



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

MEMO NO. ST10-003

1. Agenda Item Number:

24

2. Council Meeting Date:

July 30, 2009

TO: MAYOR & COUNCIL

3. Date Prepared: July 7, 2009

THROUGH: CITY MANAGER

4. Requesting Department: Public Works

5. SUBJECT: Approve Agreement ST9-988-2726 for Landscape Maintenance – Area 4 Price Frontage Road and other City facilities with Desert Glen Commercial Landscaping Group, Inc. in an amount not to exceed \$130,000 per year for a two-year period for a total of \$260,000, with options to renew for up to three (3) additional one-year terms, and cancel the previous Agreement with Mariposa Landscape Arizona Inc.

6. RECOMMENDATION: Recommend approval of Agreement ST9-988-2726 for Landscape Maintenance – Area 4 Price Frontage Road and other City facilities with Desert Glen Commercial Landscaping Group, Inc. in an amount not to exceed \$130,000 per year for a two-year period for a total of \$260,000, with options to renew for up to three (3) additional one-year terms, and cancel the previous Agreement with Mariposa Landscape Arizona Inc.

7. BACKGROUND/DISCUSSION: The landscaped areas to be maintained under this agreement are: Price Freeway Frontage Roads, Downtown City-owned areas, Transit Center, Airport Terminal area, City yards at Chicago Street and McQueen Road, and the Police impound facility. This agreement includes weekly trash pickup, weed control, irrigation repair, mowing and pruning/trimming as required.

8. EVALUATION PROCESS: On February 13, 2009 staff issued a bid for landscaping maintenance services for the Price Frontage Road and other City facilities – Area 4. On May 28, 2009 Council awarded the Agreement to Mariposa Landscape Arizona Inc. Upon mutual agreement between Mariposa Landscape Arizona Inc and City staff, that Agreement was terminated effective June 17, 2009. Issues related to exiting landscape conditions and compensation could not be reconciled. Staff is now recommending award to Desert Glen Commercial Landscaping Group Inc, who was deemed to have submitted the second lowest responsive and responsible bid. The following is a summary of bids received:

| <u>Bidder</u> | <u>Total Annual Cost:</u> |
|---|---------------------------|
| Mariposa Landscape Arizona Inc. | \$121,395.00 |
| Desert Glen Commercial Landscape | \$123,252.48 |
| Bela Contracting | \$125,400.00 |
| Pacheco Brothers | \$126,828.00 |
| Somerset Landscape | \$147,780.00 |
| Desert Earth Works | \$163,869.06 |
| Agave | \$173,683.08 |
| Artistic Land Management | \$179,872.56 |
| The Groundskeeper | \$189,660.00 |
| Earthscapes | \$219,824.00 |
| ISS Grounds Control | \$269,400.00 |
| Basin Tree Service & Pest Control | \$279,336.00 |

The annual Agreement is for \$123,252.48

6,747.52 for incidental services

Total per year..... \$130,000.00/year for 2 years = \$260,000

This amount will be paid out of HURF funds. Due to the cancellation of the previous vendor, the term of this Agreement will be July 1, 2009 – June 30, 2011, with options to renew for up to three (3) additional one-year terms.

9. FINANCIAL IMPLICATIONS:

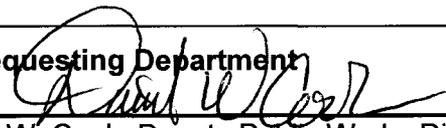
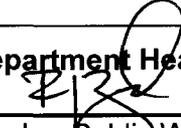
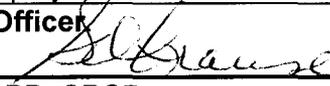
Cost: \$130,000
 Savings: N/A
 Long Term Costs: N/A

| <u>Acct No.</u> | <u>Fund</u> | <u>Program name</u> | <u>CIP Funded</u> | <u>Funds</u> |
|--------------------|--------------------|---------------------|-------------------|--------------|
| 215.3300.0000.5219 | HURF | Operating Funds | N/A | \$105,952 |
| 635.4100.0000.5219 | Airport Operations | Runway & Taxiway | N/A | \$ 4,512 |
| 605.3840.0000.5410 | Operating Fund | Water Production | N/A | \$ 2,856 |
| 101.2020.0000.5219 | Operating Fund | Police Impound | N/A | \$ 5,472 |
| 101.1540.0000.5410 | Operating Fund | Housing | N/A | \$ 2,400 |
| 101.1500.0000.5410 | Operating Fund | Downtown | N/A | \$ 5,820 |
| 101.1225.0000.5410 | Operating Fund | Central Stores | N/A | \$ 936 |
| 101.4530.0000.5410 | Operating Fund | Parks Maintenance | N/A | \$ 900 |
| 101.1225.0000.5410 | Operating Fund | Fleet Services | N/A | \$ 1,152 |

*This approval is contingent upon the adoption of the 2009-10 and 2010-11 budgets.

10. PROPOSED MOTION: Move to approve Agreement ST9-988-2726 for Landscape Maintenance – Area 4 Price Frontage Road and other City facilities with Desert Glen Commercial Landscaping Group, Inc. in an amount not to exceed \$130,000 per year for a two-year period for a total of \$260,000, with options to renew for up to three (3) additional one-year terms, and cancel the previous Agreement with Mariposa Landscape Arizona Inc.

ATTACHMENT: Agreement

APPROVALS**11. Requesting Department**

 Daniel W. Cook, Deputy Public Works Director
12. Department Head

 R.J. Zeder, Public Works Director
13. Procurement Officer

 Sharon Brause, CPPB, CPCP
14. City Manager

 W. Mark Pentz

**CITY OF CHANDLER SERVICES AGREEMENT
LANDSCAPE MAINTENANCE – AREA 4
AGREEMENT NO.: ST9-988-2726**

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 **DESERT GLEN COMMERCIAL LANDSCAPING GROUP INC.**, a Corporation of the State of Arizona, hereinafter referred to as "CONTRACTOR".

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

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

CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Contract Compliance Inspector /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Agreement 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 Agreement without prior written approval by CITY.
- 1.3. **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.
- 1.4. **Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Agreement for the performance of this Agreement without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.
- 2. **SCOPE OF WORK:** CONTRACTOR shall provide landscaping maintenance all as more specifically set forth in the Technical Specifications, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein. Bid Bond is attached hereto as Exhibit D1. Performance Bond is attached here to as Exhibit D2. A list of Contractor's equipment is set forth in Exhibit E.
- 2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
- 2.3. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Agreement 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 Agreement .
- 2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement 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 verification.
- 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 Offeror 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 Offeror does not have scrutinized business operations in Sudan.

2.5. **Warranties.**

- 2.6. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all new installation work performed pursuant to this Agreement .

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 Agreement for a period of five years after the completion of the Agreement .
- 3.2. **Audit.** At any time during the term of this Agreement 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 Agreement 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 Agreement 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 **One Hundred Thirty Thousand Dollars (\$130,000) per year for a total not to exceed of \$260,000 for the initial two (2) year term** 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. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Agreement . 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 Agreement was executed directly correlated to the price of the product concerned.

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

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

5. **TERM:**

5.1. The term of the Agreement is **two (2) years (s)**, commencing on the **22nd day of June, 2009** and terminating on **21st day of July, 2011** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Agreement for up to **three (3)** additional terms of one year each. CITY reserves the right, at its sole discretion, to extend the Agreement for up to sixty (60) days.

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

6.1. **Cooperative Use of Agreement .** In addition to the City of Chandler and with approval of the CONTRACTOR, this Agreement 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 Agreement, 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 Agreement in addition to any other rights and remedies provided by law or this Agreement.

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 Agreement 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/designee shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

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

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

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 Agreement, 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 Agreement after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement. 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 Agreement, 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 Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about Agreement 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 Agreement 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 an Agreement 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 Agreement, 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 Agreement 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 Agreement 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 Agreement .
- 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 Agreement , 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 Agreement , 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 Agreement , 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 Agreement 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 \$2,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$5,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall

be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

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

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

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

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

| In the case of the CITY | | In the case of the CONTRACTOR | |
|-------------------------|------------------------|-------------------------------|---|
| Contract Administrator: | Streets Division | Firm Name: | Desert Glen Commercial Landscaping Group Inc. |
| Contact: | Bill DePauw | Contact: | Margherita Arvanites |
| Mailing Address: | PO Box 4008 – MS 909 | Address: | 1695 W Sahuaro Dr |
| Physical Address: | 975 E Armstrong Way #C | City, State, Zip | Tucson AZ 85745 |
| City, State, Zip | Chandler, AZ 85244 | Phone: | 520-882-6322 |
| Phone: | 480-782-3492 | FAX: | 520-882-6326 |
| FAX: | 480-782-3595 | EMAIL: | Margherita@DesertGlen.com |

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

14. CONFLICT OF INTEREST:

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

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

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

15. GENERAL TERMS:

15.1 OWNERSHIP. All deliverables and/or other products of the Agreement (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 Agreement) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

15.2 Performance Bond. Within fifteen (15) days from the time an Agreement is awarded, CONTRACTOR shall furnish fully executed Performance in such form and context as determined by CITY from a surety approved by CITY. Said bond shall be in a sum no less than one hundred (100%) of the Agreement price.

CITY has the option to forfeit said bond if the Agreement 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 Agreement Documents.

If the Agreement 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 Agreement and collect the Performance Bond.

The Performance Bond may be reviewed annually and any increases in the Agreement 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 of 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 Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties. Changes to the Agreement , 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 Agreement . Any such changes, including unauthorized written Agreement Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Agreement based on such changes.

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

15.8 No Parole Evidence. This Agreement 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

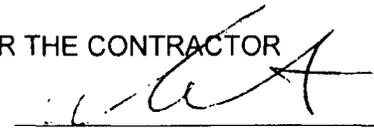
supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

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

MAYOR

FOR THE CONTRACTOR
By: 

Signature

ATTEST:

City Clerk

SEAL

ATTEST: If Corporation

Secretary

Approved as to form:

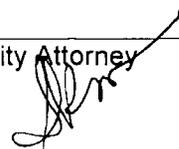
City Attorney


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 Agreement 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 Agreement meet all conditions contained herein.

| | | | | | |
|---|---|---------------|-----------|------------------|--------------|
| Contract Number: | ST9-988-2726 | | | | |
| Name (as listed in the Agreement): | Desert Glen Commercial Landscaping Group Inc | | | | |
| Street Name and Number: | 1695 W Sahuaro Dr | | | | |
| City: | Tucson | State: | AZ | Zip Code: | 85745 |

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 Agreement ;
2. All subcontractors performing work under this Agreement 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: Myriamte Alcantara

Title: President

Date (month/day/year): 6/19/09

**EXHIBIT B
GENERAL SPECIFICATIONS**

SECTION I - DESCRIPTION

CONTRACTOR shall provide landscape and irrigation maintenance services for approximately 80-acres in Area 4 within the CITY limits described in Exhibit C.

The Price Frontage Road areas will have trash picked up and maintained every Monday without fail and as required. The other sites will be scheduled throughout the rest of the week.

CONTRACTOR shall keep all areas, including sidewalks and curbs, clean of weeds, seedlings and suckers.

CONTRACTOR shall maintain all trees and shrubs in such a manner that they present a pleasing appearance and are not unsightly or a safety hazard.

CONTRACTOR shall fertilize all areas in accordance with Technical Specifications herein.

CONTRACTOR shall maintain and rake all gravel areas in accordance with specifications to present a pleasing appearance.

CONTRACTOR shall maintain and repair all irrigation systems and assure they are operating efficiently to insure healthy plants.

SECTION II - SCOPE OF SERVICE

CONTRACTOR shall furnish all labor, material and equipment necessary to maintain locations; i.e. right-of-way, medians, sidewalks to curbs, trees, shrubs and other planting included in these locations as specified herein.

- A. **SITE INSPECTION:** CONTRACTOR shall become familiar with any conditions, which may affect performance. This Agreement shall be prima facie evidence that CONTRACTOR did, in fact, make a site inspection and is aware of all conditions affecting performance and bid prices.
- B. **MATERIALS:** Any materials required that are not stipulated in this Agreement shall be submitted to Contract Administrator/designee *in writing* prior to purchase. CONTRACTOR shall provide invoices as proof of purchase to Contract Administrator/designee prior to reimbursement request.
- C. **WATER:** CITY shall furnish all water. Water meter will be provided, where required.
- D. **ACCEPTANCE:** CONTRACTOR shall perform all work specified under the direction and to the satisfaction of the Contract Administrator/designee.
- E. **ADDITIONS AND DELETIONS:** CITY will retain the right to modify maintenance areas and items to this Agreement. Charges for areas or items deleted will be dropped from the monthly billing. CITY may delete an item or area at any time and will pro-rate charges for services already performed. Charges for maintenance items or areas added to this Agreement are subject to approval by the Mayor and City Council/City Manager. Charges for areas added shall be priced comparably to similar areas.
- F. **SPECIAL WORK:** CITY may require the CONTRACTOR to perform work in addition to items specified in this Agreement including, but not limited to, repair of accident damage to landscaping and one-time cleanup. All extra work requested shall be priced based on the hourly rate provided on Exhibit C.

CONTRACTOR shall not perform any extra work prior to authorization from Contract Administrator/designee. Authorization will be in the form of a change order or a numbered authorization form. Extra work performed without authorization may not be paid.

- G. VANDALISM:** All cases of vandalism found by CONTRACTOR shall be reported to the Contract Administrator/designee within two (2) hours after noted and a vandalism report form submitted for determination of course of action to be taken.
- H. MATERIALS:** CITY retains the right to make direct purchases of all materials and to make them available to CONTRACTOR for use in fulfilling the terms of this Agreement .
- I. QUALITY CONTROL:** CONTRACTOR shall establish a complete quality control program to assure the requirements of this Agreement are provided as specified. A copy of CONTRACTOR's quality control program shall be provided to the Contract Administrator/designee at the time of notice of award of Agreement . Contract Administrator/designee will approve or disapprove CONTRACTOR's program within ten (10) working days of submittal. CONTRACTOR shall have an approved program before Agreement start date. The program will include but may not be limited to the following:

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

- J. QUALITY ASSURANCE:** Contract Administrator/designee will monitor the CONTRACTOR's performance to Technical Specifications by periodic inspection. After notification of a deficiency, CONTRACTOR will be given time, according to the Correction Time Limit schedule referenced within Agreement , to correct the problem. If the problem is not corrected within the time limit, there will be deductions made in accordance Schedule of Payments section. 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 re-work services that were unsatisfactory.

- K. SPECIALIZED HORTICULTURAL MAINTENANCE SCHEDULING AND NOTIFICATION:** CONTRACTOR shall notify the Contract Administrator/designee, in writing, at least two (2) weeks prior to the date of all specialized horticultural maintenance operations including:

- a. Fertilization
- b. Soil amendment and conditioning
- c. Chemical pest control
- d. Other items as determined by Contract Administrator/designee

Failure to notify specialized horticultural maintenance schedules in writing shall be considered breach of Agreement in accordance with this Agreement .

- L. HOLIDAYS:** The following is a list of holidays for which services may be performed at CONTRACTOR's discretion:
1. New Year's Eve Night
 2. New Year's Day
 3. Civil Rights 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. Veterans Day
 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

Should a holiday named herein fall on Sunday, it will be observed on the following Monday, and conversely when a holiday named herein falls on Saturday, it will be observed on the preceding Friday.

During a holiday week, CONTRACTOR shall adjust his weekly schedule so as to return to the normal weekly schedule the following week.

M. CONTRACTOR / CITY COMMUNICATIONS:

1. **Local Office:** During this Agreement period, 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 defined as 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 Contract Administrator/designee. CONTRACTOR shall make every effort to return calls made by Contract Administrator/designee within 30 minutes of receiving a message.
2. **Crew Leader:** CONTRACTOR shall have a Crew Leader available to Contract Administrator/designee during working hours to address problems, field inspections, perform inspections, and for other coordination with the Contract Administrator/designee. In addition the City requests that the Crew Leader be a certified spray technician thru the Arizona State Structural Pesticide Department and will be utilized as such. CONTRACTOR's Crew Leader shall supervise only one Agreement unless prior approval is received from Contract Administrator/designee. Crew Leader shall not have any additional labor duties other than incidentals; i.e. Crew Leader will not function as a lead man or foreman, and will have separate transportation available to be able to move independently between situations.

CONTRACTOR shall provide a mobile radio or cellular phone to the CONTRACTOR's Crew Leader and/or lead man to enhance communication between the Contract Administrator/designee and CONTRACTOR's field representative. At a minimum, all crews should be equipped with radios. All communication equipment shall be kept on during business hours and in proper working condition at all times.

CITY has the right to review the qualifications of the Crew Leader. If the Contract Administrator/designee does not feel the Crew Leader is qualified, CONTRACTOR shall remove him/her from that position. CONTRACTOR shall provide an alternate contact to CITY in the event the Crew Leader is not available.

N. CONTRACTOR'S PERSONNEL:

1. **Minimum Requirements / List of Employees:** CONTRACTOR shall provide evidence of his ability to furnish the proper personnel.

The ***minimum*** personnel requirements for this Agreement shall be: one (1) full-time crew leader, one (1) full-time irrigation technician, one (1) lead man and three (3) laborers to maintain areas to the required standards. All personnel shall be on site daily with crews.

CONTRACTOR shall supply Contract Administrator/designee a current list of employees assigned to CITY. 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 with CITY. All company officers and employees working on this Contract shall be listed.

2. **Identification:** CONTRACTOR shall require all employees to wear a clean uniform bearing the CONTRACTOR's name. 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. **Driver's License:** Employees driving the CONTRACTOR's vehicles shall possess and carry a **valid** Vehicle Operator's license issued by the State of Arizona at all times – NO EXCEPTIONS.
4. **Conduct:** CONTRACTOR shall be responsible for the conduct of CONTRACTOR's personnel. Employees, officers and sub-contractors **shall not** identify themselves as being employees of CITY. Employees shall conduct themselves in such a manner as to avoid embarrassment to CITY, and shall be courteous to the public.

O. CONTRACTOR'S EQUIPMENT:

1. **Minimum Requirements / Vehicles and Equipment:** CONTRACTOR shall provide and maintain equipment sufficient in number, condition and capacity to efficiently perform the work and render the services required by this Agreement during the entire period of this Agreement. This excludes boom trucks or hoists to prune, plant or repair mature trees if subcontractors are used to perform the work. CONTRACTOR shall provide evidence of his ability to furnish the proper equipment.

The minimum equipment requirements for this Agreement are: chainsaw, blowers, hedgers/pruners, various hand tools as required for the job, tractor or other large capacity equipment to fertilize, trucks (as required).

As part of the minimums listed above, the irrigation technician shall have a vehicle of his/her own with standard irrigation supplies including standard PVC fittings/pipe, glue, solvent, risers, standard heads for emitters, volt meters, and hand tools required to perform irrigation work.

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

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 the CONTRACTOR's equipment from the proposed equipment will require prior approval of the Contract Administrator/designee.

2. **Equipment Identification:** All vehicles used by CONTRACTOR shall 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 a reasonable distance.

P. CONDITION OF LANDSCAPE AT BEGINNING OF AGREEMENT : CONTRACTOR shall inspect the areas for identification of pre-existing conditions that would prevent or adversely affect completion of any normal specific deficiencies found at each Agreement area. The list of pre-existing conditions shall be submitted to the Contract Administrator/designee prior to receiving a Notice to Proceed. The CITY 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 Agreement period.

The determination of disposition of all items listed shall be the responsibility of the Contract Administrator/designee. This decision shall be final and binding upon CONTRACTOR.

All repairs to pre-existing conditions deemed necessary and authorized by the City shall be made prior to the start of normal maintenance for the identified areas.

Q. CONDITION OF LANDSCAPE AT END OF AGREEMENT : Four weeks prior to this Agreement expiration / ending, CITY and CONTRACTOR will make a final inspection to determine the condition of all landscape areas. Items found to be improperly maintained by CONTRACTOR will be listed and evaluated by CITY. CONTRACTOR shall take corrective action or CITY will arrange for repairs to be made and the costs for making such repairs will be deducted from final payments due to CONTRACTOR. The same will apply even if CONTRACTOR has been awarded a new Agreement for the same areas.

SCHEDULE OF PAYMENTS. CONTRACTOR shall provide invoices reflecting completed work. CONTRACTOR shall indicate location or areas for which service was provided on all invoices.

DEDUCTIONS TO PAYMENTS DUE. Should CONTRACTOR fail to perform the work in accordance with this Agreement , CITY may hold all or partial payments due to CONTRACTOR. Partial payment may be withheld if CONTRACTOR has performed poorly. CITY shall establish the payment amount. If CONTRACTOR has not taken action to correct the deficiency within the time listed in "Correction Time Limit Schedule" section referenced herein, CITY may withhold all payments for the area(s) affected until correction has been made. Upon satisfactory corrective action, payment will be released. Payment for work completed in an unsatisfactory manner will not be paid.

If CONTRACTOR fails to provide a full crew on a normal scheduled workday, a full crew plus one individual will be required the next scheduled work day. If a crew fails to show up for work on a scheduled workday, a deduction of one workday will be withheld from that month's payment.

Unless written extensions have been authorized, failure to correct areas identified as deficient by the Contract Administrator/designee within the limits listed, may result in cause for termination of the Agreement in accordance with provisions herein.

| <u>Correction Time Limit Schedule:</u> | <u>Working Days</u> |
|--|---------------------|
| Water & Sprinkler Repair * | 2 |
| Weed Control | 3 |
| Cleaning | 2 |
| Fertilization | 5 |
| Trimming | 3 |
| Pruning | 10 |
| Hazard Removal (sight obstruction) * | 1 |
| Replanting | 10 |
| Dead Plant Removal | 2 |
| Schedules | 2 |
| Total Neglect of Area * | 1 |

Note: Items denoted with an asterisk are considered serious deficiencies. If a second inspection by Contract Administrator/designee still finds deficiencies, a \$50.00 re-inspection fee will be assessed for each item found in this condition. If repeat deficiencies are noted in a given area within a 30 day time frame, then this condition will be considered as a serious deficiency and the re-inspection fee will be assessed. Accumulated re-inspection fees will be deducted from CONTRACTOR's monthly invoices.

If multiple deficiencies or re-inspection charges are evident, Contract Administrator/designee may require a weekly status report for each site each week indicating condition, tree/plant health, irrigation status, pest treatments, chemical application, or any other relevant information to the site.

AMENDMENTS:

Should a change in the scope of work contemplated in this Agreement be determined necessary, the work will be performed in accordance with the Agreement provided; however, **before** such work is started, an Agreement amendment shall be executed by CITY and CONTRACTOR. Additions, modifications, or deletions from the Agreement provided herein may be made and the compensation to be paid to

CONTRACTOR may be adjusted accordingly by mutual agreement. It is distinctly understood and agreed that no claim for extra work done or materials furnished by CONTRACTOR shall be allowed by CITY except as provided herein, nor shall CONTRACTOR do any work or furnish any materials not covered under this Agreement unless such work is approved by Contract Administrator/designee *in writing* prior to commencement of work.

TECHNICAL SPECIFICATIONS

- A. CONTRACTOR shall provide all labor and equipment necessary to maintain areas as specified herein. The anticipated start date is May 1, 2009.
- B. **STANDARDS:** The specifications listed below are the minimum requirements and are intended to govern, in general, the requirements desired. CITY reserves the right to evaluate variations from these specifications.

1. **PLANT MATERIAL (TREES, SHRUBS, LAWNS, GROUNDCOVER)**

- a. CONTRACTOR shall be responsible for damage to or destruction of trees, shrubs, lawns and groundcover resulting from his performance in accomplishing the scope of the Agreement. (CONTRACTOR shall not be responsible for damage to or destruction of plant material that is the result of vandalism, weather-related or damage caused by others.)
- b. CONTRACTOR shall replace, at his own expense, plant material damaged or destroyed as a result of his service, including the replacement of plants that die from "root shock" or lack of water or care, within ten (10) days after planting by CONTRACTOR. All replacement plants furnished by CONTRACTOR shall be equal in size, species and quality to the original plant, which it replaces.
- c. CONTRACTOR shall replace plant material damaged, weather-related or destroyed as a result of vandalism or other causes beyond the control of CONTRACTOR and will be reimbursed for labor based upon Exhibit C attached.

CITY will provide the replacement plant material at no cost to CONTRACTOR. CONTRACTOR shall notify the Contract Administrator/designee of any badly stressed or damaged plant material immediately. Contract Administrator/designee reserves the right to determine what should be replaced.

- d. All plant material replacements to be made by CONTRACTOR shall be approved by the Contract Administrator/designee prior to replacement. Replacement cost will be determined at that time. CITY will be sole judge as to whether treatment or removal and replacement are required.
- e. All tree removals shall be approved by the Contract Administrator/designee, *in writing*, before CONTRACTOR begins any work. CONTRACTOR shall submit a report to Contract Administrator/designee on all areas where trees have been removed. Trees that have been removed shall have the stump ground down or cut back 4-6" below grade. CONTRACTOR shall cap off irrigation lines.

The report shall include:

- (1) Area/Location
 - (2) Date actually removed
 - (3) Type of tree removed
 - (4) Approximate height and diameter
 - (5) Purpose for removal
- f. CONTRACTOR shall immediately notify the Contract Administrator/designee of any disease or pest infestation that may result in the destruction of plant material. In the event the disease or pest infestation resulted from improper plant maintenance (See Pest and Insect Control section), CONTRACTOR shall be responsible for all plant material and labor costs required to restore the plant materials and area to its original condition.
- g. All frost-killed wood will be removed in the spring after new growth begins.

- h. CONTRACTOR shall keep all trees that are staked at the beginning of the Agreement , and any trees replaced during the Agreement period, staked according to CITY specifications: Two 8-foot 2" x 2" redwood stakes on each side of the tree approximately 18 inches apart with two hose protected wire guys between trees; and stakes firmly driven into the ground 12 to 18 inches. Additionally, as trees mature, stakes will need to be removed for the health of the tree.

Immediately after wind storms, CONTRACTOR shall prune, re-stake or remove trees (less than 25' in height), and remove all debris as required at no additional charge to the city. Trees in excess of 25' in height will be dealt with on an individual basis. CITY will contract this separately or ask CONTRACTOR to submit a separate bid for this work.

- i. All trees shall be pruned by approved method to keep tree branches out of street right-of-way, for 13' 6" high vertical clearance on major streets and off sidewalk for 8' clearance. Pole saws and pruners are approved for this work.

2. PRUNING

- a. CONTRACTOR shall prune all shrubs and groundcover in an acceptable and methodical manner: i.e., selective pruning in keeping with good horticultural practices. Pruning of all shrubs and groundcover shall be limited to containment of vegetative growth to the inside edge of curb lines, sidewalks (if any) and a maximum of 24 inches above height of grade (street surface) for shrubs within the sight distance triangle (refer to CITY Standard Site Distance, Detail #C 246). Shrubs in R.O.W. or basins within 10 feet of a wall shall be kept at the height not to exceed the wall. Pruning shall also include the removal of dead, dying, diseased and broken portions; not to exceed 25 feet in height, of each plant. If replacement is necessary, except when due to negligence of CONTRACTOR, plant materials will be supplied by CITY.

Pruning shall be performed in such a way that plant material does not create a visibility obstruction to vehicular traffic. CITY shall reserve the right to determine when plant material creates a visibility obstruction.

Height of trimming of shrubs in continuous areas will be consistent in height. Height of trimming will be determined by the Contract Administrator/designee.

- b. Pruning, elevating and shaping of trees shall be limited to small trees, regardless of what their anticipated mature height may be. Pole saws and pruners should be used to meet height requirements as specified in 2(a) of this Agreement . Pruning shall be performed following accepted practices, no stubs.

Pruning is defined as cutting to a tree to shape, thin, or change the direction of the new growth. This would include crown cleaning, crown thinning, crown reduction, crown restoration and crown raising. Trimming is cutting to remove a hazard or sight obstruction.

- c. CONTRACTOR shall have good quality, appropriate hand tools available at all times. CONTRACTOR shall keep all tools in a clean, operative and sharp condition and be sterilized periodically. If disease/infection is suspected or known within a certain plant(s), CONTRACTOR shall sterilize his cutting tools between each cut. All hand shears and loppers shall be a type having two (2) cutting edges. Anvil type pruners are not acceptable. All branches and clippings shall be removed from site at completion of each work day.
- d. All trees shall be pruned yearly, but may require touch up trimming and pruning throughout the year on an as needed basis.

- e. Pruning standards shall follow the ISA Western Chapter Pruning Standards for correct pruning.
- f. Pruning over 25' in height, except palm trees, will be pruned as requested. CITY will bid this pruning separately or ask CONTRACTOR to submit a separate bid for this work.
- g. An ISA Certified Arborist or Certified Tree Worker must be available to train, oversee, and supervise all pruning of trees.
- h. Palm Trees – Palm tree pruning will be an individual component of this Agreement. There are approximately 43 palm trees in Area 4. Palm trees regardless of height shall have frond stubs and seed pods removed in August, but do not require skinning. More than one trimming of palms may be required. This will be on an as needed basis at no additional cost.

3. PEST AND INSECT CONTROL

- a. CONTRACTOR shall take normal precautions and institute proper procedures for the control of insects, pests or disease and shall be responsible for all damages resulting from improper procedures or the failure to take normal precautions to control insects, pests or disease.
- b. CONTRACTOR shall submit a list of proposed chemicals to the Contract Administrator/designee for approval. Any deviation from the approved list without prior written approval from Contract Administrator/designee may be grounds for termination of Agreement. All site chemical applications shall be done by applicators certified through Arizona State Office of Pest Management. All spot applications of over eight (8) gallons must meet the parameters set in SPCC Code Section 32-2311.
- c. CONTRACTOR shall be responsible for any adverse affects or death of plant materials, including soil sterilization, runoff and drift onto adjacent properties, caused by the application of chemicals. All repairs or replacements necessary due to the application of chemicals shall be completed at CONTRACTORS expense.
- d. CONTRACTOR shall control gophers and other pests, which burrow, crawl, fly, nest or otherwise reside on the work site. It shall be the CONTRACTOR's responsibility to determine the method of control and to execute action as determined.
- e. CONTRACTOR shall furnish all chemicals, rodenticides, insecticides, and equipment and labor necessary to provide pest control at various CITY locations listed. Service shall include cleanout and control of all pests and insects.
- f. Pesticides shall be used in strict conformance with manufacturer's instructions as they appear on the label, or approved by the Arizona State Chemist. Pesticide(s) shall not be left unattended or not under lock and key, and no pesticide will be stored on CITY premises.
- g. Product names, formulas and antidotes covering chemicals and pesticides to be used under this Agreement shall be maintained by CONTRACTOR for quick reference. MSDS shall be on file at all times. A chemical spray log will be kept indicating all spraying done for this Agreement. Spray indicator (blue dye) will be used for on applications.
- h. All chemicals and pesticides used must have Environmental Protection Agency registration and State Chemist approval.

- i. Materials, techniques and processes shall fully comply with all applicable Federal, State and local laws, regulations, standards and ordinances pertaining to health, safety and environmental protection. Failure to comply shall be sufficient grounds for immediate termination of this Agreement.
- j. CONTRACTOR shall perform the required pest, insect and disease control services shall be licensed by the State of Arizona to perform the required services as approved by the State of Arizona Office of Pest Management. All herbicide and pesticide applicators must be certified by the Office of Pest Management. However, spot applications of eight (8) gallons or less may be allowed for non-licensed individuals if they meet the parameters set in SPCC code section 32-2311.
- k. CITY expressly reserves the right to require additional service at no added cost should pest infestation or problems be experienced during the interim between the treatments. Additional inspection and service shall be completed by CONTRACTOR four (4) working days after notification.
- l. Yearly, in November, all palms will be treated with a copper fungicide (Bordeaux) to prevent bud rot. Additional applications in May or June will be applied as necessary by CONTRACTOR at no additional expense to CITY.
- m. All fruit bearing olive trees shall be treated for pollen and fruit prevention. Embark or Olive Stop shall be used at the recommended label rate for two (2) applications. A chemical log sheet must be submitted to Contract Administrator/designee indicating the date, location and chemical used during the application.

4. WEED CONTROL

CONTRACTOR shall have a separate, licensed crew for applying pre-emergent/post-emergent.

- a. Areas listed in this Agreement which consist of river rock, pea gravel, decomposed granite, irrigation backflow cages and bare earth in planting areas, shall be kept free of grass and weeds at all times. It shall be CONTRACTOR's responsibility to insure this is accomplished.
- b. If weeding is not performed as required in this Agreement, CITY will consider the affected areas unsatisfactory and appropriate action as deemed by Contract Administrator/designee will be taken.
- c. Pre-Emergent Herbicide Application
Apply BSAF brand Pendulum to all non-turf and open areas per label instruction for the winter application (December 15 - January 15) and one summer application of SurFlan (June 15 - July 15). Prior to application of pre-emergent, areas must be free from weeds. Schedule of pre-emergent applications shall be submitted to the Contract Administrator/designee a minimum of five (5) working days prior to application. Failure to submit schedule as prescribed may be grounds for termination of the Agreement.

d. Post-Emergent Weed Control - Non-Turf Areas

All weeds are to be controlled by chemical means before reaching three (3) inches high. Weeds are not to be controlled by mechanical means (hoeing).

Summer - Weeds to be controlled by the use of Monsanto brand "Roundup" herbicide per label instructions.

Winter - Weeds to be controlled by Reward, Quik-Pro or Razor in the granite areas.

e. Post-Emergent Weed Control - Turf Areas

Winter annual broadleaf weeds to be controlled by the use of 2, 4, D Amine herbicide, or approved equal, per label instructions. Cutting of the grass is not considered a weed control measure.

f. No soil sterilants of any type shall be used.

5. **CLEANING:** Shall include, but is not limited to removal of trash such as paper, cans, bottles, dog waste, dried or dead plants or parts of plants (leaves, fronds, branches, etc.) accumulated in contracted areas as a result of littering, wind or rain storms on a cycle not to exceed seven (7) days. This is to include sidewalks, bike paths and medians adjacent to planted areas and medians in the middle of the streets. Bare earth areas and areas dressed with decomposed granite will be raked every other month. Excessive erosion, traffic damage, or vandalism may be repaired at extra cost, at the discretion of the Contract Administrator/designee. All material collected shall be disposed of by CONTRACTOR and in accordance with all City, County, State and Federal requirements. The CITY understands that illegal dumping takes place on CITY property. CONTRACTOR shall be responsible for cleaning and disposing of debris. Each Incident will be considered on an individual basis and CONTRACTOR will be paid at the hourly rate listed.

6. **FERTILIZING**

NON-TURF AREAS

March 1 through March 31

Other plant material must be fertilized yearly during the month of March with 16/8/4 fertilizer with two ounces per plant. All plants shall be observed for signs of nutrient deficiencies and treated to correct deficiencies throughout the year. Such corrective action shall be at the CONTRACTOR's cost.

7. **IRRIGATION MAINTENANCE**

CITY shall furnish all water.

- a. CONTRACTOR shall be responsible for monitoring of all plant materials to ensure they receive the proper amount of water to maintain health and vigor. If special watering is needed for any area, it shall be the responsibility of CONTRACTOR to bring it to the Contract Administrator/designee's attention *in writing*. Plant materials that are damaged due to lack of water or over watering shall be replaced or returned to health at the CONTRACTOR's expense, unless prior arrangements have been made with the Contract Administrator/designee. Replacement and plant recovery procedures shall be submitted by CONTRACTOR for Contract Administrator/designee's approval.
- b. CONTRACTOR shall not water to a point of runoff when watering. If runoff is occurring, adjustment of the watering schedule or use of a wetting agent may be necessary.
- c. For efficient use of water, the guidelines below should be followed, unless CONTRACTOR can justify, to the CITY's satisfaction, deviation from the guidelines:
- (1) Adjustment must be made to maintain growth at the desired rate.
 - (2) Irrigation between 9:00 PM and 6:00 AM is preferred but other night time hours are approved if necessary.
 - (3) Irrigation after 6:00 AM must be approved by CITY.

- d. CONTRACTOR shall adjust all irrigation systems to operate at an appropriate seasonal frequency using the least amount of water necessary to maintain the growth, health and vigor of all landscape plant materials.
- e. CONTRACTOR shall water by hand or by other means in accordance with plant needs when irrigation systems are out of service.
- f. CONTRACTOR shall notify Contract Administrator/designee *in writing* of system failure involving electric supply and/or water supply from the City's main lines. The CITY will assume the cost for necessary hand watering done in accordance with the special watering provisions stated herein.
- g. CONTRACTOR shall maintain a log of current irrigation timing. A copy of the log shall be maintained at the site, properly protected from the elements. The log shall include, but not be limited to, the following items: (1) days of week system is on; (2) start times; (3) station timing; and (4) station description information.
- h. When rain occurs or is forecast with some certainty, for more than a one-day period, all irrigation systems in the turf areas shall be turned off by the CONTRACTOR's personnel.
- i. When requested by CITY, special watering will be paid for at the hourly rate as stated on Exhibit B. The payment for special watering shall only be made for reasonable amounts of time required to set up equipment, adjust for coverage, occasional monitoring and breakdown of equipment. Equipment and methods used for special watering will be subject to approval by the Contract Administrator/designee.
- j. Manual systems are to be properly maintained and operated by CONTRACTOR based on the required rate and frequency necessary for the season and to maintain healthy plant material.

8. SPRINKLER MAINTENANCE

- a. Irrigation systems shall be maintained so that all component features are operating as designed. Pumps, backflow prevention units, chemical injectors, controllers, valves, pressure regulators, filters, water lines, irrigation heads, bubblers and trickle emitters shall be checked on a bi-weekly basis and serviced as required. Repairs shall be made within two (2) days of notification to CONTRACTOR unless a delay is authorized by the Contract Administrator/designee *in writing*.
- b. CONTRACTOR shall be required to employ at least one or more qualified Irrigation Technician repair persons as required to maintain and repair all irrigation systems within the Agreement boundaries. The Irrigation Technician and the Lead Maintenance person will not be the same person. CITY will certify the skill level of all Irrigation Technicians who will be doing work on CITY's irrigation maintenance Agreement. This certification will be accomplished by a "hands-on" situational exercise conducted by CITY. CONTRACTOR may certify as many individuals as desired to successfully perform the Agreement requirements. Failure to successfully certify Irrigation Technicians will be grounds for termination of this Agreement in its entirety.

Time Frame for Irrigation Technician qualifications:

Beginning of Agreement :

Testing to qualify Irrigation Technicians from CONTRACTOR shall be completed prior to City Council approval. If any applicant fails the test they will be retested in five (5) days. If CONTRACTOR has failed to qualify a Irrigation Technician, the Agreement is subject to re-award.

Mid-Agreement :

If CONTRACTOR loses their qualified Irrigation Technician during the course of this Agreement , CONTRACTOR shall have ten (10) working days to hire a replacement and take the test. If the applicant fails the test, they will be retested in five working (5) days. If the applicant fails the test a second time, they will not be retested. If CONTRACTOR has failed to qualify an Irrigation Technician in a thirty (30) day time period, the Agreement is subject to termination for cause.

CONTRACTOR is encouraged to qualify back-up Irrigation Technicians.

The situational exercises will consist of nine tasks related to establishing and maintaining a properly functioning sprinkler system. The nine tasks consist of:

- 1) Repairing a malfunctioning valve
- 2) Repairing a broken wire with a pin-tite connector
- 3) Adjusting the flow on a control valve
- 4) Check the (Ohm) reading on a solenoid assembly for proper operation
- 5) Diagnosing a controller with no display
- 6) Programming an Irritrol MC plus controller
- 7) Check station voltage on the controller
- 8) Adjust radius and arcs on sprinkler heads
- 9) Install a new nozzle to an existing sprinkler head

Each task will be rated "pass/not pass" by an authorized CITY employee. To achieve certification, the applicant must receive a passing rating on **ALL** tasks.

- c. CITY will pay for or provide the following parts for repair of the irrigation systems: Controllers, electric valves, vacuum breakers and turf spray heads. All other parts shall be supplied by CONTRACTOR. All of the broken or defective parts, which CITY is replacing, must be returned to CITY.
- d. Irrigation equipment presently in service, which malfunctions but is repairable, shall be CONTRACTOR's responsibility, at no additional cost to CITY, to supply the labor to repair all such equipment. CITY will determine the best course of action if a controller malfunctions and cannot be repaired in the field.
- e. New equipment shall be installed after prior written approval from Contract Administrator/designee and equipment removed shall be marked for identification and returned to CITY along with all excess parts. Installation or replacement equipment, whether new or rebuilt, shall be considered routine work.
- f. Payment for irrigation maintenance shall be part of the monthly cost for each area as stated in this Agreement . Special repairs or watering shall be paid for at the price agreed upon by extra work authorization.
- g. When any work is done (repairs/replacement) on a valve, CONTRACTOR shall: raise the valve box to the existing grade; paint the top of the box white; and using a 2 inch stencil, paint the appropriate valve number in black on the top of the box.

LANDSCAPE AGREEMENT FREQUENCY SCHEDULE

| <u>Service</u> | <u>Approximate Time</u> | <u>Frequencies Per Year</u> |
|------------------------|--|-----------------------------|
| Cleaning/Litter | Every 7 days | 52 |
| Raking | every other month | 6 |
| Weed Control | Two (2) times per year with pre-emergent herbicide. Post-emergent herbicide as required at CONTRACTOR's expense to meet standards. | 2 |
| Pest Control | As required | 1 |
| Fertilizing (Plants) | Once per year | 1 |
| Pruning (trees) | once per year (minimum) & as needed | 1 |
| Trimming | As required for trees and shrubs to be maintained in a pleasing and safe appearance at all times. | 4 minimum |
| Irrigation Maintenance | Bi-weekly checks of all systems. Repairs made as required. | 26 |
| Palm Pruning | Pruning of all palms in August (once), and as needed to maintain appearance | 1 |
| Palm Treatment | Treatment of all palms with copper fungicide in November (once) and as needed to prevent disease | 1 |

**EXHIBIT C
PRICING**

G = GRANITE
U = UNLANDSCAPED
A = ACRE
L=LANDSCAPED

SECTION 1

| Site | | | | |
|------------|-------------|--|--------------------------|----------------------------|
| <u>No.</u> | <u>Type</u> | <u>Location</u> | <u>Cost per Month</u> | <u>Qty Annual-Extended</u> |
| 400 | G | <u>PRICE FRONTAGE ROAD (L)</u> ROW and medians- From the 202 Interchange North to Western Canal - 43 A | <u>\$6,724.80</u> | 12 mo. <u>\$ 80,697.60</u> |
| | | | TOTAL – SECTION 1 | <u>\$ 80,697.60</u> |

SECTION 2 - AIRPORT FACILITES AREAS

| Site | | | | |
|------------|-------------|--|--------------------------|----------------------------|
| <u>No.</u> | <u>Type</u> | <u>Location</u> | <u>Cost per Month</u> | <u>Qty Annual-Extended</u> |
| 401 | G | <u>NEW AIRPORT TERMINAL AND PARKING AREA (L)</u> 2380 S. Stinson Way - .5 A | <u>\$163.35</u> | 12 mo. <u>\$ 1,960.20</u> |
| 402 | G | <u>OLD HELIPORT LANDSCAPE AREAS (L) - .5A</u> | <u>\$163.35</u> | 12 mo. <u>\$1,960.20</u> |
| | | | TOTAL – SECTION 2 | <u>\$ 3,920.40</u> |

SECTION 3 – STREET DEPARTMENT FACILITES

| Site | | | | |
|------------|-------------|---|--------------------------|----------------------------|
| <u>No.</u> | <u>Type</u> | <u>Location</u> | <u>Cost per Month</u> | <u>Qty Annual-Extended</u> |
| 403 | G | <u>CITY YARD</u> 249 E. Chicago (L) - .12 A | <u>\$122.35</u> | 12 mo. <u>\$1,468.20</u> |
| 404 | G | <u>MCQUEEN ROAD YARD</u> 975 E. ARMSTRONG WAY (L) Outside/Inside Landscaped areas - 3 A | <u>\$716.38</u> | 12 mo. <u>\$8,596.56</u> |
| 405 | G | <u>OLD ROOSEVELT WELLSITE</u> 500 S. Roosevelt (U) - .5 A No Irrigation/plants | <u>\$54.00</u> | 12 mo. <u>\$648.00</u> |
| 406 | G | <u>AIRPORT BLVD. MEDIANS</u> Germann Rd. South to Queen Creek (L) 2.9 A | <u>\$373.84</u> | 12 mo. <u>\$4,486.08</u> |
| 407 | G | <u>TRANSIT CENTER, CHANDLER FASHION CENTER 1A, (L)</u> | <u>\$355.15.00</u> | 12mo. <u>\$4,261.80</u> |
| | | | TOTAL – SECTION 3 | <u>\$19,460.64</u> |

SECTION 4 – POLICE IMPOUND FACILITY (all inclusive)

| Site No. | Type | Location | Cost per Month | Qty | Annual-Extended |
|----------|------|--|-----------------|-------|-------------------|
| 408 | G | <u>POLICE IMPOUND FACILITY</u> 576 W. Pecos Rd. Outside and Inside fence area (L) - 1 A | <u>\$426.18</u> | 12 MO | <u>\$5,114.16</u> |

TOTAL – SECTION 4 \$5,114.16

SECTION 5 –DOWNTOWN AREA VACANT LOTS

| Site No. | Type | Location | Cost per Month | Qty | Annual Extended |
|----------|------|--|-----------------|-------|-------------------|
| 409 | G | <u>VACANT LOTS AT 96 N. Washington</u> 1.5 A – (U) | <u>\$90.00</u> | 12 MO | <u>\$1,080.00</u> |
| 410 | G | <u>VACANT LOTS AT 120 S. OREGON</u> <u>OREGON ST.- EAST AND WEST SIDES (U)</u> <u>FROM CHICAGO NORTH TO ALLEY– 4.1 A</u> | <u>\$245.22</u> | 12 MO | <u>\$2,942.65</u> |
| 411 | G | <u>VACANT LOTS AT 1000 E. TRAILS END</u> (U) – 2.25 A | <u>\$186.92</u> | 12 MO | <u>\$2,243.04</u> |
| 412 | G | <u>VACANT LOTS AT 220-280 E. CHANDLER</u> (U) - .50 A | <u>\$119.62</u> | 12 MO | <u>\$1,435.44</u> |
| 413 | G | <u>PARKING LOT LANDSCAPED AREA AT 250 S.</u> <u>AZ. AVE TO ALLEY (L) - .05A</u> | <u>\$14.02</u> | 12 MO | <u>\$168.24</u> |
| 414 | G | <u>VACANT LOTS AT 251&261 S. DAKOTA ST.</u> 200 & 210 S.OREGON (U) - .50 A | <u>\$119.62</u> | 12 MO | <u>\$1,435.44</u> |
| 415 | G | <u>VACANT LOTS AT 190& 281 S. DAKOTA ST.</u> 180 & 131 S. CALIFORNIA ST (U) - .50 A | <u>\$119.62</u> | 12 MO | <u>\$1,435.44</u> |
| 416 | G | <u>VACANT LOT AT 298 ½ S. OREGON ST.</u> (U) - .25A | <u>\$59.81</u> | 12 MO | <u>\$717.72</u> |
| 417 | G | <u>VACANT LOT AT 290 ½ S. OREGON ST.</u> (U) - .25A | <u>\$59.81</u> | 12 MO | <u>\$717.72</u> |
| 418 | G | <u>VACANT LOT AT 201 N. COLORADO BLVD</u> (U) - .15 A | <u>\$37.38</u> | 12 MO | <u>\$448.56</u> |
| 419 | G | <u>VACANT LOT AT 99 E ELGIN</u> (U) - .25A | <u>\$59.81</u> | 12 MO | <u>\$717.72</u> |
| 420 | G | <u>VACANT LOT AT 444 S.WASHINGTON ST.</u> (U) - .25A | <u>\$59.81</u> | 12 MO | <u>\$717.72</u> |

TOTAL – SECTION 5 \$14,059.68

RATE FOR MAINTENANCE FOR GRANITE AREAS \$85.00/ACRE

RATE FOR MAINTENANCE FOR TURF AREAS \$85.00/ACRE

Hourly Rate For Special Work \$23.00/hr
(Additional work required shall not exceed a total amount of \$8,605.00)

| GRAND TOTALS: | Annual Price |
|--------------------------------------|---------------------------|
| TOTAL SECTION 1 | \$ <u>80,697.60</u> |
| TOTAL SECTION 2 | \$ 3,920.40 |
| TOTAL SECTION 3 | \$ 19,460.64 |
| TOTAL SECTION 4 | \$ 5,114.16 |
| TOTAL SECTION 5 | \$ <u>14,059.68</u> |
| TOTAL (SECTION 1- 5) | \$123,252.48 |
| ADDITIONAL WORK (if required) | \$ <u>6,747.52</u> |
| TOTAL AMOUNT NOT TO EXCEED | \$130,000.00* |

*This amount is not to exceed \$130,000 per year for a total of \$260,000.00 for the initial two (2) years of the Agreement.

EXHIBIT D1
BID BOND

ARIZONA STATUTORY BID BOND PURSUANT TO
TITLES 28,34 AND 41.
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must not be less than 10% of the bid amount)

KNOW ALL MEN BY THESE PRESENTS: That, _____,
_____, (hereinafter Principal), as Principal, and
_____, (hereinafter "Surety"), a corporation organized and
existing under the laws of the State of _____, with its principal offices in _____,
holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department
of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, held and firmly bound unto
_____, (hereinafter "Obligee"), as Obligee, in the amount of Ten Percent (10%) of the
amount of the bid of Principal, submitted by Principal to the Obligee for the work described below, for the
payment of which sum, the Principal and the Surety bind themselves, and their heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has submitted a bid for:

LANDSCAPE MAINTENANCE – AREA 4; Bid No. ST9-988-2726,

NOW, THEREFORE, if the Obligee accepts the proposal of the Principal and the Principal shall enter into
a contract with the Obligee in accordance with the terms of the proposal and give the bonds and certificates of
insurance as specified in the Standard Specifications with good and sufficient surety for the faithful performance of
the contract and for the prompt payment of labor and materials furnished in the prosecution of the contract, or in
the event of the failure of the Principal to enter into the contract and give the bonds and certificates of insurance, if
the Principal pays to the Obligee the difference not to exceed the penalty of the bond between the amount
specified in the proposal and such larger amount for which the Obligee may in good faith contract with another
party to perform the work covered by the proposal then this obligation is void. Otherwise to remain in full force and
effect provided, however, that this bond is executed pursuant to the provisions of Section 34-201, Arizona Revised
Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of that section to the
extent as if it were copied at length herein.

Witness our hands this _____ day of _____, 2009.

Principal

SEAL SURETY

By: _____

By: _____
Attorney-in-Fact SEAL

Its: _____

AGENCY OF RECORD

AGENCY ADDRESS

**EXHIBIT D2
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 LANDSCAPE MAINTENANCE – AREA 4; Bid No. ST9-988-2726, 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 List
ST9-988-2726**

10 Chevy pick up trucks & trailers

1 – Irrigation van

Over 150 misc. power tools such as hedge trimmers, hand blowers, backpacks, weed eaters,

Pole saws, and rakes. We use the following brands: Echo, toro and stihl. We have 3 – 21" toro

Mowers, 2 48" walk behind mowers, and 1 – 52" ferris riding mower.