



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

**MEMO NO. ST10-006**

**1. Agenda Item Number:**  
**23**

**2. Council Meeting Date:**  
August 27, 2009

**TO: MAYOR & COUNCIL**

**3. Date Prepared:** July 24, 2009

**THROUGH: CITY MANAGER**

**4. Requesting Department:** Public Works

**5. SUBJECT:** Approve Agreement ST0-595-2767 for Dust Mitigation – Granite with ELS Construction, Inc. in an amount not to exceed \$413,673.09.

**6. RECOMMENDATION:** Recommend approval of Agreement ST0-595-2767 for Dust Mitigation – Granite with ELS Construction, Inc. in an amount not to exceed \$413,673.09.

**7. BACKGROUND/DISCUSSION:** This project will place a cap of granite on the three (3) miles of the Western Canal from Arizona Avenue to Price Freeway. This capping is necessary to eliminate dust issues and meet the PM10 dust requirements. Additionally this project will refresh granite in medians and along right of way over a thirteen (13) lineal mile area.

**8. EVALUATION PROCESS:** On June 25, 2009, staff issued a bid for Dust Mitigation – Granite to be installed at various locations within the City. The bid was advertised and all registered vendors were notified. Fifteen responses were received and evaluated.

ELS Construction	\$413,673.09	Westar Environmental	\$430,636.64
Valley crest Landscape	\$452,771.98	Artistic Land Management	\$452,988.84
Land-Tech Landscape	\$476,476.69	Desierto Verde	\$509,866.91
Siteworks Commercial Landscape	\$516,611.72	Somerset Landscape	\$642,406.65
Sunburst Landscaping	\$679,191.38	Sunbelts Aggregate Delivery	\$729,785.73
Earthscapes, Inc.	\$754,194.06	The Groundskeeper	\$763,365.09
Nickle Contracting	\$781,250.01	Recon Inc	\$781,800.35
Buesing Corp	\$834,672.20		

Staff is recommending award to ELS Construction, Inc. who was deemed to have submitted the lowest responsive and responsible bid. Attached is a tabulation listing a summary of the bids received.

**9. FINANCIAL IMPLICATIONS:**

Cost: \$ 413,673.09

Savings:

Long Term Costs: N/A

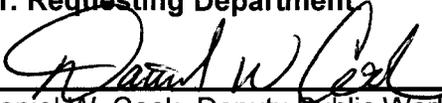
Funding Source:

<u>Acct No.:</u>	<u>Fund:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
411.3310.0000.6515.9ST014	GO Bonds- Streets	Landscape Upgrades	FY08/09	\$112,708.59
412.3310.0000.6511.9ST303	Storm Sewer Bonds	Various Improvements	FY08/09	\$300,964.50

**10. PROPOSED MOTION:** Move to approve Agreement ST0-595-2767 for Dust Mitigation – Granite with ELS Construction, Inc. in an amount not to exceed \$413,673.09.

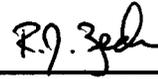
APPROVALS

11. Requesting Department:



Daniel W. Cook, Deputy Public Works Director

12. Department Head:



R. J. Zeder, Public Works Director

13. Procurement Officer:



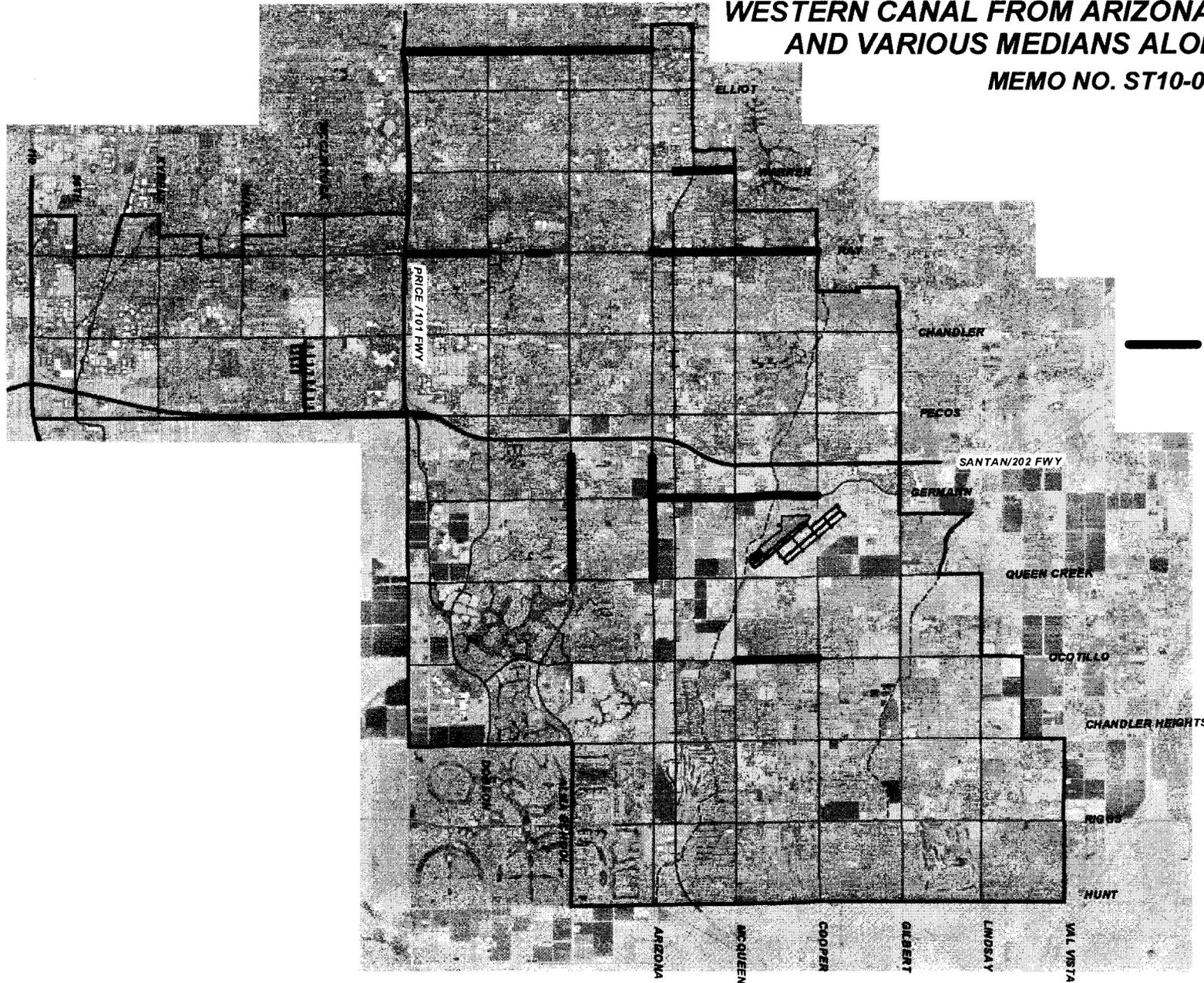
Sharon Brause, CPPB, CPCP

14. City Manager:



W. Mark Pentz

**DUST MITIGATION  
WESTERN CANAL FROM ARIZONA AV TO PRICE FWY  
AND VARIOUS MEDIANS ALONG ARTERIALS  
MEMO NO. ST10-006**



**———— GRANITE REPLACEMENT**

Dust Mitigation (Granite)  
 Bid No. ST0-595-2767

	ELS Construction Inc				Westar Environmental				Valley Crest Landscape				Artistic Land Management				Land-Tech Landscape			
<b>Medians</b>	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price
1. Purchase & Installation of 3/4" screened Walker Gold Granite for Medians	18	acre	\$ 5,440.00	\$ 97,920.00	18	acre	\$ 4,592.30	\$ 82,661.40	18	acre	\$ 6,085.28	\$109,535.04	18	acre	\$ 5,982.00	\$107,676.00	18	acre	\$ 6,100.00	\$109,800.00
2. Traffic Control (lump sum)	1	ea	\$ 9,350.00	\$ 9,350.00	1	ea	\$25,000.00	\$ 25,000.00	1	ea	\$36,345.00	\$ 36,345.00	1	ea	\$ 680.00	\$ 680.00	1	ea	\$22,000.00	\$ 22,000.00
<b>Total:</b>	\$ 107,270.00				\$ 107,661.40				\$ 145,880.04				\$ 108,356.00				\$ 131,800.00			
<b>Sales Tax:</b>	\$ 5,438.59				\$ 2,422.38				\$ 7,396.11				\$ 5,493.64				\$ 6,682.26			
<b>Western Canal</b>	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price
1. Purchase & Installation of 3/4" screened Walker Gold Granite for Western Canal	27	acre	\$ 8,465.00	\$ 228,555.00	27	acre	\$ 9,341.80	\$252,228.60	27	acre	\$ 7,983.67	\$215,559.09	27	acre	\$10,365.59	\$279,870.93	27	acre	\$ 9,500.00	\$256,500.00
2. Purchase & Installation of 3/4" screened Saddleback Brown Granite for Western Canal	2	acre	\$ 13,150.00	\$ 26,300.00	2	acre	\$12,951.25	\$ 25,902.50	2	acre	\$ 13,400.00	\$ 26,800.00	2	acre	\$ 9,500.00	\$ 19,000.00	2	acre	\$ 11,250.00	\$ 22,500.00
2. Traffic Control (lump sum)	17,074	lin ft	\$ 1.85	\$ 31,586.90	17,074	lin ft	\$ 2.06	\$ 35,172.44	17,074	lin ft	\$ 2.50	\$ 42,685.00	17,074	lin ft	\$ 1.40	\$ 23,903.60	17,074	lin ft	\$ 2.50	\$ 42,685.00
<b>Total:</b>	\$ 286,441.90				\$ 313,303.54				\$ 285,044.09				\$ 322,774.53				\$ 321,685.00			
<b>Sales Tax:</b>	\$ 14,522.60				\$ 7,049.32				\$ 14,451.74				\$ 16,364.67				\$ 16,309.43			
<b>Sub-Total:</b>	\$ 393,711.90				\$ 421,164.94				\$ 430,924.13				\$ 431,130.53				\$ 453,485.00			
<b>applicable Tax:</b>	\$ 19,961.19				\$ 9,471.70				\$ 21,847.85				\$ 21,858.31				\$ 22,991.69			
<b>GRAND TOTAL:</b>	\$ 413,673.09				\$ 430,636.64				\$ 452,771.98				\$ 452,988.84				\$ 476,476.69			

Dust Mitigation (Granite)  
 Bid No. ST0-595-2767

	Desierto Verde				Siteworks Commercial Landscape				Somerset Landscape				Sunburst Landscaping				Sunbelts Aggregate Delivery			
<b>Medians</b>	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price
1. Purchase & Installation of <sup>3/4"</sup> screened Walker Gold Granite for Medians	18	acre	\$ 6,723.92	\$ 121,030.56	18	acre	\$ 9,268.00	\$ 166,824.00	18	acre	\$ 13,580.00	\$ 244,440.00	18	acre	\$ 8,327.83	\$ 149,900.94	18	acre	\$13,741.24	\$247,342.32
2. Traffic Control (lump sum)	1	ea	\$ 17,464.42	\$ 17,464.42	1	ea	\$13,625.00	\$ 13,625.00	1	ea	\$ 19,000.00	\$ 19,000.00	1	ea	\$ 6,500.00	\$ 6,500.00	1	ea	\$19,500.00	\$ 19,500.00
<b>Total:</b>	\$ 138,494.98				\$ 180,449.00				\$ 263,440.00				\$ 156,400.94				\$ 266,842.32			
<b>Sales Tax:</b>	\$ 10,802.61				\$ 9,148.76				\$ 13,172.00				\$ 7,929.52				\$ 13,528.91			
<b>Western Canal</b>	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price
1. Purchase & Installation of <sup>3/4"</sup> screened Walker Gold Granite for Western Canal	27	acre	\$ 9,986.55	\$ 269,636.85	27	acre	\$ 9,268.00	\$ 250,236.00	27	acre	\$ 10,188.00	\$ 275,076.00	27	acre	\$ 14,766.84	\$ 398,704.68	27	acre	\$13,258.08	\$357,968.16
2. Purchase & Installation of <sup>3/4"</sup> screened Saddleback Brown Granite for Western Canal	2	acre	\$ 16,456.68	\$ 32,913.36	2	acre	\$14,535.00	\$ 29,070.00	2	acre	\$ 11,978.00	\$ 23,956.00	2	acre	\$ 17,227.98	\$ 34,455.96	2	acre	\$15,928.11	\$ 31,856.22
2. Traffic Control (lump sum)	17,074	lin ft	\$ 1.87	\$ 31,928.38	17,074	lin ft	\$ 1.87	\$ 31,928.38	17,074	lin ft	\$ 2.89	\$ 49,343.86	17,074	lin ft	\$ 3.33	\$ 56,856.42	17,074	lin ft	\$ 2.22	\$ 37,904.28
<b>Total:</b>	\$ 334,478.59				\$ 311,234.38				\$ 348,375.86				\$ 490,017.06				\$ 427,728.66			
<b>Sales Tax:</b>	\$ 26,090.73				\$ 15,779.58				\$ 17,418.79				\$ 24,843.86				\$ 21,685.84			
<b>Sub-Total:</b>	\$ 472,973.57				\$ 491,683.38				\$ 611,815.86				\$ 646,418.00				\$ 694,570.98			
<b>applicable Tax:</b>	\$ 36,893.34				\$ 24,928.34				\$ 30,590.79				\$ 32,773.38				\$ 35,214.75			
<b>GRAND TOTAL:</b>	\$ 509,866.91				\$ 516,611.72				\$ 642,406.65				\$ 679,191.38				\$ 729,785.73			

Dust Mitigation (Granite)  
 Bid No. ST0-595-2767

Medians	Earthscapes Inc				The Groundskeeper				Nickle Contracting				Recon Inc				Buesing Corp			
	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price
1. Purchase & Installation of screened Walker Gold Granite for Medians <sup>3/4"</sup>	18	acre	\$10,375.00	\$186,750.00	18	acre	\$ 7,844.00	\$141,192.00	18	acre	\$12,320.00	\$ 221,760.00	18	acre	\$10,700.00	\$192,600.00	18	acre	\$13,573.48	\$244,322.64
2. Traffic Control (lump sum)	1	ea	\$28,155.00	\$ 28,155.00	1	ea	\$68,272.00	\$ 68,272.00	1	ea	\$30,002.08	\$ 30,002.08	1	ea	\$25,500.00	\$ 25,500.00	1	ea	\$ 8,818.69	\$ 8,818.69
<b>Total:</b>	\$ 214,905.00				\$ 209,464.00				\$ 251,762.08				\$ 218,100.00				\$ 253,141.33			
<b>Sales Tax:</b>	\$ 10,895.68				\$ 10,619.00				\$ 12,839.87				\$ 11,057.67				\$ 12,834.27			
Western Canal	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price	Qty	UOM	Unit Price	Extended Price
1. Purchase & Installation of screened Walker Gold Granite for Western Canal <sup>3/4"</sup>	27	acre	\$15,575.00	\$420,525.00	27	acre	\$15,721.00	\$424,467.00	27	acre	\$15,400.00	\$ 415,800.00	27	acre	\$15,900.00	\$429,300.00	27	acre	\$16,503.61	\$445,597.47
2. Purchase & Installation of screened Saddleback Brown Granite for Western Canal <sup>3/4"</sup>	2	acre	\$15,575.00	\$ 31,150.00	2	acre	\$23,250.00	\$ 46,500.00	2	acre	\$17,400.00	\$ 34,800.00	2	acre	\$22,300.00	\$ 44,600.00	2	acre	\$21,449.42	\$ 42,898.84
2. Traffic Control (lump sum)	17,074	lin ft	\$ 3.00	\$ 51,222.00	17,074	lin ft	\$ 2.70	\$ 46,099.80	17,074	lin ft	\$ 2.40	\$ 40,977.60	17,074	lin ft	\$ 3.05	\$ 52,075.70	17,074	lin ft	\$ 3.09	\$ 52,758.66
<b>Total:</b>	\$ 502,897.00				\$ 517,066.80				\$ 491,577.60				\$ 525,975.70				\$ 541,254.97			
<b>Sales Tax:</b>	\$ 25,496.38				\$ 26,215.29				\$ 25,070.46				\$ 26,666.98				\$ 27,441.63			
<b>Sub-Total:</b>	\$ 717,802.00				\$ 726,530.80				\$ 743,339.68				\$ 744,075.70				\$ 794,396.30			
<b>applicable Tax:</b>	\$ 36,392.06				\$ 36,834.29				\$ 37,910.33				\$ 37,724.65				\$ 40,275.90			
<b>GRAND TOTAL:</b>	\$ 754,194.06				\$ 763,365.09				\$ 781,250.01				\$ 781,800.35				\$ 834,672.20			

**CITY OF CHANDLER SERVICES AGREEMENT  
DUST MITIGATION - PURCHASE & INSTALLATION OF GRANITE  
AGREEMENT NO.: ST0-595-2767**

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 **ELS CONSTRUCTION INC**, a Corporation of the State of Arizona, hereinafter referred to as "CONTRACTOR".

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

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

**1. CONTRACT ADMINISTRATOR:**

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

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

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

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

**2. SCOPE OF WORK:** CONTRACTOR shall provide for the purchase and installation of granite, all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein. Performance Bond (Exhibit D1), Payment Bond (Exhibit D2), required signage (Exhibits E1 – E3) are attached and incorporated herein by reference.

**3. 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.

**2.1. 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.

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

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

**2.3.1** 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").

- 2.3.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.3.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.3.4 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.
- 2.3.5 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.
- 2.3.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.3.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
4. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
  - 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
  - 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
  - 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
  - 3.4. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
  - 3.5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed **FOUR HUNDRED THIRTEEN THOUSAND SIX HUNDRED SEVENTY-THREE DOLLARS AND 9/100 (\$413,673.09)** 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. **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.
- 4.3. **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.
5. **TERM:** Following execution of this Agreement by CITY, CONTRACTOR shall immediately commence work and shall complete all services described herein within **one hundred eighty days (180)** days from the Notice to Proceed.
6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.
- 6.1. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at [www.maricopa.gov/materials](http://www.maricopa.gov/materials) and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
- 6.2. **Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

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

- 7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. **Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.

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

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

## **8. TERMINATION:**

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

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

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

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

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

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

is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.

- 8.6. Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 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. DISPUTE RESOLUTION.**
- 10.1 Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 10.2 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.3 Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.4 Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
- 11. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage

requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

## **12. INSURANCE:**

### **12.1. Insurance Representations and Requirements:**

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

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

## **12.2. Proof of Insurance – Certificates of Insurance**

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

## **12.3. Coverage**

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



contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.

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

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

**15. GENERAL TERMS:**

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

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

CITY has the option to forfeit said bonds if the Contract is terminated by the default of CONTRACTOR or if CITY determines that CONTRACTOR is unable or unwilling to complete the work as specified in the Contract Documents. If the Contract schedule is not adhered to, and CITY determines that the work is unlikely to be completed within a reasonable time after the original target date, then CITY may terminate the Contract and collect the Performance Bond.

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

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

**15.4. Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

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

**15.6. Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments

shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.

- 15.7. **Independent CONTRACTOR.** The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.8. **No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.9. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of 2009.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

\_\_\_\_\_  
MAYOR

By: *James Coats*  
Signature

ATTEST:

ATTEST: If Corporation

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

SEAL

*Ryan P. Ho*  
Secretary

Approved as to form:

\_\_\_\_\_  
City Attorney *X*

EXHIBIT A

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

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

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

<b>Contract Number: ST0-595-2767</b>			
<b>Name (as listed in the contract): ELS CONSTRUCTION INC</b>			
<b>Street Name and Number: 3329 E Southern Ave</b>			
<b>City: Phoenix</b>	<b>State: AZ</b>	<b>Zip Code: 85040</b>	

I hereby attest that:

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

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

*James Castore*

Printed Name: James Castore

Title: President

Date (month/day/year): 8-14-09

## EXHIBIT B SCOPE OF WORK

1. CONTRACTOR shall provide dust mitigation to CITY by installing granite in selected medians throughout CITY and along the Western Canal. Granite shall be 1" – 1 ½" in depth in medians and 2" depth on the Western Canal as shown on attached drawings and raked to provide a level surface. Care shall be taken in the placement of the granite so as not to disturb or damage any plant material. At job completion, CONTRACTOR shall sweep and remove all debris from lanes prior to reopening for traffic.
2. In order to maintain dust control, CONTRACTOR shall keep suitable equipment on hand at the jobsite for maintaining dust in accordance with the requirements of the Maricopa County Environmental Services Department of Air Pollution Control regulations. CONTRACTOR shall be responsible for obtaining any permits required prior to commencing work.
3. CONTRACTOR shall provide ¾" screened Walker Gold in color for the medians and it shall not contain lumps or balls of clay, caliche, organic matter or calcareous coating. CONTRACTOR shall provide ¾" screened Walker Gold and ¾" screened Saddleback Brown in color for the Western Canal and it shall not contain lumps or balls of clay, caliche, organic matter or calcareous coating. A sample of each granite offered shall be provided to Street Division Inspector/designee for approval prior to installation. CONTRACTOR shall ensure that a sufficient quantity is available from a single source to complete the project to ensure uniformity.
4. Delivery and installation of granite will be completed throughout the fiscal year and not all at one time; however, the biggest portion (along Western Canal) will not be required for 6-9 months.
5. It shall be the responsibility of CONTRACTOR to provide loaders, trucks and all equipment required for the moving and distributing of the granite to where it is being placed. All trucks shall be equipped with conveyor equipment that can place the granite into medians and rights-of-way with minimum impact on traffic flow. The conveyor system shall be mobile enough to move and place granite between trees and shrubs.
6. CONTRACTOR shall provide traffic control for the medians as required by the City of Chandler Traffic Barricade Design, Technical Design Manual #7. CONTRACTOR will also be responsible for providing a uniformed CITY (only) Police Officer at signaled intersections for safety purposes.
7. CONTRACTOR shall be responsible for furnishing and erecting construction signs in accordance with City Code 46-2, Section 2. The signs shall be professionally prepared and subject to approval by the Contract Administrator/designee. Signs shall be maintained by CONTRACTOR for the duration of the work and shall be removed by CONTRACTOR during final clean up.
8. Medians to receive dust mitigation (granite) are:
  - Warner Rd, east of Arizona Avenue to McQueen Rd and McQueen Rd. right-of-way (2.5 acres)
  - Ray Rd, Arrowhead to Central, Dobson to Price (2.5 acres)
  - Ray Rd, Cooper Rd. to Arizona Avenue (2.5 acres)
  - Germann Rd, Arizona Avenue to Cooper Rd (4 acres)
  - Alma School Rd, south of San Tan 202 Freeway to Queen Creek Rd (3 acres)
  - Ocotillo Rd, McQueen Rd to Cooper Rd (1.5 acres)
  - Arizona Avenue, Willis to Queen Creek Rd (2 acres)
9. Edging shall be Bulldog-Edge black rigid PVC as manufactured by Oly-Ola Edgings Inc. or approved equal. This shall include the 15' pieces 4 stakes/15' section and h-clips as provided by Oly-Ola. In addition to the manufacturers stakes provided, CONTRACTOR shall also provide an additional (4), 12" landscape spikes per 15' section. Installation shall be per the manufacturers recommendations. Oly-Ola may be reached at 1-800-EDGINGS.

**EXHIBIT C  
PRICING**

**MEDIANS**

Item #	Description	Qty	U.O.M.	Unit Price	Extended Price
1.	Purchase & installation of ¾" screened Walker Gold granite for medians	18	acres	\$5,440.00	\$97,920.00
2.	Traffic Control (lump sum)	1	ea.	\$9,350.00	\$9,350.00
<b>TOTAL</b>					\$107,270.00
<b>SALES TAX - 5.07%</b>					\$ 5,438.59

**WESTERN CANAL**

Item #	Description	Qty	U.O.M.	Unit Price	Extended Price
1.	Purchase & installation of ¾" screened Walker Gold granite along Western canal	27	acres	\$8,465.00	\$228,555.00
2.	Purchase & installation of ¾" screened Saddleback Brown granite along Western canal	2	acres	\$13,150.00	\$26,300.00
3.	Bulldog-Edge black rigid pvc Manufactured by Oly-Ola Edging	17,074	lin. ft	\$1.85	\$31,586.90
<b>TOTAL</b>					\$286,441.90
<b>SALES TAX - 5.07%</b>					\$14,522.60

SUB - TOTAL - \$393,711.90  
(excluding tax)

applicable tax - \$ 19,961.19

**GRAND TOTAL - \$ 413,673.09**

**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:  
**DUST MITIGATION – GRANITE; BID No. ST0-595-2767**

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 \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
SEAL                      SURETY

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

By: \_\_\_\_\_  
Attorney-in-Fact                      SEAL

Its: \_\_\_\_\_

\_\_\_\_\_  
AGENCY OF RECORD

\_\_\_\_\_  
AGENCY ADDRESS

Revised 8/2004

**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 **DUST MITIGATION –GRANITE**, Bid No. **ST9-595-2767**, 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 E1  
CONSTRUCTION SIGN DETAIL**

**Construction signs required for work:**

Whenever any work is being done in CITY streets, easements or right of way for which approval by CITY of a traffic control plan is required, the person or persons performing such work shall maintain at the site of such work at all times during which any such work is being done, signage meeting the requirements set forth below and providing information to the public as follows:

1. If the work will take one (1) week or longer to perform, such signage shall:
  - a. Be installed so that the bottom of the sign is at least seven (7) feet above grade, or as otherwise approved by CITY Transportation Engineer;
  - b. Be at least 3'x5' in size or large enough to contain all the information required below, whichever is larger;
  - c. Be placed in such positions that they can be read by traffic from each direction;
  - d. Be colored "construction orange" with black letters;
  - e. Have block letters at least 6" in height;
  - f. Contain the following information: the name of the CONTRACTOR for whom the work is being performed; the name of the CONTRACTOR actually performing the work; a general description of the work to be done; the time frame within which the work will be performed, i.e. the date work will commence and the date all work will be completed; a 24-hour contact phone number where persons may speak with a representative of the CONTRACTOR for whom the work is being performed or may leave a request to speak with such a representative and for which all calls will be turned by such a representative of the CONTRACTOR within 24-hours.
  
2. If the work will take less than one (1) week to perform, such signage shall:
  - a) Be installed on temporary supports at an approved location;
  - b) Be placed in such positions that they can be read by traffic from each direction;
  - c) Be colored "construction orange" with black letters;
  - d) Have block letters at least 6" in height;
  - e) Contain the following information: the name of CONTRACTOR for whom the work is being performed; a 24-hour contact phone number where persons may speak with a representative of the CONTRACTOR for whom the work is being performed or may leave a request to speak with such a representative and for which all calls will be returned by such a representative of the CONTRACTOR within 24-hours.

EXHIBIT E2

**DEVELOPER  
CONTRACTOR  
SIDEWALK REPAIR  
6-4-07 TO 6-15-07  
(480) 782-XXXX**

**EXHIBIT E3**

**CONTRACT  
OR  
(480) 782-  
XXXX**