Chandler · Arizona Where Values Make The Difference	**PURCHASING ITEM FOR COUNCIL AGENDA** **MEMO ST09-002**	**1. Agenda Item Number:** 22 **2. Council Meeting Date:** August 28, 2008

TO: MAYOR & COUNCIL	**3. Date Prepared:** August 6, 2008
THROUGH: CITY MANAGER	**4. Requesting Department:** Public Works

5. SUBJECT: Award Agreement No. PW9-595-2629 for Landscape Materials & Service to Artistic Land Management, Inc. for one year in an amount not to exceed $75,000.

6. RECOMMENDATION: Recommend awarding Agreement No. PW9-595-2629 for Landscape Materials & Service to Artistic Land Management, Inc. for one year in an amount not to exceed $75,000.

7. BACKGROUND/DISCUSSION: Existing landscaped medians and City-owned right-of-ways are constantly in the need of plant replacements. City-owned Housing areas have a need for plant replacement as well. These are generally small quantities of plants that have died or have been damaged. Previously, these plants were removed but not replaced in a timely manner due to small quantities involved. The timely replacement of these plants is an integral part of keeping the City-owned landscape areas properly maintained. This agreement has provided the City with the means to replace these plants in a timely manner regardless of the quantities.

8. EVALUATION PROCESS: Bids were advertised and all registered venders were notified. Three responses were received. This is a unit price award for the purchase of various size trees and shrubs with the option of having the vendor install the plants upon City request. The pricing bid was compared with current market price per plant and the labor for installation in the Phoenix area. The results found the pricing to be fair and reasonable.

City staff is recommending award to the lowest responsive, responsible bidder, Artistic Land Management, Inc. The agreement period will be for one year, September 1, 2008 through August 31, 2009 with the option to renew for four (4) additional one-year periods.

9. FINANCIAL IMPLICATIONS:

Cost: $75,000
Savings: N/A
Long Term Costs: N/A
Fund Source:

Acct. No.	Fund	Program Name	CIP Funded	Amount
411.3310.0000.6515.8ST014	GO Bonds-Streets	Landscape Upgrades	FY07/08	$ 50,000
234.4650.0000.5259.CG2008.1450.1A	HUD Capital Fund Prog.	Landscape Upgrades	FY08/09	$ 12,500
234.4650.0000.5259.CG2008.1450.2A	HUD Capital Fund Prog.	Landscape Upgrades	FY08/09	$ 12,500

10. PROPOSED MOTION: Move to award Agreement No. PW9-595-2629 for Landscape Materials & Service to Artistic Land Management, Inc. for one year in an amount not to exceed $75,000.

APPROVALS

11. Requesting Department for 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

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CITY OF CHANDLER SERVICES AGREEMENT
LANDSCAPE MATERIALS & SERVICE
AGREEMENT NO.: PW9-595-2629

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 **ARTISTIC LAND MANAGEMENT INC.,** a Corporation of the State of Arizona, hereinafter referred to as "CONTRACTOR".

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

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

1. **CONTRACT ADMINISTRATOR:**

1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Contract Compliance Officer /designee (Contract Administrator), to provide the services required by this Agreement.

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

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

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

2. **SCOPE OF WORK:** CONTRACTOR shall provide landscape materials and/or services all as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

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

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

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

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

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

3.1. **Records**. The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

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

3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

3.4. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

3.5. **PRICE:**

3.6. CITY shall pay to CONTRACTOR an amount not to exceed Seventy Five Thousand Dollars ($75,000) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.

4. **TAXES**

4.1. CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.

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

4.3. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.

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

4.5. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.

4.6. **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.

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

5. **TERM:**

5.1. The term of the Contract is one (1) year (s), commencing on September 1, 2008 and terminating on August 31, 2009 unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to four (4) additional terms of one year each. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof

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

6.1. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

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

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

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

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

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

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

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

7.6. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the

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

8. TERMINATION:

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

8.2 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.

8.3. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

8.4. Gratuities. CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.

8.5. Suspension or Debarment. CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.

8.6. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

8.8. **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.

9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

10. **Alternate Dispute Resolution. REQUIREMENT FOR ALTERNATIVE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Agreement documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive initial means for resolution of claims or disputes and other matters in question between CITY and CONTRACTOR arising out of, or relating to the Agreement documents, interpretation of the Agreement, 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 Agreements containing this ADR provision.

A. **INTERNAL RESOLUTION PROCESS**

1. **Notice:** CONTRACTOR shall submit written notice of any claim or dispute to the Purchasing Manager 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 Agreement nor lumped together with other pending claims.

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.

3. **CITY Response:** The Agreement 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.

4. **Appeal:** If CONTRACTOR disagrees with the response of the Purchasing Manager, within fifteen days of the date of the response by the Agreement Administrator, CONTRACTOR shall file with the Assistant Management Services Director, written notice of appeal. The Purchasing Manager shall provide copies of all relevant information concerning the Agreement 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.

B. ARBITRATION

1. **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 in which the claims are for $500,000 or less except for errors of law which may be appealed if an award exceeds $100,000 and is based on an error of law . If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Agreement 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 E, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.

2. **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 Agreement 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.

3. **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.

4. **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. 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.

5. **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.

6. **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 Agreement and the laws of the State of Arizona.

7. **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.

8. **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.

9. **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.

10. **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 Agreements 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.

C. **APPEAL TO MARICOPA COURTS:** 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 Agreement; 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.

D. **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.

E. **FEES AND COSTS:** Each party shall bear its own fees and costs in connection with any internal dispute resolution procedure. 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.

F. **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 pursuant to the Alternative Dispute Resolution provisional of this Agreement.

11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits,

actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements:

A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.

B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.

C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.

D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.

E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.

H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at

the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of $25,000 will only be accepted with the permission of the Management Services Director/Designee.

I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.

J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.

K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance

A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.

B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.

C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.

D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;

D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;

E. Claims for damages insured by usual personal injury liability coverage;

F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;

G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.

H. Claims for bodily injury or property damage arising out of completed operations;

I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;

J. Claims for injury or damages in connection with one's professional services;

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

12.4. Commercial General Liability - Minimum Coverage Limits.

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

12.5. Automobile Liability

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

12.6. Worker's Compensation and Employer's Liability

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

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

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

In the case of the CITY		In the case of the CONTRACTOR	
Contract Administrator:	Streets Division	Firm Name:	Artistic Land Mgmt
Contact:	Bill DePauw	Contact:	Jose Hernandez
Mailing Address:	PO Box 4008 – MS 909	Address:	PO Box 2320
Physical Address:	975 E Armstrong Building #C	City, State, Zip	Chandler AZ 85244
City, State, Zip	Chandler, AZ 85244	Phone:	480-821-4966
Phone:	480-782-3492	FAX:	480-961-5191
FAX:	480-782-3495	EMAIL:	Jose@ArtisticLandManagement.com

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

14. CONFLICT OF INTEREST:

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

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

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

15. GENERAL TERMS:

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

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

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

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

15.6. Independent CONTRACTOR. The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

15.7. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

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

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of **2008.**

FOR THE CITY OF CHANDLER		FOR THE CONTRACTOR
_____		By: _____
MAYOR		Signature
ATTEST:		ATTEST: If Corporation
	SEAL	
_____		_____
City Clerk		Secretary

Approved as to form:

_____

City Attorney

EXHIBIT A
TECHNICAL SPECIFICATIONS

SECTION A - DESCRIPTION OF WORK:
CONTRACTOR shall provide landscape development work as shown on drawings and in schedules.

1. **Sub grades**: Sub-grades have been previously graded under a separate agreement. CONTRACTOR shall be required to make repairs, which are pitted, eroded or scoured due to surface drainage, where necessary. All ground surfaces shall be graded reasonably smooth prior to completion of the landscape installation. Commencement of work indicates acceptance of existing job conditions.

2. **Finish Grades**: Unless otherwise noted, landscape finish grades shall be 1" below adjacent pavements, curbs and walks, etc.

   All landscape areas within this agreement shall be uniformly graded so that finished surfaces conform to typical City of Chandler roadway standards. Finished surfaces shall be reasonably smooth, compacted, and free from irregular surface drainage. Ditches and swales shall be finished to permit proper surface drainage.

3. **Surface Drainage of Planted Areas**: CONTRACTOR shall bear final responsibility for proper surface drainage of planted areas. Any discrepancy in the drawings or specifications, obstructions on the site, or prior work done by another party, which CONTRACTOR feels precludes establishing proper drainage, shall be brought to the attention of the Contract Administrator/designee *in writing* for correction or relief of said responsibility.

4. **Water:** Potable water will be provided by CITY for use in the irrigation sprinkler system.

5. **QUALITY ASSURANCE**:
   Landscape work shall be completed by a single firm specializing in landscape installation and maintenance.

5.1. **REGULATORY REQUIREMENTS:**
Perform work in accordance with all applicable laws, codes, and regulations required by authorities having jurisdiction over such work and provide for all inspections and permits required by federal, state, and local authorities in furnishing, transporting and installing materials as shown or for completing the work identified herein.

5.2. **REFERENCES:**

a. AAN-ASNS: AMERICAN ASSOCIATION OF NURSERYMEN, INC.
"American Standard for Nursery Stock" - 1986 Edition

b. AJCHN-SPN: AMERICAN JOINT COMMITTEE ON HORTICULTURAL NOMENCLATURE
"Standardized Plant Names" - Section Edition 1942

c. ANA: ARIZONA NURSERY ASSOCIATION
"Grower's Committee Recommended Tree Specifications" - 1998

d. MAG: MARICOPA ASSOCIATION OF GOVERNMENTS
Uniform Standard Details and Specifications for Public Works Construction, 1979

5.3 **SOURCE QUALITY CONTROL:**
Landscape materials shall be shipped with certificates of inspection required by governmental authorities. CONTRACTOR shall comply with regulations applicable to landscape materials.

CONTRACTOR shall not make substitutions. If specified landscape material is not obtainable, CONTRACTOR shall submit proof of non-availability to Contract Administrator/designee, together with proposal for use of equivalent material with corresponding adjustment of contract price.

5.4 **SAMPLES AND TESTS**:
Contract Administrator/designee reserves the right to take and analyze samples of materials for conformity to specifications at any time. CONTRACTOR shall furnish samples upon request by CITY. Materials rejected by CITY shall be immediately removed from the site at CONTRACTOR's expense. Cost of testing of materials not meeting specifications shall be paid by CONTRACTOR.

5.5 **Measurements:** CONTRACTOR shall measure trees and shrubs with branches and trunks or canes in their normal position. Do not prune to obtain required sizes. Measure body of tree or shrub for height and spread dimensions. Do not measure from branch or root tip-to-tip.

CONTRACTOR shall measure specified Date Palms from finished planted grade to the base or the start of the fronds. Date Palms shall have a finished planted height as specified in the landscape improvement plans. No air roots shall be exposed or visible after installation.

5.6 **Inspection:** Contract Administrator/designee will inspect plant material either at place of growth, at a nursery, or at the site prior to planting, for compliance with requirements for genus, species, variety, size and quality. Inspections other than those on site shall identify the character and quality of plants desired for the project and shall not constitute final acceptance of plant material. Contract Administrator/designee shall retain the right to further inspect trees, shrubs and palms for size and condition of balls and root systems, insects, injuries and latent defects, and to reject unsatisfactory or defective material at any time during progress of work. CONTRACTOR shall remove rejected trees, shrubs and palms immediately from site.

5.7 **SUBMITTALS:** CONTRACTOR shall provide sample of proposed granite mulch showing color, size range and texture, including proposed source. All submittals and samples shall be forwarded in a single package to the Contract Administrator/designee within 30 days of award of the Agreement.

5.8 **Certification**: CONTRACTOR shall submit certificates of inspection as required by governmental authorities. CONTRACTOR shall submit manufacturers or CONTRACTOR's certified analysis for soil amendments and fertilizer materials. CONTRACTOR shall submit other data substantiating that materials comply with specified requirements. CONTRACTOR shall file copies of certificates with Contract Administrator/designee after acceptance of material.

5.9 **Planting Schedule**: At least 14 days prior to initiating work, CONTRACTOR shall submit proposed planting schedule, indicating dates for each type of landscape work during landscape installation. CONTRACTOR shall correlate with specified maintenance periods to provide maintenance from date of substantial completion. Once accepted, CONTRACTOR shall revise dates only as approved in writing, after documentation of reasons for delay.

5.10 **Maintenance Instructions Booklet**: CONTRACTOR shall submit typewritten recommendation of procedures to be established by CITY for maintenance of landscape work for one full year. CONTRACTOR shall submit two weeks prior to expiration of maintenance period according to agreement closeout. CONTRACTOR shall be prepared to discuss the content with the Contract Administrator/designee.

5.11 DELIVERY, STORAGE AND HANDLING:

5.11.1 **Packaged Materials**: CONTRACTOR shall deliver packaged materials in containers showing weight, analysis and name of manufacturer. CONTRACTOR shall protect materials from deterioration during delivery, and while stored at site. CONTRACTOR shall protect products/materials from weather or other conditions that would damage or impair the effectiveness of the product/material.

5.11.2 **Trees and Shrubs**: CONTRACTOR shall not bend or bind-tie trees, shrubs and palms in such manner as to damage bark, break branches or destroy natural shape. CONTRACTOR shall provide protective covering during delivery and adequate protection for root systems and balls from drying winds and sun.

CONTRACTOR shall deliver trees, shrubs and palms after preparations for planting have been completed and plant immediately. If planting is delayed more than 6 hours after delivery, CONTRACTOR shall set trees and shrubs in shade, protect from weather and mechanical damage, and keep roots moist by acceptable means of retaining moisture. CONTRACTOR shall water as often as necessary to maintain root system in a moist condition. It is recommended that a temporary storage yard be established by CONTRACTOR for landscape plants and materials.

CONTRACTOR shall not remove container-grown stock from containers until planting time.

6. SITE CONDITIONS:

CONTRACTOR shall inspect sub-grades prior to commencing work to confirm sub-grade depths and grades. CONTRACTOR shall advise Contract Administrator/designee of discrepancies with drawings or specifications. All planting areas shall be free of construction debris and/or toxic material and sub-graded to a level to permit landscape construction. Trenches, foundation backfill or other filled excavations shall be compacted prior to the completion of the landscape installation. Commencement of work indicates acceptance of job conditions.

CONTRACTOR shall cooperate with other CONTRACTORS who may be working in and adjacent to landscape work areas.

7. **Utilities**: CONTRACTOR shall determine location of underground utilities through Blue Stake or other methods and perform work in such a manner to avoid possible damage. CONTRACTOR shall hand excavate as required. CONTRACTOR shall maintain grade stakes set by others until removal is mutually agreed upon by CONTRACTOR and CITY.

8. **Obstructions**: If rock, underground construction, or other obstructions are encountered in excavation for planting of trees or shrubs, CONTRACTOR shall notify Contract Administrator/designee. New locations may be selected by CITY, or instructions may be issued to direct removal of obstruction. CONTRACTOR shall proceed with work only after approval of Contract Administrator/designee.

9. PROJECT WARRANTY (GUARANTEE)

CONTRACTOR shall warranty trees, shrubs and palms for a period of one year after final acceptance of landscape installation against defects including death, unsatisfactory growth, and forest damage except for defects resulting from neglect by CITY, abuse or damage by others, or unusual phenomena or incidents which are beyond CITY's control.

Starting date for the 90-day maintenance period must be approved in writing by the Contract Administrator/designee.

CONTRACTOR shall remove and replace trees, shrubs, or other plants found to be dead or in unhealthy condition at any time during warranty period or as directed by the Contract

Administrator/designee. CONTRACTOR shall replace trees, shrubs and palms, which are in questionable condition at end of warranty period unless, in opinion of the Contract Administrator/designee, it is advisable to delay replacement. If replacement is delayed, another inspection will be conducted at a mutually agreed-upon date to determine acceptance or rejection. Only one replacement (per tree, shrub or palm) will be required during the warranty period, except for losses or replacements due to failure to comply with specified requirements. Contract Administrator/designee will be responsible for approving replacement material prior to planting.

10. **MAINTENANCE OF PLANTING**:
From the time any plants are planted until completion of the 90-day maintenance period, CONTRACTOR shall ensure that all plants are watered and fertilized, trash and debris are removed, weeds controlled, plant replacements made, guying stakes adjusted, soil saucers maintained, plants pruned and weeded, mulch added and/or spraying for insects or disease completed. Plants damaged by frost shall be replaced during the maintenance period as directed by the Contract Administrator/designee.

CONTRACTOR shall spray or dust appropriate insecticides, miticides, and fungicides as necessary to maintain plants in a healthy and vigorous growing condition during the maintenance period. CONTRACTOR shall apply pest and disease control chemicals in accordance with manufacturer's instructions. CONTRACTOR shall provide written documentation to the Contract Administrator/designee of all chemicals applied during the maintenance period. CONTRACTOR shall bear full responsibility for complete removal of weeds and grasses such as Dallas, Johnson and Nut grasses from the site resulting from the landscape installation.

SECTION B - PRODUCTS:

1. **SOIL AMENDMENTS:**
Forest Mulch: A well composted, nitrogen stabilized wood fiber mulch available from Western Agricultural Products, Phoenix, Arizona, or approved equivalent.

Commercial Fertilizer: Complete fertilizer of neutral character, with 50% of the elements derived from organic sources and containing not less than 20% total nitrogen, 20% available phosphoric acid, and 20% soluble potash, or approved equivalent.

Plant Tablets: Agriform 21 gram, 20-10-5 fertilizer tablets, or approved equivalent.

2. **PLANT MATERIALS**

Quality: CONTRACTOR shall provide trees, shrubs, palms and other plants of size, genus species and variety shown and scheduled on the landscape improvement plans which comply with recommendations of the noted references.

Trees, Shrubs and Palms: CONTRACTOR shall provide trees, shrubs and palms of quantity, size, genus, species and variety shown and scheduled for landscape work and complying with recommendations and requirements of the above references. CONTRACTOR shall provide healthy, vigorous stock, grown in a recognized nursery in accordance with good horticultural practice and free of disease, insects, eggs, larvae and defects such as knots, sun-scald, injuries, abrasions, or disfigurement.

Plants shall be sound, healthy and vigorous, well branched and densely foliated when in leaf. They shall be free from physical damage or adverse conditions that would prevent thriving growth.

Plants shall not be pruned before delivery. Trees with damaged or crooked leaders, or multiple leaders, unless specified, will be rejected. Trees with abrasions of the bark, sunscalds, disfiguring knots, or fresh cuts of limbs over 3/4" which have not completely callused will be rejected.

CONTRACTOR shall label each type of tree and shrub and all trade-marked (Π) plant material with securely attached waterproof tag bearing legible designation of botanical and common name. Do not remove tags until approval has been received to do so from the Landscape Architect.

Palm Trees: CONTRACTOR shall provide Date Palm Trees as indicated on the landscape improvement plans. Palm trees shall have straight trunks, free of kinks or scars and have like character (match in appearance).

3. MISCELLANEOUS LANDSCAPE MATERIALS:

Decomposed Granite Mulch: Decomposed granite shall be as per project plans and MAG, Section 702.4, with the following additions: the decomposed granite shall not contain lumps or balls of clay, caliche, organic matter or calcareous coating and shall conform to the standard Arizona Department of Transportation size specifications.

CONTRACTOR shall ensure that sufficient quantity is available from a single source to complete the project. Contract Administrator/designee is to approve sample prior to ordering.

Stakes and Guys: CONTRACTOR shall provide stakes of sound new 2"x2" Douglas fir or pine, free of knot holes and other defects. Length of stakes shall be as necessary to stabilize planted trees. CONTRACTOR shall provide wire ties and guys of 2-strand, twisted, pliable zinc-coated galvanized iron wire not lighter than 12 gauge. CONTRACTOR shall provide not less than 1/2" diameter reinforced rubber or plastic hose, cut to required lengths and of uniform color, material and size to protect tree trunks from damage by wires.

4. SCHEDULE OF SOIL MIXTURE AMENDMENTS:

For planting Date Palms, see landscape details on the improvement plans. For planting backfill for trees and shrubs provide specified materials in not less than the following quantities:

•1/2 part of forest mulch to 4 parts of native soil by volume

5. EXCAVATION

CONTRACTOR shall excavate pits, beds and trenches as shown in schedules. CONTRACTOR shall loosen hard subsoil in bottom of excavation.

Schedules for plant pit dimensions are as follows:

Plant Pit Dimensions for Trees, and Shrubs

Plant Size	Width	Depth
1 Gallon	1'-0"	1'-0"
5 Gallon	2'-0"	1'-6"
24" Box	4'-0"	3'-0"
30" Box	5'-0"	3'-9"
36" Box	6'-0"	4'-0"
42" Box	12" Wider than container (each side)	As required to provide watering saucer

*See specific details on the landscape improvement plans for date palm pit dimensions.

Plant Tablet Schedules for Trees and Shrubs

1 Gallon	1 Tablet
5 Gallon	2 Tablets
24" Box	5 Tablets
36" Box	6 Tablets
42" Box	8 Tablets

SECTION B.-.EXECUTION

1. TREES, SHRUBS, PALMS

Types of work required include the following:

- Furnishing trees, shrubs and palms
- Preparation of planting pits, including excavation, backfilling and disposal of surplus and unsuitable excavated material
- Planting of trees, shrubs and palms
- Maintenance of trees, shrubs and palms
- Supplying and placing of planter backfill mix.

Installation of Plant Materials: CONTRACTOR shall lay out individual tree, shrub and palm locations and areas for multiple plantings. CONTRACTOR shall stake locations, outline areas and secure Contract Administrator/designee's acceptance before start of planting work. CONTRACTOR shall make minor adjustments as may be requested by Contract Administrator/designee.

Excavation: CONTRACTOR shall excavate pits as shown on drawings and schedules. CONTRACTOR shall loosen hard subsoil in bottom of excavation. Refer to Part 1 for underground obstructions.

CONTRACTOR shall test drainage of tree and shrub pits by filling with water twice in succession. Conditions permitting the retention of water in planting pits for more than twenty-four (24) hours shall be brought to the attention of the Contract Administrator/designee. CONTRACTOR shall submit a written proposal for the correction to the Contract Administrator/designee for approval prior to proceeding with the work.

CONTRACTOR shall test drainage of palm tree pits by filling with water once. Conditions permitting the retention of water in the planting pits for more than (2) hours shall be brought to the attention of the Contract Administrator/designee.

Preparation of Tree and Shrub Planting Backfill Mix: CONTRACTOR shall mix forest mulch with excavated soil into a homogeneous mixture near the plant pit at rates specified in schedule. CONTRACTOR shall separate layers of mulch and excavated soil layers will not be accepted. (Date Palm species will not receive forest mulch--backfill as shown on the planting details provided as a portion of the landscape improvement plans.)

Setting for Trees and Shrubs: CONTRACTOR shall set plant material stock on layer of compacted backfill mixture, plumb and in center of pit or trench with top of ball at elevation necessary to accomplish finished landscape grades. CONTRACTOR shall remove pallets or containers before setting. CONTRACTOR shall cut cans on 2 sides with a metal cutter, remove bottoms of wooden boxes before setting. Do not use spade to cut cans. Do not handle contained plants by foliage, branches or trunks.

Setting and Backfilling for Date Palm Trees: CONTRACTOR shall place palms per the details on the landscape improvement plan set. All palms shall be placed straight and perpendicular to an

assumed level ground surface. Do not place palms perpendicular to sloped ground. CONTRACTOR shall set palms firm enough as not to reduce the need for stakes or bracing. CONTRACTOR shall assume all responsibility to maintain palms in an upright position. If CONTRACTOR believes bracing is necessary, it shall be his responsibility to notify the Contract Administrator/designee prior to the commencement of palm installation. CONTRACTOR shall provide a shop drawing to the Contract Administrator/designee for approval, which identifies proposed bracing method and materials.

Upon delivery to the site, verify that palm fronds have been pulled together loosely, but securely tied in an upward position with multiple strands or jute twine to protect the heart of the tree. Palms without frond ties will be rejected. Frond ties shall remain in place until new growth is visible.

Backfilling for Trees and Shrubs: After removing plant from container, CONTRACTOR shall scarify side of rootball to eliminate root-bound condition.

CONTRACTOR shall not use stock if ball is cracked or broken before or during planting operation. When set, place additional backfill around base and sides of ball and place plant tablets. CONTRACTOR shall work each layer to settle backfill and eliminate voids and air pockets. When excavation is approximately 2/3 full, CONTRACTOR shall water thoroughly before placing remainder of backfill. Repeat watering until no more is absorbed. CONTRACTOR shall water again after placing final layer of backfill.

CONTRACTOR shall countersink backfill as per drawings.

CONTRACTOR shall provide decomposed granite mulch in planted areas as shown on drawings. CONTRACTOR shall provide not less than 2" of mulch as per plans and finish level with adjacent finish grades.

CONTRACTOR shall remove all nursery-type plan labels from plants. CONTRACTOR shall not remove the waterproof or trademark tags until directed to do so by the Contract Administrator/designee. CONTRACTOR shall prune, thin out and shape trees and shrubs in accordance with ASNS. CONTRACTOR shall prune trees to retain required height and spread. Unless otherwise directed by the Contract Administrator/designee, CONTRACTOR shall not cut tree leaders, and remove only injured or dead branches from flowering trees (if any). CONTRACTOR shall prune shrubs to retain natural character. Plants after pruning should conform to the ANA requirements.

Contract Administrator/designee reserves the right to omit tree stakes on certain trees, depending on planting size. Unless otherwise directed, stake all trees. CONTRACTOR shall set stakes vertically and space to avoid penetrating balls or root masses. CONTRACTOR shall allow enough slack to avoid "rigid" restraint of tree. CONTRACTOR shall begin maintenance of plant material.

All plants shall be set apart in one separated area at the plant source for inspection prior to planting. CONTRACTOR shall inform the Contract Administrator/designee as to the exact location and time the plants being used have been set aside for inspection.

2. INSPECTIONS:

Pre-Maintenance Inspection: CONTRACTOR shall perform a pre-maintenance inspection upon substantial completion of all landscape planting and irrigation work under this contract. CONTRACTOR shall notify Contract Administrator/designee within 5 days of inspection to arrange schedule. Contract Administrator/designee, CONTRACTOR and such others as the CITY shall direct, shall be present at the inspection. Contract Administrator/designee shall issue the effective beginning date for the 90-day maintenance period.

Work requiring corrective action in the judgment of the Contract Administrator/designee shall be performed within 5 days after the pre-maintenance inspection. Corrective work and materials replacement shall be in accordance with the drawings and specifications and shall be made by CONTRACTOR at no cost to CITY.

Final Maintenance Inspection: At the end of the 90-day maintenance period, a final maintenance inspection will be performed to accept the landscape installation.

At the time of final maintenance inspection, CONTRACTOR shall have all planting areas under this Contract free of weeds. All plant basins shall be in good repair.

If, after the inspection, the Contract Administrator/designee is of the opinion that all work has been performed as per the drawings and specifications and that all plant materials are in satisfactory growing condition, he will give CONTRACTOR written notice of acceptance of the landscape installation and commencement of the 1-year warranty period.

Work requiring corrective action or replacement (in the judgment of the Contract Administrator/designee) shall be performed within 10 days after the final inspection. Corrective work and materials replacement shall be in accordance with the drawings and specifications, and shall be made by CONTRACTOR at no cost to CITY. CONTRACTOR shall maintain corrected work until it has been re-inspected by Contract Administrator/designee.

At the time of the final maintenance inspection, CONTRACTOR shall convene a maintenance conference to familiarize CITY with the maintenance procedures recommended in the Maintenance Instructions Booklet. The meeting may be attended by the Contract Administrator/designee, CITY representatives, or others selected by CITY. The conference shall be mandatory for final close-out of the agreement.

Subsequent to the maintenance conference, CONTRACTOR shall make two site visits within the following two months to observe compliance with the maintenance instructions by CITY. CONTRACTOR shall report, *in writing*, to Contract Administrator/designee any non-compliance activities or situations which may be harmful to the completed landscaping.

3. **CLEANUP AND PROTECTION**:

During landscape work, CONTRACTOR shall keep pavements clean and work area in an orderly condition. CONTRACTOR shall broom, scrub or hose affected areas as directed by the Contract Adrninistrator/designee to maintain a clean and neat work area.

CONTRACTOR shall promptly remove soil and debris created by landscape work from paved areas. CONTRACTOR shall clean wheels of vehicles prior to leaving site to avoid tracking soil onto surface of roads, walks or other paved areas.

CONTRACTOR shall protect landscape work and materials from damage due to landscape installation, operations by other contractors and trades and trespassers. CONTRACTOR shall maintain protection during installation and maintenance periods. CONTRACTOR shall treat, repair or replace CONTRACTOR-damaged work as directed by the Contract Administrator/designee at no cost to CITY. CONTRACTOR shall remove all debris, trash and excess materials generated by the landscape installation.

EXHIBIT B
PRICING

Citywide pricing

ITEM	DESCRIPTION	UNIT PRICE	LABOR	ESTIMATED QTY
1.	1-gallon container shrub	$4.75	$3.50	3,000 ea
2.	5-gallon container shrub	$12.00	$10.50	3,000 ea
3.	24" Box Tree	$65.00	$30.00	250 ea
4.	36" Box Tree	$385.00	$150.00	100 ea
5.	Decomposed Granite (sq. ft) ¾" minus Desert Gold;	$37.00	$40.00	1,000 tons

Hourly rate for additional work, if required **$20.00**

Housing & Redevelopment pricing (including Davis/Bacon information)

ITEM	DESCRIPTION	UNIT PRICE	LABOR	ESTIMATED QTY
1.	1-gallon container shrub	$4.75	$4.00	3,000 ea
2.	5-gallon container shrub	$12.00	$11.50	3,000 ea
3.	24" Box Tree	$65.00	$35.00	250 ea
4.	36" Box Tree	$385.00	$165.00	100 ea
5.	Decomposed Granite (sq. ft) ¾" minus Desert Gold;	$37.00	$50.00	1,000 tons

Hourly rate for additional work, if required **$24.00**