



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

MEMO NO. TE08-222

1. Agenda Item Number:

22

2. Council Meeting Date:

May 22, 2008

TO: MAYOR & COUNCIL

3. Date Prepared: April 29, 2008

THROUGH: CITY MANAGER

4. Requesting Department: Public Works

5. SUBJECT: Approve agreement TE8-968-2595 for Streetlight Replacements and Upgrades with Brooks Bros. Utility Contractors, Inc. in an amount not to exceed \$62,400.00.

6. RECOMMENDATION: Recommend approval of agreement TE8-968-2595 for Streetlight Replacements- Upgrades with Brooks Bros. Utility Contractors, Inc. in an amount not to exceed \$62,400.00.

7. BACKGROUND/DISCUSSION: This contract is for the replacement of damaged streetlights as a result of traffic accidents or corrosion, and for miscellaneous streetlight installations to increase lighting levels in older developed areas. This contract is used on an as-need basis, and therefore the quantities are estimated based on the previous year history. Staff has estimated that approximately 44 streetlights may be replaced and/or upgraded during the term of this contract June 1, 2008 through May 30, 2009. Risk Management recovers approximately 80% of the cost for damaged poles through insurance companies and/or persons involved. The remainder will be funded from the City's self-insurance. Rusted streetlight poles and replacements and the miscellaneous new installation are funded from the Capital Improvement Program as needed.

8. EVALUATION PROCESS: On April 1, 2008 staff issued a bid Streetlight Replacements and Upgrades at various locations within the City. The bid was advertised and all registered vendors were notified. Seven responses were received and evaluated. Staff is recommending award to Brooks Bros. Utility Contractors Inc., who was deemed to have submitted the lowest responsive and responsible bid. Attached is a tabulation listing a summary of the bids received.

9. FINANCIAL IMPLICATIONS:

Cost: \$62,400.00
Savings: \$0
Long Term Costs: N/A
Funding Source:

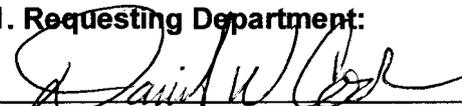
<u>Acct No.:</u>	<u>Fund:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
411.3310.6517.8ST051	General Obligation Bonds	Streetlight Upgrade	FY07-08	\$62,400.00

10. PROPOSED MOTION: Move to approve agreement TE8-968-2595 for Streetlight Replacements and Upgrades with Brooks Bros. Utility Contractors, Inc. in an amount not to exceed \$62,400.00.

APPROVALS

Attachments: Bid tabulation; Contract

11. Requesting Department:


Daniel W. Cook, Deputy Public Works Director

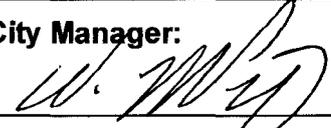
12. Department Head:


R.J. Zeder, Public Works Director

13. Procurement Officer:


Sharon Brause, CPPB

14. City Manager:


W. Mark Pentz

		Fluoresco		Rural Electric		Brooks Bros Utility		B&F CONTRACTING		ITS Engineers		AZ Traffic Signal	
City of Chandler	QTY	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
Item 1	25	\$633.00	\$15,825.00	\$651.00	\$16,275.00	\$1,200.00	\$30,000.00	\$1,569.00	\$39,225.00	\$1,300.00	\$32,500.00	\$3,480.00	\$87,000.00
Item 2	1	\$633.00	\$633.00	\$651.00	\$651.00	\$150.00	\$150.00	\$1,569.00	\$1,569.00	\$1,300.00	\$1,300.00	\$3,480.00	\$3,480.00
Item 3	11	\$633.00	\$6,963.00	\$651.00	\$7,161.00	\$150.00	\$1,650.00	\$1,569.00	\$17,259.00	\$1,300.00	\$14,300.00	\$3,210.00	\$35,310.00
Item 4	3	\$633.00	\$1,899.00	\$1,260.00	\$3,780.00	\$150.00	\$450.00	\$1,569.00	\$4,707.00	\$1,300.00	\$3,900.00	\$3,500.00	\$10,500.00
Item 5	3	\$633.00	\$1,899.00	\$1,260.00	\$3,780.00	\$150.00	\$450.00	\$1,569.00	\$4,707.00	\$1,300.00	\$3,900.00	\$4,040.00	\$12,120.00
Item 6	1	\$789.00	\$789.00	\$1,260.00	\$1,260.00	\$150.00	\$150.00	\$1,569.00	\$1,569.00	\$1,300.00	\$1,300.00	\$3,820.00	\$3,820.00
Item 7	25	\$1,756.00	\$43,900.00	\$2,870.00	\$71,750.00	\$650.00	\$16,250.00	\$500.00	\$12,500.00	\$100.00	\$2,500.00	\$3,120.00	\$78,000.00
Item 8	15	\$75.00	\$1,125.00	\$1,170.00	\$17,550.00	\$360.00	\$5,400.00	\$350.00	\$5,250.00	\$350.00	\$5,250.00	\$1,240.00	\$18,600.00
Item 9	250	\$8.45	\$2,112.50	\$21.00	\$5,250.00	\$3.50	\$875.00	\$30.00	\$7,500.00	\$18.00	\$4,500.00	\$37.10	\$9,275.00
Item 10	400	\$26.00	\$10,400.00	\$74.00	\$29,600.00	\$7.00	\$2,800.00	\$50.00	\$20,000.00	\$60.00	\$24,000.00	\$69.15	\$27,660.00
Item 11	25	\$390.00	\$9,750.00	\$1,300.00	\$32,500.00	\$80.00	\$2,000.00	\$260.00	\$6,500.00	\$425.00	\$10,625.00	\$440.00	\$11,000.00
Sub-Total			\$95,295.50		\$172,631.00		\$60,175.00		\$120,786.00		\$104,075.00		\$296,765.00
Sales Tax			\$3,412.00		\$1,261.00		\$2,151.57		\$2,623.73		\$5,411.25		\$7,328.00
GRAND TOTAL ITEMS 1-11			\$98,707.50		\$173,892.00		\$62,326.57		\$123,409.73		\$109,486.25		\$304,093.00
City of Avondale	QTY	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
Item 12	5	\$633.00	\$3,165.00	\$1,260.00	\$6,300.00	\$450.00	\$2,250.00	\$1,569.00	\$7,845.00	\$1,200.00	\$6,000.00	\$3,450.00	\$17,250.00
Item 13	5	\$633.00	\$3,165.00	\$1,260.00	\$6,300.00	\$700.00	\$3,500.00	\$1,569.00	\$7,845.00	\$1,200.00	\$6,000.00	\$4,145.00	\$20,725.00
Item 14	8	\$633.00	\$5,064.00	\$2,427.00	\$19,416.00	\$450.00	\$3,600.00	\$1,569.00	\$12,552.00	\$1,200.00	\$9,600.00	\$3,810.00	\$30,480.00
Item 15	8	\$633.00	\$5,064.00	\$2,427.00	\$19,416.00	\$450.00	\$3,600.00	\$1,569.00	\$12,552.00	\$1,200.00	\$9,600.00	\$3,820.00	\$30,560.00
Item 16	5	\$1,756.00	\$8,780.00	\$4,900.00	\$24,500.00	\$1,250.00	\$6,250.00	\$500.00	\$2,500.00	\$1,000.00	\$5,000.00	\$3,120.00	\$15,600.00
Sub-Total			\$25,238.00		\$75,932.00		\$19,200.00		\$43,294.00		\$36,200.00		\$114,615.00
Sales Tax			\$1,444.00		\$612.00		\$1,266.24		\$2,195.06		\$3,185.60		\$6,556.00
GRAND TOTAL ITEMS 12-16			\$26,682.00		\$76,544.00		\$20,466.24		\$45,489.06		\$39,385.60		\$121,171.00
**Contractors West Inc submitted a bid, which was considered incomplete and non-responsive.													

**CITY OF CHANDLER PURCHASE CONTRACT
STREETLIGHT REPLACEMENTS - UPGRADES
AGREEMENT NO.: TE8-968-2595**

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **BROOKS BROS. UTILITY CONTRACTORS, INC.**, a Corporation in the State of Arizona, 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 Traffic Operations 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, a Contract Release Order or use of a City Procurement Card.
- 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.

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 B, 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. Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.3. 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.

- 2.4. 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.
- 2.5. Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 2.6. 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.
- 2.7. Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.9. 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.
- 2.10. Current Products.** All products offered in response to this solicitation 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.
- 2.11. New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.12. Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
- 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, and shall be fit for all purposes and uses required by the Contract.
- 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. **Warranty.** All equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 1 year from the date of acceptance by CITY. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.
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 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
- 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/Installation Schedule:** Delivery shall be made within twenty one (21) calendar days after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceeds Sixty Two Thousand Three Hundred Twenty Six Dollars and 57/100 (\$62,326.57) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.
- 5.1. **Pricing.** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 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, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.

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- 5.3. **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.
 - 5.4. **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.
 - 5.5. **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.
 - 5.6. **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.
 - 5.7. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
 - 5.8. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
 - 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
 6. **TERM.** The contract term is for a one-year period subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five (5) years. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
 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 CONTRACTOR.
 - 7.2. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
 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 Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

9.2 Termination for Cause: City may terminate this Agreement for Cause:

Upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR 'S property;
- 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

- 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 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.
- 9.9. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 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.

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- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party, except as provided for herein. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.
- N. **Merger and Bar:** Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of Contract Time which reasonably should or could have been brought against any party that was or could have been brought into this ADR process. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error, or omission.
- O. **Disputes of amounts greater than \$500,000:** Disputes for which the Arbitration Panel has determined to warrant an award in an amount greater than Five Hundred Thousand Dollars (\$500,000) to any one party, may be brought in the appropriate Court. A party must obtain such a determination from the Arbitration Panel prior to filing any legal action.

12. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

13. **INSURANCE:**

13.1 **Insurance Representations and Requirements:**

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

13.2 Proof of Insurance – Certificates of Insurance

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

13.3 Coverage

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

- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

13.4 Commercial General Liability - Minimum Coverage Limits.

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

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

13.6 Worker's Compensation and Employer's Liability

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

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

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

- 14. **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:	Traffic Engineering	Firm Name:	Brooks Bros	Utility Contractors, Inc.
Contact:	Joe Felix	Contact:	Keefe Brooks	
Mailing Address:	PO Box 4008 – MS 910	Address:	1532 E Indianola Ave	
Physical Address:	975 E Armstrong Way Building B	City, State, Zip	Phoenix AZ 85014	
City, State, Zip	Chandler AZ 85249	Phone:	602-266-9499	
Phone:	480-782-3459	FAX:	602-266-9507	
FAX:	480-782-3444	Email:	Keefe@BBUC.net	

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.

15. GENERAL TERMS:

- 15.1 Entire Agreement:** This Contract, including Exhibits A and B attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.2 Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 15.3 Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 15.4 Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by 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.
- 15.5 Conflict of Interest:**
- 15.5.1 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.
- 15.5.2 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).
- 15.5.3 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.
- 15.4 Independent CONTRACTOR:** The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.5 No Parole Evidence:** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.6 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.

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

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

FOR THE CITY OF CHANDLER

MAYOR

ATTEST:

City Clerk

Approved as to form:

City Attorney

SKR

FOR THE CONTRACTOR

By: *Keef Brooks*

Signature

SEAL

ATTEST: If Corporation
John P. ...

Secretary



Imelda Hernandez
9.5.10

**EXHIBIT A
TECHNICAL SPECIFICATIONS**

CONTRACTOR shall provide all labor and equipment necessary to provide a complete installation of the new streetlights, to include electrical splice pit.

- A. **SITE INSPECTION.** CONTRACTOR shall familiarize themselves with any conditions, which may affect performance and pricing.
- B. **VANDALISM.** CONTRACTOR shall report all cases of vandalism to CITY when discovered and CITY will determine the course of action to be taken.
- C. **CONTRACTOR/CITY COMMUNICATIONS.**
 - 1. **Key Personnel:**
It is essential that CONTRACTOR provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract.
 - 2. **Driver's License.** CONTRACTOR's employees shall possess and carry a valid vehicle operator's license issued by the State of Arizona at all times
- D. **CONDUCT.** CONTRACTOR'S employees, officers and subcontractors shall not identify themselves as being employees of the CITY. CONTRACTOR's employees shall conduct themselves in such a manner as to avoid embarrassment to the CITY, and shall be courteous to the public at all times.
- E. **CONTRACTOR'S EQUIPMENT.** CONTRACTOR shall provide and maintain equipment sufficient in number, condition and capacity to efficiently perform the work and render the services required by this contract.

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

- F. **EQUIPMENT IDENTIFICATION.** All vehicles used by CONTRACTOR shall be clearly identified with the name of the company, address of local office and phone number of local office on each side of the equipment, including personnel transportation vehicles. The letters shall be of such size that they are distinguishable from reasonable distance.
- G. **REDUCTION IN PAYMENT DUE TO UNSATISFACTORY SERVICE.** CONTRACTOR'S performance shall be evaluated for satisfactory service. If performance for any required service is unsatisfactory and poor performance is clearly the fault of CONTRACTOR (any service not performed which is required by the contract), an amount of money equal to the service value shall be withheld. Anytime the CONTRACTOR'S performance is unsatisfactory, payment shall be withheld until CONTRACTOR'S performance is deemed satisfactory by Contract Administrator/designee.

In the event CONTRACTOR is deficient in any required service, CITY may perform the service using CITY personnel or by separate contract. Cost of services not performed by CONTRACTOR shall be deducted from CONTRACTOR's monthly invoice.

H. REPLACEMENTS:

CONTRACTOR shall replace streetlights that have been damaged by vehicle accident or other means of accident. Streetlights replaced by CONTRACTOR for the CITY OF CHANDLER shall satisfy the provisions of the CITY's self-insurance program, which is administered by the Risk Management Division.

Approximately 20% of the streetlight replacements are located in the medians.

I. NOTIFICATION:

The Contract Administrator/designee will notify CONTRACTOR of the location of damaged light, the type of light to be replaced including the pole height, mast arm, and type of wattage for the luminaire. This will be done by phone and followed up in writing and mailed to CONTRACTOR.

CONTRACTOR shall notify the Contract Administrator/designee 24-hours prior to initiating work. Once work has been completed, CONTRACTOR shall contact the Contract Administrator/designee 24-hours in advance to arrange for inspection. Payment will be process once a CITY approved inspection report is submitted.

J. UPGRADES:

The CITY estimates 20 streetlight upgrades per year over a 5-year period.

CITY will furnish poles, davit arms, and luminaries. CONTRACTOR shall furnish Junction boxes.

CONTRACTOR shall furnish and install electrical conduit, 10" PVC mounting tube and gravel for pole, ground rod and #12 solid wire from luminaire to junction box. CONTRACTOR shall touch up paint to match and place APS or SRP streetlight numbers on poles.

CONTRACTOR shall be responsible for contacting APS or SRP and Chandler Street Lighting Section and City of Avondale Street Lighting Section for inspections. Plan sets shall consist of a CITY location plan along with the APS or SRP wiring plan and electrical splice pit location.

1. NOTIFICATION:

Upgrades. The Contract Administrator/designee will notify CONTRACTOR of the location of the light and junction box. The type of light to be installed including the pole height, mast arm, and type of wattage for the luminaire will depend on location and type of existing lighting. This information will be provided by CITY. CONTRACTOR shall be notified by letter with copy of the plan sets.

CONTRACTOR shall arrange for inspection and notify SRP or APS that the lights are ready to be energized once work has been completed.

CONTRACTOR shall work with residents to assure pole placement, landscape restoration and to alleviate any other problems that may arise. CONTRACTOR shall contact the Contract Administrator/designee no later than two (2) working days prior to commencing work. CONTRACTOR shall arrange for a CITY inspection once work has been completed.

2. TRAFFIC CONTROL

CONTRACTOR shall provide all traffic control required to perform the job. The City of Chandler Traffic Barricade Manual shall be followed for all traffic control layouts.

3. CLEAN UP AND DISPOSAL

CONTRACTOR shall be responsible for cleaning up and disposing of any material, dirt, gravel, broken concrete or asphalt which is remaining as part of this work. CONTRACTOR shall be responsible for removing the pole if the pole is still on-site. CONTRACTOR shall be responsible for properly disposing of all waste material.

4. RESPONSE TIME

When notified by the Contract Administrator/designee, CONTRACTOR shall respond by installing the required material as directed by CITY. It is of utmost importance that the streetlight replacement (and related work) be completed within **15-calendar days from receipt of written notification**, or by informing Contract Administrator/designee if this schedule cannot be met and the reasons for such delay. The City is to be notified of energization delays or work completion delays due to the failure of SRP or APS.

Replacements:

The CITY will provide an inventory of poles. Poles are stored and available for pickup at the CITY's Central Supply Yard located at 975 E Armstrong Way Building I, Chandler. The City of Avondale poles are stored at 399 E Lower Buckeye Rd, Avondale.

CONTRACTOR shall pick up the poles listed above out of the CITY's inventory in order to perform the replacement within the 15-calendar days.

The intent of inventory is to facilitate replacement of damaged poles within the time frame given. Liquidated damages will be assessed beginning on Day 16 and every calendar day thereafter at the rate of \$100.00 per day until work is completed.

In the event that the required pole is not available at the CITY yard, the CONTRACTOR shall be responsible for ordering and installing the required pole. In this case, CONTRACTOR shall complete the repair within 120 calendar days or be subject to liquidated damages at the rate of \$100.00 per day beginning on Day 121, and every calendar day thereafter until work is completed.

Electrical Connections:

CONTRACTOR shall check the voltage supply and wire the luminaire for the proper voltage. In-line fuses (HEB-AA Buss fuse holder with WPBI rubber boot) shall be installed on each power conductor at the point of service.

5. CHANGE ORDER:

CONTRACTOR shall receive a written order from Contract Administrator/designee, authorizing an addition, deletion or revision in the work. A Contract Amendment is the only mechanism for adjusting the contract quantities, price or the contract time.

**EXHIBIT B
PRICING**

Unit Price shall include all applicable taxes:

CITY OF CHANDLER

	Installation of Poles	Qty	Unit Price	Extended Price
Item #1	Install 30 ft or 35 ft SL-1 pole ONLY	25	\$1,200.00	\$30,000.00
Item #2	Install 30 ft or 35 ft SL-10 pole ONLY	1	\$150.00	\$150.00
Item #3	Install 30 ft or 35 ft SL-16 pole ONLY	11	\$150.00	\$1,650.00
Item #4	Install 30 ft or 35 ft SL-17 pole ONLY	3	\$150.00	\$450.00
Item #5	Install 30 ft SL-6 APS pole ONLY	3	\$150.00	\$450.00
Item #6	Install 38.6 ft SL-8 APS pole ONLY	1	\$150.00	\$150.00

TOTAL ITEMS 1-6 ITEMS \$32,850.00

	Supply & installation	Qty	Unit Price	Extended Price
Item #7	Supply & Install foundation	25	\$650.00	\$16,250.00
Item #8	Supply & Install PVC tube	15	\$360.00	\$5,400.00
Item #9	Supply & Install 2 ½ inch Trenched Conduit	250 ft	\$3.50	\$875.00
Item #10	Supply & Install 2 ½ inch Bored Conduit	400 ft	\$7.00	\$2,800.00
Item #11	Supply & Install No. 3 ½ Pull Box	25	\$80.00	\$2,000.00

SUB-TOTAL ITEMS 7-11 ITEMS \$27,325.00

TOTAL ITEMS 1-6 ITEMS \$32,850.00

SALES TAX \$2,151.57

GRAND TOTAL OF ALL 1-11 ITEMS \$62,326.57