



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

1. Agenda Item Number:

**32**

2. Council Meeting Date:

November 20, 2008

**TO: MAYOR & COUNCIL**

**3. Date Prepared:** October 27, 2008

**THROUGH: CITY MANAGER**

**4. Requesting Department:** Management Services

**5. SUBJECT:** Approve Agreement PM9-595-2690 for Ornamental Rock, Granite & Misc. Supplies with Material Delivery, Inc. (MDI), Preach Building Supply, and Pioneer Landscaping Materials Inc. in a total amount not to exceed \$100,000.

**6. RECOMMENDATION:** Recommend approval of Agreement PM9-595-2690 for Ornamental Rock, Granite & Misc. Supplies with Material Delivery, Inc. (MDI), Preach Building Supply, and Pioneer Landscaping Materials Inc in a total amount not to exceed \$100,000.

**7. BACKGROUND/DISCUSSION:** The City's needs for ornamental rock, granite, topsoil, river rock, rip rap, and in-field mix for our City ballparks are now in excess of the City's bid threshold. These materials are used throughout the City, with Parks Operations, Neighborhood Resources and Housing & Redevelopment being the largest users. Realizing the need to establish a contract for this service, an Invitation for Bid (IFB) was issued for the commodities. This agreement will provide the City with three (3) contractors who are able to accommodate the various needs of the City.

**8. EVALUATION PROCESS:** Bids were advertised and all registered vendors were notified. Six (6) responses were received and evaluated. After evaluating the responses, City staff is recommending award to Material Delivery, Inc (MDI), Preach Building Supply, and Pioneer Landscaping Materials to ensure availability of any needed items. It was determined by staff that these vendors are able to meet the City's needs. The terms of the agreement period will be December 1, 2008 through November 30, 2009 with the option to renew for four (4) additional one-year periods.

**9. FINANCIAL IMPLICATIONS:** Funds will be paid through various departments' other professional contract services (5219) accounts for this service.

**10. PROPOSED MOTION:** Move to approve Agreement PM9-595-2690 for Ornamental Rock, Granite & Misc. Supplies with Material Delivery, Inc. (MDI), Preach Building Supply, and Pioneer Landscaping Materials Inc in a total amount not to exceed \$100,000.

**APPROVALS**

**11. Requesting Department**

Robert Combs, CPPB, Purchasing & Materials Manager

**12. Department Head**

Dennis Strachota, Management Services Director

**13. Procurement Officer**

Sharon Brause, CPPB

**14. City Manager**

W. Mark Pentz

**CITY OF CHANDLER PURCHASE CONTRACT  
ORNAMENTAL ROCK, GRANITE & MISC. LANDSCAPING SUPPLIES  
AGREEMENT NO.: PM9-595-2690**

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 Material Delivery Inc (MDI), 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 Parks & Grounds Maintenance Manager /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.
- 1.4. Usage Report.** CONTRACTOR shall furnish to CITY a usage report delineating the acquisition activity governed by the contract. Such report shall be sent after ten (10) months of the Contract term. The format of the report shall be an electronic copy to the Procurement Officer listed herein and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

**2. GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit C, 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. Licenses:** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.
- 2.4. 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.

- 2.5. Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.6. Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.6.1.** Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").
- 2.6.2.** A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.6.3.** The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.6.4.** The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.6.5.** The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.6.6.** In accordance with A.R.S. §35-397, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.6.7.** In accordance with A.R.S. §35-397, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.7. 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.
- 2.8. Estimated Quantities.** The quantities shown on Exhibit C (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 will be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.9. 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.
- 2.10. Product Quality.** Quality of furnished material must be to the satisfaction of authorized CITY personnel. In the event that material does not meet minimum specifications, the CONTRACTOR shall be required to replace the material at not cost to the CITY.
- 2.11. 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.

- 2.12. Weigh Tickets.** The CONTRACTOR must submit weigh tickets to the using Department within seven (7) calendar days of each delivery.
- 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.
- 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, inspections, 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.** Delivery shall be made within forty-eighty hours (48) after receipt of a Contract Purchase Order (ARO) unless otherwise specified.
- 5. PRICE:** CITY shall pay to CONTRACTOR, together with all companion agreements, an amount not to exceed One Hundred Thousand Dollars (\$100,000) 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 C, 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.
- 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 term of the Contract is one (1) year (s), commencing on the 1<sup>st</sup> day of December, 2008 and terminating on November 30, 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.
- 7. USE OF THIS CONTRACT:** CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and

will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.

- 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](http://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. 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 CONSULTANT 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:** CONSULTANT 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 CONSULTANT'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONSULTANT'S agreement and acceptance of CITY'S position.
3. **CITY Response:** The Agreement Administrator will provide to CONSULTANT a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONSULTANT'S written claim.
4. **Appeal:** If CONSULTANT disagrees with the response of the Purchasing Manager, within fifteen days of the date of the response by the Agreement Administrator, CONSULTANT 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 CONSULTANT within sixty (60) days from the date of CONSULTANT'S written notice of appeal.

#### **B. ARBITRATION**

1. **Arbitration:** If CONSULTANT 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 CONSULTANT chooses not to accept the decision of the Assistant Management Services Director, CONSULTANT 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 CONSULTANT 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, CONSULTANT will select one arbitrator, and any other CONSULTANT 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. 12-1501, 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.
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. **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:	<u>Parks &amp; Facilities</u>	Firm Name:	<u>Material Delivery Inc. (MDI)</u>
Contact:	<u>Kris Kircher</u>	Contact:	<u>Mark Higgins</u>
Mailing Address:	<u>PO Box 4008 – MS 909</u>	Address:	<u>PO Box 71369, 2815 E Rose Garden</u>
Physical Address:	<u>249 E Chicago</u>	City, State, Zip	<u>Phoenix AZ 85050</u>
City, State, Zip	<u>Chandler AZ 85244</u>	Phone:	<u>02-569-8722</u>
Phone:	<u>480-782-2752</u>	FAX:	<u>02-569-9240</u>
FAX:	<u>480-782-2560</u>	Email:	<u>MHiggins@MDIRock.com</u>

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. **GENERAL TERMS:**

- 14.1 **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.
- 14.2 **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.
- 14.3 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 14.4 **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 14.5 **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.
- 14.6 **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.
- 14.7 **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.

**14.8 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

\_\_\_\_\_  
MAYOR

By: \_\_\_\_\_  
Signature

Approved as to Form:

ATTEST: If Corporation

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Secretary

ATTEST:



\_\_\_\_\_  
City Clerk

EXHIBIT A

Contractor Immigration Warranty  
To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the Contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the Contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

<b>Contract Number:</b>	PM9-595-2690
<b>Name (as listed in the contract):</b>	MATERIAL DELIVERY INC. (MDI ROCK)
<b>Street Name and Number:</b>	P.O. Box 71269 or 2815 ROSE GARDEN
<b>City:</b> PHOENIX	<b>State:</b> AZ <b>Zip Code:</b> 85050

I hereby attest that:

1. The Contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

  
\_\_\_\_\_

Printed Name: MARK HIGGINS

Title: SALES MANAGER

Date (month/day/year): 10-29-08

**EXHIBIT B**  
**TECHNICAL SPECIFICATIONS**

1. Ornamental Rock - Select rock shall be crushed naturally colored rock, indigenous to Arizona, in a ½" or ¾" gradation size. Crushed rock shall be decorative rock typically known or described on Exhibit B.
2. Decomposed Granite – Decomposed granite shall be of a dark red or gold color granite rock material indigenous to Arizona. Decomposed or balls of clay and other deleterious substances shall be removed. All material shall be from a single production source and uniform in appearance.
3. Boulders – Boulders shall be 2" to 6" in diameter. Colors may vary.
4. River Rock - Select rock shall be river rock indigenous to the area around Phoenix, Arizona.
5. Screened topsoil
6. Sterilized manure
7. Riprap granite for drains – 1 ½" – 3" in size.
8. Infield mix. – stabilizer "Pro Red" infield mix.

**EXHIBIT C  
PRICING**

Item #	Description		MDI
1a	Decomposed Granite, 1/4" minus; Madison Gold or Equal; delivered (250 tons)	Unit Price	\$ 21.00
		Extended Price	\$ 5,250.00
1b	Decomposed Granite, 1/4" minus; Madison Gold or Equal; picked up (250 tons)	Unit Price	\$ 20.00
		Extended Price	\$ 5,000.00
2a	Decomposed Granite, 3/4" minus; Madison Gold or equal; delivered (250 tons)	Unit Price	\$ 28.00
		Extended Price	\$ 7,000.00
2b	Decomposed Granite, 3/4" minus, Madison Gold or equal; picked-up (250 tons)	Unit Price	\$ 27.00
		Extended Price	\$ 6,750.00
3a	Decomposed Granite, 1/4" minus, Express Rose or equal; delivered (250 tons)	Unit Price	\$ 27.00
		Extended Price	\$ 6,750.00
4a	Decomposed Granite, 3/4" minus, Express Rose or equal; delivered (250 tons)	Unit Price	\$ 33.00
		Extended Price	\$ 8,250.00
5a	Decomposed Granite, 1/4" minus, Sedona Red or equal; delivered (250 tons)	Unit Price	\$ 61.00
		Extended Price	\$ 15,250.00
5b	Decomposed Granite, 1/4" minus, Sedona Red or equal; picked-up (250 tons)	Unit Price	\$ 55.00
		Extended Price	\$ 13,750.00
6a	Decomposed Granite, 3/4" minus, Sedona Red or equal; delivered (250 tons)	Unit Price	\$ 61.00
		Extended Price	\$ 15,250.00
6b	Decomposed Granite, 3/4" minus, Sedona Red or equal; picked-up (250 tons)	Unit Price	\$ 55.00
		Extended Price	\$ 13,750.00
7a	Decorative Rock, 1/4" Madison Gold or equal; delivered (250 tons)	Unit Price	\$ 26.00
		Extended Price	\$ 6,500.00
7b	Decorative Rock, 1/4" Madison Gold or equal; picked-up (250 tons)	Unit Price	\$ 20.00
		Extended Price	\$ 5,000.00
8a	Decorative Rock, 3/4" Madison Gold or equal; delivered (250 tons)	Unit Price	\$ 31.00
		Extended Price	\$ 7,750.00
8b	Decorative Rock, 3/4" Madison Gold or equal; picked-up (250 tons)	Unit Price	\$ 35.00
		Extended Price	\$ 8,750.00
9a	Decorative Rock, 1/2" Express Rose or equal; delivered (250 tons)	Unit Price	\$ 39.00
		Extended Price	\$ 9,750.00
10a	Decorative Rock, 3/4" Express Rose or equal; delivered (250 tons)	Unit Price	\$ 39.00
		Extended Price	\$ 9,750.00

Item #	Description		MDI
11a	Decorative Rock, Sedona Red or equal; delivered (250 tons)	Unit Price	\$ 61.00
		Extended Price	\$ 15,250.00
11b	Decorative Rock, Sedona Red or equal; picked-up (250 tons)	Unit Price	\$ 55.00
		Extended Price	\$ 13,750.00
12a	Decorative Rock, 3/4", Pink Coral or equal; delivered (250 tons)	Unit Price	\$ 37.00
		Extended Price	\$ 9,250.00
12b	Decorative Rock, 3/4", Pink Coral or equal; picked-up (250 tons)	Unit Price	\$ 42.00
		Extended Price	\$ 10,500.00
13a	Decorative Rock, 1/2" minus, Color;; delivered (250 tons)	Unit Price	\$ 35.00
		Extended Price	\$ 8,750.00
13b	Decorative Rock, 1/2" minus, Color;; picked-up (250 tons)	Unit Price	\$ 30.00
		Extended Price	\$ 7,500.00
14a	Decorative Rock, 3/4" minus, Color;; delivered (250 tons)	Unit Price	\$ 45.00
		Extended Price	\$ 11,250.00
14b	Decorative Rock, 3/4" minus, Color;; picked-up (250 tons)	Unit Price	\$ 39.00
		Extended Price	\$ 9,750.00
15a	Decomposed Granite, 1/4" minus or equal; delivered (500 tons)	Unit Price	\$ 23.50
		Extended Price	\$ 11,750.00
15b	Decomposed Granite, 1/4" minus or equal; picked-up (500 tons)	Unit Price	\$ 19.00
		Extended Price	\$ 9,500.00
16a	Decomposed Granite, 3/4" minus or equal; delivered (500 tons)	Unit Price	\$ 38.00
		Extended Price	\$ 1,900.00
17a	Boulders; color may vary; delivered (20 tons)	Unit Price	\$ 120.00
		Extended Price	\$ 2,400.00
17b	Boulders; color may vary; picked-up (20 tons)	Unit Price	\$ 80.00
		Extended Price	\$ 1,600.00
18a	3"-8" Salt River Rock (indigenous to metro Phoenix); delivered (100 tons)	Unit Price	\$ 29.00
		Extended Price	\$ 2,900.00
18b	3"-8" Salt River Rock (indigenous to metro Phoenix); picked-up (100 tons)	Unit Price	\$ 28.00
		Extended Price	\$ 2,800.00
19a	Screened Topsoil; delivered (100 tons)	Unit Price	\$ 24.00
		Extended Price	\$ 2,400.00
19b	Screened Topsoil; picked-up (100 tons)	Unit Price	\$ 24.00
		Extended Price	\$ 2,400.00
20a	Sterilized Manure; delivered (100 yards)	Unit Price	\$ 20.00
		Extended Price	\$ 2,000.00
20b	Sterilized Manure; picked-up (100 yards)	Unit Price	\$ 20.00
		Extended Price	\$ 2,000.00

Item #	Description		MDI
21a	Riprap granite for drains; 1-1/2" - 3"; delivered (100 tons)	Unit Price	\$ 39.00
		Extended Price	\$ 3,900.00
22a	Infield Mix; Stabilizer "Pro Red" infield mix; delivered (200 tons)	Unit Price	\$ 48.00
		Extended Price	\$ 9,600.00
22b	Infield Mix; Stabilizer "Pro Red" infield mix; picked-up (200 tons)	Unit Price	\$ 47.00
		Extended Price	\$ 9,400.00

**CITY OF CHANDLER PURCHASE CONTRACT  
ORNAMENTAL ROCK, GRANITE & MISC. LANDSCAPING SUPPLIES  
AGREEMENT NO.: PM9-595-2690**

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 Pioneer Landscaping Materials Inc, 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 Parks & Grounds Maintenance Manager /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.
- 1.4. Usage Report.** CONTRACTOR shall furnish to CITY a usage report delineating the acquisition activity governed by the contract. Such report shall be sent after ten (10) months of the Contract term. The format of the report shall be an electronic copy to the Procurement Officer listed herein and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

**2. GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit C, 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. Licenses:** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.
- 2.4. 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.

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- 2.5. Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.6. Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.6.1.** Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").
- 2.6.2.** A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.6.3.** The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.6.4.** The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.6.5.** The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.6.6.** In accordance with A.R.S. §35-397, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.6.7.** In accordance with A.R.S. §35-397, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.7. 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.
- 2.8. Estimated Quantities.** The quantities shown on Exhibit C (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 will be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.9. 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.
- 2.10. Product Quality.** Quality of furnished material must be to the satisfaction of authorized CITY personnel. In the event that material does not meet minimum specifications, the CONTRACTOR shall be required to replace the material at not cost to the CITY.
- 2.11. 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.

**2.12. Weigh Tickets.** The CONTRACTOR must submit weigh tickets to the using Department within seven (7) calendar days of each delivery.

**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.

**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, inspections, 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.** Delivery shall be made within forty-eight hours (48) after receipt of a Contract Purchase Order (ARO) unless otherwise specified.

**5. PRICE:** CITY shall pay to CONTRACTOR, together with all companion agreements, an amount not to exceed One Hundred Thousand Dollars (\$100,000) 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 C, 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.
- 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 term of the Contract is one (1) year (s), commencing on the 1<sup>st</sup> day of December, 2008 and terminating on November 30, 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.
7. **USE OF THIS CONTRACT:** CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and

will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.

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](http://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. 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 CONSULTANT 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:** CONSULTANT 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 CONSULTANT'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONSULTANT'S agreement and acceptance of CITY'S position.
3. **CITY Response:** The Agreement Administrator will provide to CONSULTANT a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONSULTANT'S written claim.
4. **Appeal:** If CONSULTANT disagrees with the response of the Purchasing Manager, within fifteen days of the date of the response by the Agreement Administrator, CONSULTANT 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 CONSULTANT within sixty (60) days from the date of CONSULTANT'S written notice of appeal.

#### B. ARBITRATION

1. **Arbitration:** If CONSULTANT 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 CONSULTANT chooses not to accept the decision of the Assistant Management Services Director, CONSULTANT 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 CONSULTANT 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, CONSULTANT will select one arbitrator, and any other CONSULTANT 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. 12-1501, 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.
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. 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

Department:	Parks & Facilities
Contact:	Kris Kircher
Mailing Address:	PO Box 4008 – MS 909
Physical Address:	249 E Chicago
City, State, Zip	Chandler AZ 85244
Phone:	480-782-2752
FAX:	480-782-2560

In the case of the CONTRACTOR

Firm Name:	Pioneer Landscaping Materials Inc.
Contact:	Jonathan Ferry
Address:	310 N Pasadena St
City, State, Zip	Gilbert, AZ 85233
Phone:	480-926-8200
FAX:	480-813-1758
Email:	Jon@PioneerSand.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. GENERAL TERMS:**

- 14.1 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.
- 14.2 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 of each party.
- 14.3 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 14.4 Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 14.5 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.
- 14.6 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.

**14.7 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.

**14.8 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

\_\_\_\_\_  
MAYOR

By: *Jonathan M. Perry*  
Signature

Approved as to Form:

ATTEST: If Corporation

\_\_\_\_\_  
City Attorney  
*[Signature]*

*Sammy Pridley*  
Assistant Secretary

ATTEST:

\_\_\_\_\_  
City Clerk

SEAL

EXHIBIT A

Contractor Immigration Warranty  
To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the Contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the Contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: PM9-595-2690		
Name (as listed in the contract): Pioneer Landscaping Materials, Inc		
Street Name and Number: 310 N. Pasadena St		
City: Gilbert	State: AZ	Zip Code: 85233

I hereby attest that:

1. The Contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

Jonathan M. Ferris

Printed Name: JONATHAN M. FERRIS

Title: SALES REP.

Date (month/day/year): OCTOBER 30, 2008

**EXHIBIT B  
TECHNICAL SPECIFICATIONS**

1. Ornamental Rock - Select rock shall be crushed naturally colored rock, indigenous to Arizona, in a ½" or ¾" gradation size. Crushed rock shall be decorative rock typically known or described on Exhibit B.
2. Decomposed Granite – Decomposed granite shall be of a dark red or gold color granite rock material indigenous to Arizona. Decomposed or balls of clay and other deleterious substances shall be removed. All material shall be from a single production source and uniform in appearance.
3. Boulders – Boulders shall be 2" to 6" in diameter. Colors may vary.
4. River Rock - Select rock shall be river rock indigenous to the area around Phoenix, Arizona.
5. Screened topsoil
6. Sterilized manure
7. Riprap granite for drains – 1 ½" – 3" in size.
8. Infield mix. – stabilizer "Pro Red" infield mix.

**EXHIBIT C  
PRICING**

<b>Item #</b>	<b>Description</b>		<b>Pioneer Landscaping Materials</b>
1a	Decomposed Granite, 1/4" minus; Madison Gold or Equal; delivered (250 tons); <b>Pioneer's color – Santa Fe Gold</b>	Unit Price	\$ 19.50
		Extended Price	\$ 4,875.00
1b	Decomposed Granite, 1/4" minus; Madison Gold or Equal; picked up (250 tons); <b>Pioneer's color – Santa Fe Gold</b>	Unit Price	\$ 23.95
		Extended Price	\$ 5,987.50
2a	Decomposed Granite, 3/4" minus; Madison Gold or equal; delivered (250 tons); <b>Pioneer's color – Santa Fe Gold</b>	Unit Price	\$ 24.00
		Extended Price	\$ 6,000.00
3a	Decomposed Granite, 1/4" minus, Express Rose or equal; delivered (250 tons); <b>Pioneer's color – Grande Rose</b>	Unit Price	\$ 16.25
		Extended Price	\$ 4,062.50
3b	Decomposed Granite, 1/4" minus, Express Rose or equal; picked-up (250 tons); <b>Pioneer's color – Grande Rose</b>	Unit Price	\$ 22.95
		Extended Price	\$ 5,737.50
4a	Decomposed Granite, 3/4" minus, Express Rose or equal; delivered (250 tons); <b>Pioneer's color – Grande Rose</b>	Unit Price	\$ 21.25
		Extended Price	\$ 5,312.50
5a	Decomposed Granite, 1/4" minus, Sedona Red or equal; delivered (250 tons); <b>Pioneer's color – Santa Fe Red</b>	Unit Price	\$ 19.50
		Extended Price	\$ 4,875.00
6a	Decomposed Granite, 3/4" minus, Sedona Red or equal; delivered (250 tons); <b>Pioneer's color – Santa Fe Red</b>	Unit Price	\$ 24.00
		Extended Price	\$ 6,000.00
7a	Decorative Rock, 1/4" Madison Gold or equal; delivered (250 tons); <b>Pioneer's color – Santa Fe Gold</b>	Unit Price	\$ 33.00
		Extended Price	\$ 8,250.00
7b	Decorative Rock, 1/4" Madison Gold or equal; picked-up (250 tons); <b>Pioneer's color – Santa Fe Gold</b>	Unit Price	\$ 34.95
		Extended Price	\$ 8,737.50
8a	Decorative Rock, 3/4" Madison Gold or equal; delivered (250 tons); <b>Pioneer's color – Santa Fe Gold</b>	Unit Price	\$ 33.00
		Extended Price	\$ 8,250.00
8b	Decorative Rock, 3/4" Madison Gold or equal; picked-up (250 tons); <b>Pioneer's color – Santa Fe Gold</b>	Unit Price	\$ 34.95
		Extended Price	\$ 8,737.50
9a	Decorative Rock, 1/2" Express Rose or equal; delivered (250 tons); <b>Pioneer's color – Grande Rose</b>	Unit Price	\$ 29.50
		Extended Price	\$ 7,375.00
9b	Decorative Rock, 1/2" Express Rose or equal; picked-up (250 tons); <b>Pioneer's color – Grande Rose</b>	Unit Price	\$ 33.95
		Extended Price	\$ 8,487.50
10a	Decorative Rock, 3/4" Express Rose or equal; delivered (250 tons); <b>Pioneer's color – Grande Rose</b>	Unit Price	\$ 33.00
		Extended Price	\$ 8,250.00
10b	Decorative Rock, 3/4" Express Rose or equal; picked-up (250 tons); <b>Pioneer's color – Grande Rose</b>	Unit Price	\$ 34.95
		Extended Price	\$ 8,737.50
11a	Decorative Rock, Sedona Red or equal; delivered (250 tons); <b>Pioneer's color – Santa Fe Red</b>	Unit Price	\$ 33.00

Item #	Description	Extended Price	Pioneer Landscaping Materials
		Extended Price	\$ 8,250.00
11b	Decorative Rock, Sedona Red or equal; picked-up (250 tons); <b>Pioneer's color – Santa Fe Red</b>	Unit Price	\$ 34.95
		Extended Price	\$ 8,737.50
12a	Decorative Rock, 3/4", Pink Coral or equal; delivered (250 tons); <b>Pioneer's color – Picacho Pink</b>	Unit Price	\$ 32.00
		Extended Price	\$ 8,000.00
12b	Decorative Rock, 3/4", Pink Coral or equal; picked-up (250 tons); <b>Pioneer's color – Santa Fe Red</b>	Unit Price	\$ 35.95
		Extended Price	\$ 8,987.50
13a	Decorative Rock, 1/2" minus, Color; delivered (250 tons) <b>Pioneer's color – Santa Fe Brown</b>	Unit Price	\$ 24.00
		Extended Price	\$ 6,000.00
14a	Decorative Rock, 3/4" minus, Color; delivered (250 tons); <b>Pioneer's color – Santa Fe Red</b>	Unit Price	\$ 24.00
		Extended Price	\$ 6,000.00
15a	Decomposed Granite, 1/4" minus or equal; delivered (500 tons); <b>Pioneer's color – Santa Fe Red</b>	Unit Price	\$ 19.50
		Extended Price	\$ 4,875.00
15b	Decomposed Granite, 1/4" minus or equal; picked-up (500 tons); <b>Pioneer's color – Santa Fe Red</b>	Unit Price	\$ 23.95
		Extended Price	\$ 5,987.50
16a	Decomposed Granite, 3/4" minus or equal; delivered (500 tons); <b>Pioneer's color – Santa Fe Red</b>	Unit Price	\$ 24.00
		Extended Price	\$ 6,000.00
17a	Boulders; color may vary; delivered (20 tons)	Unit Price	\$ 180.00
		Extended Price	\$ 3,600.00
17b	Boulders; color may vary; picked-up (20 tons)	Unit Price	\$ 180.00
		Extended Price	\$ 3,600.00
18a	3"-8" Salt River Rock (indigenous to metro Phoenix); delivered (100 tons)	Unit Price	\$ 24.95
		Extended Price	\$ 2,495.00
18b	3"-8" Salt River Rock (indigenous to metro Phoenix); picked-up (100 tons)	Unit Price	\$ 26.95
		Extended Price	\$ 2,695.00
19a	Screened Topsoil; delivered (100 tons)	Unit Price	\$ 21.95
		Extended Price	\$ 2,195.00
19b	Screened Topsoil; picked-up (100 tons)	Unit Price	\$ 22.95
		Extended Price	\$ 2,295.00
20a	Sterilized Manure; delivered (100 yards)	Unit Price	\$ 21.95
		Extended Price	\$ 2,195.00
20b	Sterilized Manure; picked-up (100 yards)	Unit Price	\$ 21.95
		Extended Price	\$ 2,195.00
21a	Riprap granite for drains; 1-1/2" - 3"; delivered (100 tons)	Unit Price	\$ 24.95
		Extended Price	\$ 2,495.00
22a	Infield Mix; Stabilizer "Pro Red" infield mix; delivered (200 tons)	Unit Price	\$ 65.00
		Extended Price	\$ 13,000.00

**CITY OF CHANDLER PURCHASE CONTRACT  
ORNAMENTAL ROCK, GRANITE & MISC. LANDSCAPING SUPPLIES  
AGREEMENT NO.: PM9-595-2690**

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 Preach Building Supply, Inc, 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 Parks & Grounds Maintenance Manager /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.
- 1.4 Usage Report.** CONTRACTOR shall furnish to CITY a usage report delineating the acquisition activity governed by the contract. Such report shall be sent after ten (10) months of the Contract term. The format of the report shall be an electronic copy to the Procurement Officer listed herein and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

**2 GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit C, 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 Licenses:** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.
- 2.4 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.

- 2.5 Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.6 Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.6.1** Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").
- 2.6.2** A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.6.3** The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.6.4** The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.6.5** The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.6.6** In accordance with A.R.S. §35-397, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.6.7** In accordance with A.R.S. §35-397, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.7 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.
- 2.8 Estimated Quantities.** The quantities shown on Exhibit C (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 will be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.9 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.
- 2.10 Product Quality.** Quality of furnished material must be to the satisfaction of authorized CITY personnel. In the event that material does not meet minimum specifications, the CONTRACTOR shall be required to replace the material at not cost to the CITY.
- 2.11 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.

**2.12 Weigh Tickets.** The CONTRACTOR must submit weigh tickets to the using Department within seven (7) calendar days of each delivery.

### **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.

**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, inspections, 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.** Delivery shall be made within forty-eight hours (48) after receipt of a Contract Purchase Order (ARO) unless otherwise specified.

**5 PRICE:** CITY shall pay to CONTRACTOR, together with all companion agreements, an amount not to exceed One Hundred Thousand Dollars (\$100,000) 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 C, 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.
- 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 term of the Contract is one (1) year (s), commencing on the 1<sup>st</sup> day of December, 2008 and terminating on November 30, 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.
- 7 USE OF THIS CONTRACT:** CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and

will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.

**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](http://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. 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 CONSULTANT 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:** CONSULTANT 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 CONSULTANT'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONSULTANT'S agreement and acceptance of CITY'S position.
3. **CITY Response:** The Agreement Administrator will provide to CONSULTANT a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONSULTANT'S written claim.
4. **Appeal:** If CONSULTANT disagrees with the response of the Purchasing Manager, within fifteen days of the date of the response by the Agreement Administrator, CONSULTANT 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 CONSULTANT within sixty (60) days from the date of CONSULTANT'S written notice of appeal.

**B. ARBITRATION**

1. **Arbitration:** If CONSULTANT 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 CONSULTANT chooses not to accept the decision of the Assistant Management Services Director, CONSULTANT 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 CONSULTANT 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, CONSULTANT will select one arbitrator, and any other CONSULTANT 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. 12-1501, 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.
- 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 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

Department:	Parks & Facilities
Contact:	Kris Kircher
Mailing Address:	PO Box 4008 – MS
Physical Address:	249 E Chicago
City, State, Zip:	Chandler AZ 85246
Phone:	480-782-2752
FAX:	480-782-2560

In the case of the CONTRACTOR

Firm Name:	Preach Building Supply, Inc.
Contact:	John Maynard
Address:	1601 W Hatcher Rd
City, State:	Phoenix AZ 85021
Phone:	602-944-1304
FAX:	602-943-2554
Email:	

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 GENERAL TERMS:**

- 14.1 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.
- 14.2 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.
- 14.3 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 14.4 Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 14.5 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.
- 14.6 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.
- 14.7 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.

**14.8 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

\_\_\_\_\_  
MAYOR

By: Phillip J. Preach  
Signature

Approved as to Form:

ATTEST: If Corporation

\_\_\_\_\_  
City Attorney 

\_\_\_\_\_  
Secretary

ATTEST:

\_\_\_\_\_  
City Clerk

SEAL

**EXHIBIT A**

**Contractor Immigration Warranty  
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the Contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the Contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

<b>Contract Number:</b>	<b>PM9-595-2690</b>	
<b>Name (as listed in the contract):</b>		
<b>Street Name and Number:</b>		
<b>City:</b>	<b>State:</b>	<b>Zip Code:</b>

I hereby attest that:

1. The Contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

**Signature of Contractor (Employer) or Authorized Designee:**

Phillip L. Preach

**Printed Name:** Phillip L. Preach

**Title:** Owner

**Date (month/day/year):** 10/30/2008

**EXHIBIT B**  
**TECHNICAL SPECIFICATIONS**

1. Ornamental Rock - Select rock shall be crushed naturally colored rock, indigenous to Arizona, in a ½" or ¾" gradation size. Crushed rock shall be decorative rock typically known or described on Exhibit B.
2. Decomposed Granite – Decomposed granite shall be of a dark red or gold color granite rock material indigenous to Arizona. Decomposed or balls of clay and other deleterious substances shall be removed. All material shall be from a single production source and uniform in appearance.
3. Boulders – Boulders shall be 2" to 6" in diameter. Colors may vary.
4. River Rock - Select rock shall be river rock indigenous to the area around Phoenix, Arizona.
5. Screened topsoil
6. Sterilized manure
7. Riprap granite for drains – 1 ½" – 3" in size.
8. Infield mix. – stabilizer "Pro Red" infield mix.

**EXHIBIT C  
PRICING**

Item #	Description	Pricing	Preach Bldg Supply
1a	Decomposed Granite, 1/4" minus; <b>Madison Gold</b> ; delivered (250 tons)	Unit Price	\$ 24.25
		Extended Price	\$ 6,062.50
1b	Decomposed Granite, 1/4" minus; <b>Madison Gold</b> ; picked up (250 tons)	Unit Price	\$ 14.75
		Extended Price	\$ 3,687.50
2a	Decomposed Granite, 3/4" minus; <b>Madison Gold</b> ; delivered (250 tons)	Unit Price	\$ 34.75
		Extended Price	\$ 8,687.50
3a	Decomposed Granite, 1/4" minus, <b>Express Rose</b> ; delivered (250 tons)	Unit Price	\$ 22.00
		Extended Price	\$ 5,500.00
4a	Decomposed Granite, 3/4" minus, <b>Express Rose</b> ; delivered (250 tons)	Unit Price	\$ 28.75
		Extended Price	\$ 7,187.50
5a	Decomposed Granite, 1/4" minus, <b>Sedona Red</b> ; delivered (250 tons)	Unit Price	\$ 25.75
		Extended Price	\$ 6,437.50
6a	Decomposed Granite, 3/4" minus, <b>Sedona Red</b> ; delivered (250 tons)	Unit Price	\$ 30.50
		Extended Price	\$ 7,625.00
7a	Decorative Rock, 1/4" <b>Madison Gold washed</b> ; delivered (250 tons)	Unit Price	\$ 24.50
		Extended Price	\$ 6,125.00
8a	Decorative Rock, 3/4" <b>Madison Gold screened</b> ; delivered (250 tons)	Unit Price	\$ 39.00
		Extended Price	\$ 9,750.00
9a	Decorative Rock, 1/2" <b>Express Rose</b> ; delivered (250 tons)	Unit Price	\$ 37.00
		Extended Price	\$ 9,250.00
10a	Decorative Rock, 3/4" <b>Express Rose</b> ; delivered (250 tons)	Unit Price	\$ 37.00
		Extended Price	\$ 9,250.00
11a	Decorative Rock, <b>Sedona Red</b> ; delivered (250 tons)	Unit Price	\$ 41.50
		Extended Price	\$ 10,375.00
12a	Decorative Rock, 3/4", <del>Pink Coral</del> or equal; delivered (250 tons); <b>Preach color - 1" Yavapai coral</b>	Unit Price	\$ 34.25
		Extended Price	\$ 8,562.50
12b	Decorative Rock, 3/4", <del>Pink Coral</del> or equal; picked-up (250 tons); <b>Preach color - 1" Yavapai coral</b>	Unit Price	\$ 32.25
		Extended Price	\$ 8,062.50
13a	Decorative Rock, 1/2" minus, <b>Tanner Gold</b> ; delivered (250 tons)	Unit Price	\$ 26.25
		Extended Price	\$ 6,625.00
14a	Decorative Rock, 3/4" minus, <b>Tanner Gold</b> ; delivered (250 tons)	Unit Price	\$ 26.25
		Extended Price	\$ 6,562.50
17b	Boulders; colors may vary; picked-up (20 tons)	Unit Price	\$ 120.00
		Extended Price	\$ 2,400.00

Item #	Description		Preach Building Supply
18a	3"-8" Salt River Rock (indigenous to metro Phoenix); delivered (100 tons)	Unit Price	\$ 32.50
		Extended Price	\$ 3,250.00
19a	Screened Topsoil; delivered (100 tons)	Unit Price	\$ 24.75
		Extended Price	\$ 2,475.00
20a	Sterilized Manure; delivered; <b>Preach – fine mulch (120 yards; 40 yard minimum delivery);</b>	Unit Price	\$ 24.00
		Extended Price	\$ 2,880.00
20b	Sterilized Manure; picked-up (100 yards); <b>Preach – fine mulch</b>	Unit Price	\$ 20.00
		Extended Price	\$ 2,000.00
21a	Riprap granite for drains; 1-1/2" - 3"; delivered (100 tons); <b>Preach – ¾" – 2 ½" bleach rock</b>	Unit Price	\$ 25.00
		Extended Price	\$ 2,500.00
22a	Infield Mix; Stabilizer "Pro Red" infield mix; delivered (200 tons)	Unit Price	\$ 64.50
		Extended Price	\$ 12,900.00

**Minimum delivery – 26 tons / Maximum delivery – 27 tons**