	EA	$	7.68
		Discount of similar items	%		20%
126	ILSCO	T3A2-250N alum. Mechanical lug for 3 conductor, 6AWG-250MCM ALCU	EA	$	25.15
		Discount of similar items			45%
127	Burndy	KA28 mech. Lug; 1 cond. 4AWG stranded, 4/0 awg; 3/8" stud (copper only)	EA	$	5.91
		Discount of similar items			50%
129	NSI	AL-R2-R2 Connector block, 500-4AWG Dbl primary; 500-4 AWG dbl secondary connector	EA	$	29.54
		Discount of similar items	%		15%
131	Taymac Covers	Taymac 20510 deep GFCI cover, 1 gang surface mount, vertical	EA	$	16.25
		Discount of similar items			15%
134	PVC Conduit	PVC 1-1/2" schedule 40 conduit	FT	$	1.34
135		PVC 68 primer, purple, Oatey #30806	QT	$	4.15
		Discount of similar items	%		52%
137	KIM		EA	$	348.00
		Discount of similar items	%		30%