



**PURCHASING ITEM
FOR
COUNCIL AGENDA**
Memo No. CS09-259

1. Agenda Item Number:

10

2. Council Meeting Date:
May 28, 2009

TO: MAYOR & COUNCIL

3. Date Prepared: May 13, 2009

THROUGH: CITY MANAGER

4. Requesting Department: Community Services

5. SUBJECT: Award Agreement PM9-988-2740 for City Parks Mowing Service to Pacheco Brothers Gardening Inc. for one year with options to renew for up to four (4) additional one-year periods, in an amount not to exceed \$186,000.00.

6. RECOMMENDATION: Recommend awarding Agreement PM9-988-2740 for City Parks Mowing Service to Pacheco Brothers Gardening Inc. for one year with options to renew for up to four (4) additional one-year periods, in an amount not to exceed \$186,000.00.

7. HISTORICAL BACKGROUND/DISCUSSION: The Parks Division contracts to an outside vendor for the turf mowing of 56 parks totaling 480 acres. The parks are mowed on a weekly basis March through October with a monthly mowing November through February.

8. EVALUATION PROCESS: Bids were requested for landscaping maintenance for mowing services at the various City park locations. The Invitation for Bids (IFB) was advertised and notices sent to all registered vendors. Ten vendors submitted bids that were opened and evaluated. The following is a list of the responses that were received:

Pacheco Brothers Gardening Inc.	- \$185,848.00
Desert Glen Commercial Group	- \$207,572.28
Artistic Land Management	- \$239,937.00
Somerset Landscape	- \$253,501.16
Agave Environmental	- \$255,040.48
Bela Contracting	- \$256,816.70
Earthscapes	- \$263,213.84
Mariposa Landscape	- \$266,297.60
The Groundskeeper	- \$283,230.00
Basin Tree Services dba UROW	- \$335,072.00

City staff is recommending an award to Pacheco Brothers Gardening Inc. as the low responsive, responsible bidder for one year with provisions for four one-year extensions. The contract approved last year (February 1, 2008 through January 31, 2009) for this same service was \$257,000.00. Therefore a cost savings was realized from re-bidding the contract. The term of the Agreement will be June 1, 2009 through May 31, 2010.

9. FINANCIAL IMPLICATIONS: Funding for this contract extension has been allocated in the General Fund of the Park Operations and Maintenance Division, account number 101.4530.0000.5410.

10. PROPOSED MOTION: Move to approve Agreement No. PM9-988-2740 for City Parks Mowing Service to Pacheco Brothers Gardening Inc. for one year with options to renew for up to four (4) additional one year periods, in an amount not to exceed \$186,000.00.

APPROVALS

11. Requesting Department

12. Department Head


Kris Kircher, Park & Facilities Maintenance Manager


Mark M. Eynatten, Community Services Director

13. Procurement Officer.

14. City Manager


Sharon Brause, CPPB, CPCP


W. Mark Pentz

**CITY OF CHANDLER SERVICES AGREEMENT
PARKS MOWING MAINTENANCE
AGREEMENT NO.: PM9-988-2740**

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **Pacheco Brothers Gardening, Inc.**, a Corporation of the State of California, hereinafter referred to as "CONTRACTOR".

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

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

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Parks & Facilities Maintenance Manager /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontracts.** CONTRACTOR shall not enter into any sub-contract under this Contract for the performance of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide landscaping services all as more specifically set forth in the Scope of Work, Exhibit A, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein. Exhibit E, Contractor's List of Equipment, is attached hereto and incorporated by reference.

- 2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Licenses.** CONTRACTOR shall have in their possession at time of bid submittal and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract. This shall include, but not be limited to, the Qualifying Party (QP) for an active A-21 license with the Arizona Registrar of Contractors A.R.S. §32-2312 (www.azroc.gov) AND a QP for an active B-3 and B-5 license with the Office of Pest Management (<http://www.sb.state.az.us/LicCatDefConv.php>). This information must be verifiable with the Arizona Registrar of Contractors and the Office of Pest Management and photocopies provided with bid submittal.
- 2.3. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.
- 2.4. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
 - 2.4.1. 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").

- 2.4.2. 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.
- 2.4.3. 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.
- 2.4.4. 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.
- 2.4.5. 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.
- 2.4.6. In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Contractor does not have scrutinized business operations in Iran.
- 2.4.7. In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Contractor does not have scrutinized business operations in Sudan.
3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
 - 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
 - 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
 - 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
 - 3.4. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
 - 3.5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed **Two Hundred Thousand Dollars (\$200,000)** 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.

4. TAXES

- 4.1. **CONTRACTOR** shall be solely responsible for any and all tax obligations, which may result out of the **CONTRACTOR'S** performance of this Agreement. The **CITY** shall have no obligation to pay any amounts for taxes, of any type, incurred by the **CONTRACTOR**.
- 4.2. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.3. **Estimated Quantities.** The quantities shown on Exhibit 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 shall be required by **CITY**. **City** reserves the right to increase or decrease the quantities actually required.
- 4.4. **IRS W9 Form.** In order to receive payment **CONTRACTOR** shall have a current I.R.S. W9 Form on file with **CITY**, unless not required by law.
- 4.5. **REDUCTION IN PAYMENT DUE TO UNSATISFACTORY SERVICE.** Each month **CONTRACTOR's** performance will be evaluated for satisfactory service. If the performance for any required service is unsatisfactory and poor performance is clearly the fault of the **CONTRACTOR** (any service not performed which is required by the contract), an amount of money equal to the service value will be withheld. Anytime the **CONTRACTOR's** performance is unsatisfactory payment will be withheld until **CONTRACTOR's** performance is satisfactory.

In the event the **CONTRACTOR** is deficient in any required service, the **City** may perform the service by **City** personnel or by separate contract. Cost of services not performed by the **CONTRACTOR** will be deducted from **Contractors** monthly invoice.

- 4.6. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, **CITY** will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to **CONTRACTOR** that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.7. **Acceptance by City.** **CITY** reserves the right to accept or reject the request for a price increase. If **CITY** approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 4.8. **Price Reduction.** **CONTRACTOR** shall offer **CITY** a price reduction for its services concurrent with a published price reduction made to other customers.

5. TERM:

- 5.1. The term of the Contract is **one (1) year (s)**, commencing on **June 1, 2009** and terminating on **May 31, 2010** 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. **CITY** reserves the right, at its sole discretion, to extend the Contract for up to 31 days.
6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the **City of Chandler**. **CITY** reserves the rights to obtain like services from another source to secure significant cost savings or when **CONTRACTOR** cannot meet timely completion.
- 6.1. **Cooperative Use of Contract.** In addition to the **City of Chandler** and with approval of the **CONTRACTOR**, this Contract may be extended for use by other municipalities, school districts and government agencies of the **State**. A current listing of eligible entities may be found at

www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

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

7. CITY'S CONTRACTUAL REMEDIES:

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

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

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

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

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

7.6. Right of Offset. The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. TERMINATION:

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

8.2 Termination for Cause: City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

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

- 8.3. Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 8.4. Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.
- 8.5. Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 8.6. Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 9. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

10. **Alternate Dispute Resolution. REQUIREMENT FOR ALTERNATIVE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Agreement documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive initial means for resolution of claims or disputes and other matters in question between CITY and CONTRACTOR arising out of, or relating to the Agreement documents, interpretation of the Agreement, or the performance or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to Agreements containing this ADR provision.

A. INTERNAL RESOLUTION PROCESS

1. **Notice:** CONTRACTOR shall submit written notice of any claim or dispute to the Purchasing Manager within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as they occur and not postponed until the end of the Agreement nor lumped together with other pending claims.
2. **Forfeiture:** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of CITY'S position.
3. **CITY Response:** The Agreement Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
4. **Appeal:** If CONTRACTOR disagrees with the response of the Purchasing Manager, within fifteen days of the date of the response by the Agreement Administrator, CONTRACTOR shall file with the Assistant Management Services Director, written notice of appeal. The Purchasing Manager shall provide copies of all relevant information concerning the Agreement and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.

B. ARBITRATION

1. **Arbitration:** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes in which the claims are for \$500,000 or less except for errors of law which may be appealed if an award exceeds \$100,000 and is based on an error of law . If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Agreement Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph E, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
2. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a Agreement with CITY which contains this ADR

provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.

3. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
4. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
5. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
6. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Agreement and the laws of the State of Arizona.
7. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
8. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
9. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
10. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other Agreements containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just

resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with CITY.

- C. APPEAL TO MARICOPA COURTS:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Agreement; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- D. UNIFORM ARBITRATION ACT:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 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.
- 11. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements:

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

12.2. Proof of Insurance – Certificates of Insurance.

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

12.3. Coverage.

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

- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

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

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

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

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

CITY has the option to forfeit said bond if the Contract is terminated by the default of CONTRACTOR or if CITY determines that CONTRACTOR is unable or unwilling to complete the work as specified in the Contract Documents.

If the Contract schedule is not adhered to, and CITY determines that the work is unlikely to be completed within a reasonable time after the original target date, then CITY may terminate the Contract and collect the Performance Bond. Performance and Bid Bond are attached hereto as Exhibit D and are made a part hereof by reference.

The Performance Bond may be reviewed annually and any increases in the contract amount may require bond to be increased and reissued.

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

15.9. **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 2009.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

By: *Juan Pacheco*
Signature

MAYOR

ATTEST:

ATTEST, If Corporation

SEAL

Juan Pacheco
Secretary

City Clerk

Approved as to form:

City Attorney *[Signature]*

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:	PM9-988-2740				
Name (as listed in the contract):	PACHECO BROTHERS GARDENING INC.				
Street Name and Number:	795 SANDOVAL WAY				
City:	HAYWARD	State:	CA	Zip Code:	94544

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: Lynn D. Pacheco
Title: Secretary
Date (month/day/year): 4/27/09

**EXHIBIT B
SCOPE OF WORK**

1. **DESCRIPTION:** CONTRACTOR shall furnish all labor, licenses and permits, as well as material and equipment necessary to maintain the City locations as specified herein. For this Agreement, the CONTRACTOR shall be a licensed landscape CONTRACTOR and licensed by the Registrar of Contractors. CITY is requiring the CONTRACTOR have a qualifying party, at time of submittal, with an A-21 license with the Registrar of Contractors as well as a qualifying party with a B-3 and B-5 license with the Office of Pest Management (<http://www.sb.state.az.us/LicCatDefConv.php>). The specifications listed herein are the minimum requirements and are intended to govern the Agreement. The CITY reserves the right to evaluate variations from these specifications.

All work specified herein shall be completed under the direction of and to the satisfaction of the Contract Administrator/designee. All areas shall be mowed and trimmed in accordance with specifications.

As additional facilities are built within the City, they may be added to the maintenance of this agreement at a negotiated price.

CONTRACTOR shall be required to have the equipment on hand necessary to perform Agreement requirements. CONTRACTOR shall list all equipment to be used on this contract on Exhibit E attached.

- A. **MOWING REQUIREMENTS:** CONTRACTOR shall mow and edge grass areas to approximately one and one-half to two inches (1½" to 2") in height. Uneven cuts, scalping and varying heights will be considered unsatisfactory to CITY standards. CONTRACTOR may be penalized up to the full cost of the mowing for failure to comply. Lawn areas shall be mowed and edged no less than every 30 days during (November-February), winter month period but as often as necessary to provide a pleasant appearance. Lawn areas shall be mowed and edged every seven days during (March – October) summer months. Failure to mow turf within this seven-day period during summer months will result in non-payment for that week.

All mowing tasks initiated in parks and retention basins shall be completed during the same working day. Parks with large turf areas may be split between multiple days; however, any section where mowing is initiated must be completed (mowing, edging, hard surface sweeping, blowing of walks and planters of grass & debris) during the same working day.

Mowing Detail: CONTRACTOR shall edge grass areas adjacent to sidewalks, curbs, and hard surface pads or patios only with a bladed lawn edger. CITY Park staff will require certain edges, fence lines, trees, and borders be chemically treated. Chemical control of grass will be permitted along chain link fences, around sign posts, underneath certain play equipment, structures, certain trees and in sidewalk expansion joints *only*.

Chemical spraying must be performed in accordance with the State of Arizona Office of Pest Management's Rules and Regulations. CONTRACTOR shall be required to maintain proper licensing for the specific pest control to be utilized. CONTRACTOR shall furnish properly certified and trained personnel and equipment for routine grass control and spraying. Should CONTRACTOR not be licensed for the specific pest control to be utilized, a licensed subcontractor may be used. The subcontractor and its personnel are then bound by the above requirements. **NO SUBCONTRACTOR SHALL BE USED.**

CONTRACTOR shall use mechanical or chemical edging and trimming around and underneath all other fixed structures (i.e. tables, benches, posts, etc).

CONTRACTOR shall collect and remove all grass clippings if they are thick enough to be designated as unsightly by the Contract Administrator/designee. Disposal of all debris shall be at no extra charge to CITY.

The Contract Administrator/designee will determine when a portion of any area can not be mowed due to excessive ground moisture, standing water or flood irrigation water. The percentage not mowed will be deducted from the weekly mowing payment.

CONTRACTOR shall be responsible for all chemical and/or other accepted methods of weed control. Any herbicide used shall be considered a management tool and will not be paid for by CITY. CONTRACTOR shall provide a Material Safety Data Sheet (MSDS) to Contract Administrator/designee for all chemicals used. Line trimmers shall not be used around trees or shrubs unless approved for use by the Contract Administrator/designee.

CONTRACTOR shall be responsible for removing weeds and/or grasses around the base of all trees and shrubs planted in turf areas to a diameter of 10" away from the trunk. All methods that may be used to remove this growth must insure that no damage to the tree or shrub occurs. If damage to the tree or shrub are evident, it shall be CONTRACTOR's responsibility to replace said tree/shrub in kind, with no cost additional cost to CITY. Damage to the tree/shrub shall include but is not limited to: any girdling or bark removal, a broken trunk, leader or main branch which disfigures the plant, and/or chemical burning, stunting or leaf drop.

Any special mowing or vacuuming required will be paid for at the price agreed upon by an extra work authorization.

B. SPECIAL MOWING REQUIREMENTS:

Parks with Public Pools: Arrowhead, Folley, Desert Oasis and West Chandler Park have turf within public pool areas. During the months of June/July, mowing within pool areas needs to be completed by 7:00 am.

Over-seeded Parks: Tumbleweed Park has 10 acres of turf that is over seeded with rye. CONTRACTOR shall be responsible for mowing this acreage on a weekly basis from November 1st thru February 29th. A separate line item has been identified on Exhibit C for this purpose

C. SITE INSPECTION: CONTRACTOR shall visit the site(s) and familiarize themselves with any conditions that may be present. Submission of a bid will be prima facie evidence that CONTRACTOR did, in fact, make a site inspection and is aware of all conditions affecting performance and bid prices.

D. MATERIALS: Any materials required that are not stipulated in the Agreement must be approved by the Contract Administrator/designee prior to purchase. CONTRACTOR shall provide invoices as proof of purchase to the contract administrator before reimbursement will be made.

CITY shall retain the right to make direct purchases of all materials and to make them available to the Contractor for use in fulfilling the terms of this agreement.

E. WATER: The City shall furnish all water. A water meter will be provided if needed.

F. ADDITIONS AND DELETIONS: The CITY shall retain the right to delete or add maintenance areas and items to this Agreement. Charges for areas or items deleted will be dropped from the monthly billing. The CITY may delete an item or area at any time and will prorate charges for services already performed. Charges for maintenance items or areas added to this Agreement are subject to the approval by the Mayor and City Council/City Manager. Charges for areas added shall be priced comparably to similar areas.

G. SPECIAL WORK: The CITY may require CONTRACTOR to perform work in addition to items specified in the Agreement including, but not limited to, repair of accident damage to landscaping and one-time cleanup.

All extra work ordered on the basis that hourly rates would be used, shall be compensated per Exhibit C attached "Hourly Rate for Special Work". CONTRACTOR shall not perform any extra work until authorization is obtained in writing from the Contract Administrator/designee. Any additional work not covered by the hourly rate will be approved by the City prior to starting work. CONTRACTOR shall submit a written estimate to the Contract Administrator/designee for approval prior to commencing work. The City reserves the right to perform the work or contact other vendor's if CONTRACTOR's estimate is not considered fair and reasonable.

- H. **VANDALISM**: All cases of vandalism shall be reported to the Contract Administrator/designee when discovered and Contract Administrator/designee shall determine the course of action to be taken.
- I. **QUALITY CONTROL**: CONTRACTOR shall establish a complete quality control program to assure the requirements of the Agreement are completed as specified. One copy of the CONTRACTOR's quality control program shall be provided to the Contract Administrator/designee for approval within ten (10) days after receiving the Notice of Award. The Contract Administrator/designee will approve or disapprove the CONTRACTOR's program within ten (10) working days of submittal. CONTRACTOR shall have an approved program before work starts. The program shall include but not be limited to the following:
1. Weekly Schedule of Performance
 2. Performance Requirements Summary Report: This report will provide such information so as to insure compliance of quality control standards. The City will provide the format that the CONTRACTOR should use. CONTRACTOR shall submit Performance Requirement Summary Report on a weekly basis. Any vandalism shall be reported within two (2) hours after it is noted and vandalism report form submitted.

CONTRACTOR shall be required to provide a schedule for weekly maintenance of all areas, specifying when each area will be maintained and no changes to the schedule shall be made without prior approval of the Contract Administrator/designee.

- J. **QUALITY ASSURANCE**: The Contract Administrator/designee will monitor CONTRACTOR's performance by random sampling to insure compliance with the requirements of the Agreement. In the event a deficiency exists, CONTRACTOR shall be required to explain *in writing* why performance was unacceptable, how performance will be returned to acceptable levels, and how reoccurrence of the problem will be prevented in the future. CONTRACTOR will not be paid for services not rendered in accordance with the standards set forth in this Agreement, notwithstanding that CONTRACTOR is required to rework services that were unsatisfactorily performed.
- K. **HOLIDAYS**: The following is a list of holidays on which service will not be performed:

1. New Year's Eve Night
2. New Year's Day – January 1
3. Martin Luther King Day – Third Monday in January
4. President's Day – Third Monday in February
5. Memorial Day – Last Monday in May
6. Independence Day – July 4
7. Labor Day – First Monday in September
8. Veteran's Day – November 11
9. Thanksgiving Holiday – Fourth Thursday and the following Friday in November
10. Christmas Eve from 12:00 Noon – December 24
11. Christmas Day – December 25

When a holiday named herein falls on Sunday, it shall be observed on the following Monday, and when a holiday named herein falls on Saturday, it shall be observed on the preceding Friday.

During the week of a holiday, the CONTRACTOR shall adjust his weekly schedule so as to return to the normal weekly schedule the following week. This information is for reference only as a reminder that the work still needs to be completed during the holiday week. CONTRACTOR may work on City holidays at his or her own discretion. However, all mowing shall be completed during the holiday week.

2. **CONTRACTOR / CITY COMMUNICATIONS:**

A. **Local Office:** Throughout the period of this Agreement, CONTRACTOR shall establish and maintain a local office and an authorized managing agent who can be contacted during normal business hours. A local office is one that can be reached from within the City of Chandler without a toll call. An answering machine, fax and a mobile telephone will fulfill the requirement for a local office. CONTRACTOR shall have a telephone number for contact, Monday through Friday, 6:00 am to 5:00 pm. CONTRACTOR's local managing agent shall serve as the point of contact for dealing and communicating with the CITY. CONTRACTOR shall return calls made by CITY within 2 hours.

B. **Field Supervisor:** CONTRACTOR shall furnish one qualified field supervisor that speaks, reads and writes English fluently and is available during working hours to address problems, field inspections, perform drive-throughs and for other coordination with the Contract Administrator/designee. CONTRACTOR's Field Supervisor shall supervise only one contract at a time, unless approved by Contract Administrator/designee. This person shall not have any additional labor duties other than incidentals. For example, the Field Supervisor shall not also function as a crew leader or foreman, and shall have separate transportation to be able to move independently between situations.

CONTRACTOR shall provide a mobile radio or cellular phone to the CONTRACTOR's field supervisors and/or foreman to enhance communication between the CITY and CONTRACTOR's field representative. At a minimum, all crews should be equipped with radios. If a cellular telephone is used, CONTRACTOR shall be responsible for payment of all charges relating to its use. All communication equipment shall be kept on during business hours and in proper working condition at all times.

The CITY has the right to review the qualifications of the field supervisor. If the Contract Administrator/designee does not feel the supervisor is qualified, CONTRACTOR shall remove him/her from that position. An alternate contact shall be supplied by CONTRACTOR in the event the Field Supervisor is not available.

C. **Key Personnel:** It is essential that CONTRACTOR provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. CONTRACTOR shall agree to assign specific individuals to the key positions.

1. CONTRACTOR agrees that, once assigned to work under this Agreement, key personnel shall not be removed or replaced without written notice to the Contract Administrator/designee.
2. If key personnel are not available for work under this Agreement for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, CONTRACTOR shall immediately notify the Contract Administrator/designee, and shall, subject to the concurrence of the Contract Administrator/designee, replace each personnel with personnel of substantially equal ability and qualifications.

D. **CONTRACTOR'S PERSONNEL:**

1. **List of Employees:** CONTRACTOR shall provide a list of personnel who will be assigned to this contract, number of crews to be provided, and a preliminary mow schedule with submittal. This shall serve evidence of CONTRACTOR's ability to furnish the proper personnel.

CONTRACTOR shall supply the Contract Administrator/designee with a current list of employees assigned to CITY contracts. The list must include: full names, driver's license number with

expiration date, job title, and where applicable, certified pesticide applicator's license number and expiration date or any other pertinent or required certification or registration. The list shall be kept current. All company officers and employees working on this Agreement must be listed.

2. **Identification:** CONTRACTOR's employees shall be required to wear a clean uniform bearing the CONTRACTOR's name. All employees who normally and regularly come into direct contact with the public shall bear some means of individual identification, such as a nametag or identification card. New employees shall be in uniform within ten working days after their start date.
3. **Conduct:** CONTRACTOR's employees, officers and subcontractors shall not identify themselves as being employees of the City of Chandler. Employees shall conduct themselves in such a manner as to avoid embarrassment to the CITY, and shall be courteous to the public.

E. CONTRACTOR'S EQUIPMENT:

1. **Vehicles and Equipment:** CONTRACTOR shall provide and maintain during the entire period of this Agreement, equipment sufficient in number, condition and capacity to efficiently perform the work and render the services required by this Agreement. CONTRACTOR shall furnish the Contract Administrator/designee with a list identifying all equipment to be used in fulfilling this agreement and notify the Contract Administrator/designee of any additions or deletions. Any changes in CONTRACTOR's equipment from the proposed equipment must have prior approval of the Contract Administrator/designee. CONTRACTOR shall provide evidence of his ability to furnish the proper equipment.

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

2. **Equipment Identification:** All vehicles used by CONTRACTOR must be clearly identified with the name of the company and phone number of local office on each side of the equipment, including personnel transportation vehicles. The letters shall be of such size that they are distinguishable from reasonable distance.
3. CONTRACTOR shall provide a list of all equipment to be used exclusively on this contract with bid submittal.

- F. CONDITION OF MAINTENANCE AREAS AT BEGINNING OF CONTRACT:** Upon receiving official notification of approval, CONTRACTOR shall inspect the area for identification of pre-existing conditions that would prevent or adversely affect completion of any normal specific deficiencies found at each area and submit the list to the Contract Administrator/designee for review before a Notice or Proceed will be issued. The Contract Administrator/designee will evaluate each problem listed to determine if extra compensation is warranted for repair work prior to starting routine maintenance. The CITY may authorize CONTRACTOR to make extra cost repairs or may determine that the items listed represent normal conditions that might be expected at any time during the term of the Agreement.

The determination of disposition of all items listed shall be the responsibility of CITY and that decision shall be final and binding upon CONTRACTOR. All repairs to pre-existing conditions deemed necessary and authorized by CITY, shall be made prior to the start of normal maintenance for the identified areas.

- G. CONDITION OF MAINTENANCE AREAS AT END OF CONTRACT:** Four weeks prior to this Agreement being terminated, the CITY and CONTRACTOR (if desired) will make a final inspection to determine the condition of all maintenance areas. Items found to be improperly maintained by the outgoing CONTRACTOR will be listed and evaluated by the Contract Administrator/designee. Should correcting action is not taken by CONTRACTOR, the Contract Administrator/designee will arrange for repairs to be made and the costs for

making repairs to the areas will be deducted from final payments to the outgoing CONTRACTOR. The same will apply even if the outgoing CONTRACTOR has been awarded a new Agreement for the same areas.

SECTION II - SCHEDULE OF PAYMENTS:

- A. CONTRACTOR shall provide invoices reflecting work completed. Payment will be made monthly on the basis of invoices submitted or as agreed in Agreement. CONTRACTOR shall indicate on the invoices the location or areas the charge has been applied to.
- B. **REDUCTION IN PAYMENT DUE TO UNSATISFACTORY SERVICE.** CONTRACTOR's performance will be evaluated monthly for satisfactory service. If the performance for any required service is unsatisfactory and poor performance is clearly the fault of CONTRACTOR (any service not performed which is required by the Agreement), an amount of money equal to the unsatisfactory service value will be withheld. Any time CONTRACTOR's performance is unsatisfactory, payment will be withheld until CONTRACTOR's performance is returned to a manner that is satisfactory to the Contract Administrator/designee.

In the event CONTRACTOR is deficient in any required service, the Contract Administrator/designee may perform the service using CITY personnel or use of another Contractor. Cost of services not performed by CONTRACTOR will be deducted from CONTRACTOR's monthly invoice.

Trash in turf areas: Park staff is responsible for trash removal in CITY parks. All efforts shall be made to remove litter in turf areas before mowing. Mowing of litter is unacceptable. If litter is found in turf areas before mowing, CONTRACTOR shall be responsible for removing this litter. A schedule of trash cleaning will be given to CONTRACOTOR prior to commencing work under this Agreement.

Parks: Parks have been broken into four areas as follows:

Area A				
	<u>Park</u>	<u>Address</u>	<u>Total # of Acres</u>	<u>Total # of Turf Acres</u>
1.	Apache Park	1300 N Hartford Street	10.0	8.69
2.	Armstrong Park	399 N Delaware	3.0	.5
3.	Chandler Boys & Girls Club	300 E. Chandler Blvd.	2.18	2.18
4.	East Well Mini Park	605 E. Erie Street	0.25	.25
5.	N. J. Harris Park	372 S. Elgin	0.81	.5
6.	Folley Park	601 E. Frye Road	24.38	22.5
7.	Gazelle Meadows Park	500 N. Exeter Street	8.3	2.89
8.	Jackrabbit Park	1750 E. Thatcher Blvd.	4.57	1.56
9.	Navarrete Park	501 W. Harrison Street	5.0	3.09
10.	Pima Park	625 N. McQueen	31.0	23.0
11.	Provinces Park	1258 E. Orchid Lane	7.0	7.0
12.	San Tan Park	2301 E. Frye Road	10.14	3.0
13.	Stonegate Park	1650 N. Ithica Street	8.25	8.0
14.	West Well Mini Park	395 W. Erie Street	0.25	.25
15.	Winn Park	56 E. Morelos Street	1.0	.73
16.	Espee Park	600 E. Knox	33.0	17.0
17.	Tibshraeny Park	270 N. Cottonwood	15	8.2

18.	Arbuckle Park	1100 S Norman Way	9.5	4.62
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Area B				
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	<u>Park</u>	<u>Address</u>	<u>Total # of Acres</u>	<u>Total # of Turf</u>
19.	Amberwood Park	2327 W Calle Del Norte	15.43	14.83
20.	Arrowhead Park	1475 W. Erie Street	35.5	26.87
21.	Brooks Crossing Park	1345 W. Calle Del Norte	8.0	7.54
22.	Hoopes Park	601 W. Mesquite	12.4	11.57
23.	Los Altos Park	306 N. Los Altos	0.75	.35
24.	Maggio Ranch Park	1500 W. Maggio Way	4.8	3.67
25.	Pecos Ranch Park	1555 W. Maplewood Street	13.79	10.0
26.	Pequeno Park	777 N. Coronado	4.73	2.3
27.	San Marcos Park	712 W. Fairview Street	15.03	9.85
28.	Shawnee Park	1500 W. Mesquite	17.06	15.57
29.	Summit Point Park	528 W. Boxelder	0.29	.14
30.	Thude Park	2825 W. Galveston Street	22.3	21.0
31.	Harmony Hollows Park	1100 W Galveston St	6.2	6.1

Area C				
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	<u>Park</u>	<u>Address</u>	<u>Total # of Acres</u>	<u>Total # of Turf</u>
32.	Desert Breeze Park (includes Fire Station #9 & Police Substation)	660 N. Galaxy Drive	42.0	27.1
33.	Harter Park	665 N. Country Club Way	9.4	5.9
34.	Mountain View Park	575 S. Twelve Oaks Blvd.	19.0	12.71
35.	Pine Shadows Park	5300 W. Galveston Street	7.86	4.0
36.	Price Park	475 S. Kenwood Lane	13.26	9.23
37.	Pueblo Alto Park	3948 W. Calle Segunda St	0.25	.1
38.	Sundance Park	933 N. Roosevelt Ave.	3.51	3.0
39.	Sunset Park	4700 W. Ray Road	4.74	4.71
40.	Windmills West Park	1233 N. Windmills Blvd.	6.5	4.44
41.	West Chandler	250 S. Kyrene	20.0	8.75

AREA E**				
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	<u>Park</u>	<u>Address</u>	<u>Total # of Acres</u>	<u>Total # of Turf</u>
42.	Tumbleweed Park	2250 S. McQueen Rd.	95.0	42.5
43.	Dobson Park	1625 W. Ryan Rd.	12.0	11.0
44.	Fox Crossing	3572 S. Sandpiper Dr.	4.95	3.2

45.	La Paloma	6579 S. Amanda Dr.	17.0	12.2
46.	Chuparosa Park	2400 S. Dobson Rd.	21.0	11.0
47.	Quail Haven	4675 S Adams Ave	9.78	4.3
48.	Chuckwalla Park	4600 E Doral Dr	5.0	3.1
49.	Ryan Park	2450 S Hartford	14.0	10.0
50.	Pine Lakes Park	598 E Crescent Ave	6.0	4.1
51.	Blue Heron	1399 W Lake Blvd	3.0	2.3
52.	Crossbow Park	4520 S Crossbow	9.34	4.4
53.	Paseo Vista (opening October 2009)	McQueen / Ocotillo	66	4.0
54.	Roadrunner Park (possible opening September 2011)	Gilbert / Ryan Rd	10.0	7.5
55.	Centennial Park (possible opening September 2011)	Cooper / Queen Creek	7.87	4.9
56.	Nozomi Park (possible opening September 2011)	McQueen / Queen Creek	70	31

Summer months – March 1 – October 31
Winter months – November 1 – February 29

****For reference purposes only – Area D is a downtown area that is maintained by CITY staff.**

**EXHIBIT C
PRICING**

AREA A:		Summer Pricing			Winter Pricing			Totals
Item	Park	Mowing Summer Month Unit Price	Qty	Summer Extended Price	Mowing Winter Month Unit Price	Qty	Winter Extended Price	Total Extended Price by Park
1	Apache Park	\$382.00	8	\$3,056.00	\$95.00	4	\$380.00	\$3,436.00
2	Armstrong Park	\$22.00	8	\$176.00	\$6.00	4	\$24.00	\$200.00
	Chandler Boys & Girls Club	\$95.00	8	\$760.00	\$24.00	4	\$96.00	\$856.00
4	East Well Mini Park	\$11.00	8	\$88.00	\$3.00	4	\$12.00	\$100.00
5	Harris Park	\$22.00	8	\$176.00	\$6.00	4	\$24.00	\$200.00
6	Folley Park	\$935.00	8	\$7,480.00	\$247.00	4	\$988.00	\$8,468.00
7	Gazelle Meadows Park	\$127.00	8	\$1,016.00	\$31.00	4	\$124.00	\$1,140.00
8	Jackrabbit Park	\$68.00	8	\$544.00	\$17.00	4	\$68.00	\$612.00
9	Navarrete Park	\$136.00	8	\$1,088.00	\$34.00	4	\$136.00	\$1,224.00
10	Pima Park	\$935.00	8	\$7,480.00	\$252.00	4	\$1,008.00	\$8,488.00
11	Provinces Park	\$307.00	8	\$2,456.00	\$77.00	4	\$308.00	\$2,764.00
12	San Tan Park	\$132.00	8	\$1,056.00	\$33.00	4	\$132.00	\$1,188.00
13	Stonegate Park	\$351.00	8	\$2,808.00	\$88.00	4	\$352.00	\$3,160.00
14	West Well Mini Park	\$11.00	8	\$88.00	\$3.00	4	\$12.00	\$100.00
15	Winn Park	\$32.00	8	\$256.00	\$8.00	4	\$32.00	\$288.00
16	Espee Park	\$680.00	8	\$5,440.00	\$187.00	4	\$748.00	\$6,188.00
17	Tibshraeny Park	\$360.00	8	\$2,880.00	\$90.00	4	\$360.00	\$3,480.00
18	Arbuckle Park	\$340.00	8	\$2,720.00	\$98.00	4	\$392.00	\$3,112.00
Total for Area A								\$44,764.00
AREA B:		Summer Pricing			Winter Pricing			Totals
Item	Park	Mowing Summer Month Unit Price	Qty	Summer Extended Price	Mowing Winter Month Unit Price	Qty	Winter Extended Price	Total Extended Price by Park
19	Amberwood Park	\$651.00	8	\$5,208.00	\$162.00	4	\$648.00	\$5,856.00
20	Arrowhead Park	\$1,105.00	8	\$8,840.00	\$255.00	4	\$1,020.00	\$9,860.00
21	Brooks Crossing Park	\$331.00	8	\$2,648.00	\$82.00	4	\$328.00	\$2,976.00
22	Hoopes Park	\$493.00	8	\$3,944.00	\$127.00	4	\$508.00	\$4,452.00
23	Los Altos Park	\$15.00	8	\$120.00	\$4.00	4	\$16.00	\$136.00
24	Maggio Ranch Park	\$161.00	8	\$1,288.00	\$40.00	4	\$160.00	\$1,448.00
25	Pecos Ranch Park	\$439.00	8	\$3,512.00	\$110.00	4	\$440.00	\$3,952.00

26	Pequeno Park	\$100.00	8	\$800.00	\$26.00	4	\$104.00	\$904.00
27	San Marcos Park	\$433.00	8	\$3,464.00	\$108.00	4	\$432.00	\$3,896.00
28	Shawnee Park	\$684.00	8	\$5,472.00	\$171.00	4	\$684.00	\$6,156.00
29	Summit Point Park	\$6.00	8	\$48.00	\$2.00	4	\$8.00	\$56.00
30	Thude Park	\$850.00	8	\$6,800.00	\$230.00	4	\$920.00	\$7,720.00
31	Harmony Hollows Park	\$268.00	8	\$2,144.00	\$66.00	4	\$264.00	\$2,408.00
Total for Area B								\$ 49,820.00

AREA C:		Summer Pricing			Winter Pricing			Totals
Item	Park	Mowing Summer Month Unit Price	Qty	Summer Extended Price		Qty	Winter Extended Price	Total Extended Price by Park
32	Desert Breeze Park	\$1,020.00	8	\$8,160.00	\$298.00	4	\$1,192.00	\$9,352.00
33	Harter Park	\$259.00	8	\$2,072.00	\$65.00	4	\$260.00	\$2,332.00
34	Mountain View Park	\$558.00	8	\$4,464.00	\$139.00	4	\$556.00	\$5,020.00
35	Pine Shadows Park	\$175.00	8	\$1,400.00	\$43.00	4	\$172.00	\$1,572.00
36	Price Park	\$405.00	8	\$3,240.00	\$101.00	4	\$404.00	\$3,644.00
37	Pueblo Alto Park	\$3.00	8	\$24.00	\$1.00	4	\$4.00	\$28.00
38	Sundance Park	\$132.00	8	\$1,056.00	\$33.00	4	\$132.00	\$1,188.00
39	Sunset Park	\$127.00	8	\$1,656.00	\$52.00	4	\$208.00	\$1,864.00
40	Windmills West Park	\$195.00	8	\$1,560.00	\$48.00	4	\$192.00	\$1,752.00
41	West Chandler Park	\$384.00	8	\$3,072.00	\$96.00	4	\$384.00	\$3,456.00
Total for Area C								\$ 30,208.00

AREA E:		Summer Pricing			Winter Pricing			Totals
Item	Park	Mowing Summer Month Unit Price	Qty	Summer Extended Price	Mowing Winter Month Unit Price	Qty	Winter Extended Price	Total Extended Price by Park
42	Tumbleweed Park	\$1,700.00	8	\$13,600.00	\$425.00	4	\$1,700.00	\$15,300.00
42.a	Tumbleweed Park Over-seed areas	n/a	n/a	n/a	\$439.00	4	\$1,756.00	\$1,756.00
43	Dobson Park	\$483.00	8	\$3,864.00	\$121.00	4	\$484.00	\$4,384.00
44	Fox Crossing	\$140.00	8	\$1,120.00	\$35.00	4	\$140.00	\$1,260.00
45	La Paloma Park	\$536.00	8	\$4,288.00	\$133.00	4	\$532.00	\$4,820.00
46	Chuparosa Park	\$483.00	8	\$3,864.00	\$121.00	4	\$484.00	\$4,384.00
47	Quail Haven Park	\$189.00	8	\$1,512.00	\$47.00	4	\$188.00	\$1,700.00
48	Chuckwalla Park	\$136.00	8	\$1,088.00	\$34.00	4	\$136.00	\$1,224.00

49	Ryan Park	\$439.00	8	\$3,512.00	\$110.00	4	\$440.00	\$3,952.00
50	Pine Lakes Park	\$179.00	8	\$1,432.00	\$44.00	4	\$176.00	\$1,608.00
51	Blue Heron Park	\$100.00	8	\$800.00	\$25.00	4	\$100.00	\$900.00
52	Crossbow Park	\$193.00	8	\$1,544.00	\$48.00	4	\$192.00	\$1,736.00
53	Paseo Vista Park	\$175.00	8	\$1,400.00	\$43.00	4	\$172.00	\$1,572.00
54	Centennial Park	\$215.00	8	\$1,720.00	\$54.00	4	\$216.00	\$1,936.00
55	Nozomi Park	\$1,275.00	8	\$10,200.00	\$340.00	4	\$1,360.00	\$11,560.00
56	Roadrunner Park	\$329.00	8	\$2,632.00	\$83.00	4	\$332.00	\$2,964.00
Total for Area E								\$ 61,056.00

TOTAL – AREA A \$ 44,764.00
TOTAL – AREA B \$ 49,820.00
TOTAL – AREA C \$ 30,208.00
TOTAL – AREA E \$ 61,056.00

TOTAL A – E \$ 185,848.00

Special hourly rate for additional work, if required \$ 35.00 per hr
(in an amount not to exceed \$14,152.00)

PERFORMANCE BOND

**STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Bond amount)**

KNOW ALL MEN BY THESE PRESENTS: That, _____ (hereinafter called the Principal), as Principal, and _____ a corporation organized and existing under the law of the State of _____ with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Chandler, County of Maricopa, State of Arizona, in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the City of Chandler, Dated the _____ day of _____, _____, for **PARKS MOWING MAINTENANCE; Bid No. PM9-988-2740**, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants terms, conditions, and agreements of said contract during the original term of said Contract and any extensions thereof, with or without notice to the Surety, and during the life of any warranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of conditions of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligations shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter and Article, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

Witness our hands this ____ day of _____, 2009.

PRINCIPAL SEAL

AGENT OF RECORD
BY _____

SURETY SEAL

AGENT ADDRESS

EXHIBIT E
Contractor's Equipment Listing (for this Agreement only)
PM9-988-2740

- (2) F250 Pickups
- (1) F350 Flatbed with dump
- (1) F150 Pickup
- (3) Equipment Trailers
- (3) John Deere 1445 75" cut mulching decks
- (2) John Deere 757 54" cut mulching decks
- (3) John Deere G518 36" cut mulching decks
- (4) line trimmers
- (3) straight blade edgers
- (4) backpack lowers
- (2) backpack sprayers
- All hand tools necessary

Backup Equipment:

- (2) John Deere 1445 72" cut mulching decks
- (1) John Deere 1445 72" cut with bagging unit
- (2) John Deere 757 54" cut mulching deck
- (1) F250 Pickup
- (1) Equipment trailer
- Numerous line trimmers, blowers, and edgers

Schedule for Purchase:

- (1) John Deere 1600 10' cut with mulching deck
- (1) equipment trailer dedicated for JD1600