



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

MEMO NO. TE10-003

1. Agenda Item Number:

16

2. Council Meeting Date:

September 24, 2009

TO: MAYOR & COUNCIL

3. Date Prepared: August 10, 2009

THROUGH: CITY MANAGER

4. Requesting Department: Public Works

5. SUBJECT: Approve Agreement TE0-550-2765 for the purchase of LED lamps, traffic signal poles, streetlight poles, and related equipment to Valmont Industries, Cem-Tec, CS Construction, Leotek and Brown Wholesale Electric for a total not to exceed \$280,000.

6. RECOMMENDATION: Recommend approval of Agreement TE0-550-2765 for the purchase of LED lamps, traffic signal poles, streetlight poles, and related equipment to Valmont Industries, Cem-Tec, CS Construction and Brown Wholesale Electric for a total not to exceed \$280,000.

7. BACKGROUND/DISCUSSION: Traffic Engineering requires traffic signal poles, support equipment and street lighting poles for replacements, new installations and upgrades to existing intersections. Typically three new signals and four upgrades to intersections are constructed each year. In addition, Traffic Engineering supplies the traffic signal poles and mast arms on various intersection improvement projects on both Capitol Improvement Projects and development projects. The purchase of this equipment through this contract will reduce the cost of construction and accelerate the completion of the improvements. Spending will be on an as needed basis throughout the year.

The oldest traffic signal LEDs are now reaching their 10-year life. Our maintenance experience has been that they are lasting longer than that, so we will continue to replace them individually as they fail. Should we encounter a high rate of failure in future years, we will consider initiating a group replacement program at that time.

8. EVALUATION PROCESS: On June 25, 2009, staff issued a bid for Traffic Signal Poles & Miscellaneous Hardware at various locations within the City. This bid was done as a cooperative bid with City of Glendale, City of Avondale, City of Peoria, City of Apache Junction, Town of Gilbert, Town of Queen Creek, and Maricopa County Department of Transportation. The bid was advertised and all registered vendors were notified. Ten responses were received and evaluated. Staff is recommending award on a line-item basis to Valmont Industries, CS Construction, Brown Wholesale Electric, Leotek and Cem-Tec Corporation, who were deemed to have submitted the lowest responsive and responsible bids. The award of this contract does not lock the City into purchases or specific dollar amounts with any one vendor. Attached is a tabulation listing a summary of the bids received.

9. FINANCIAL IMPLICATIONS:

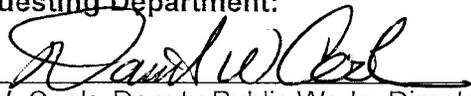
Cost: \$280,000.00
Savings: \$0
Long Term Costs: N/A

<u>Acct No.:</u>	<u>Fund:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
415.3310.0.6516.8ST322	IMPACT FEE	New Traffic Signals	FY 07/08	\$33,887.00
415.3310.0.6516.9ST322	IMPACT FEE	New Traffic Signals	FY 08/09	\$226,113.00
215.3310.0.6516.10T526	HURF	Traffic Signal LED Replacement	FY 09/10	\$20,000.00

10. PROPOSED MOTION: Move to approve Agreement TE0-550-2765 for the purchase of LED lamps, traffic signal poles, streetlight poles, and related signal support equipment to Valmont Industries, Cem-Tec, CS Construction, Leotek and Brown Wholesale Electric for a total not to exceed \$280,000.

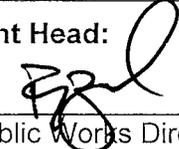
APPROVALS

11. Requesting Department:



Daniel W. Cook, Deputy Public Works Director

12. Department Head:



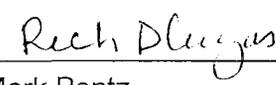
R.J. Zeder, Public Works Director

13. Procurement Officer:



Sharon Brause, CPPB, CPCP

14. City Manager:



for W. Mark Pentz

Traffic Signal Poles and Misc. Hardware
 Bid No. TE0-550-2765

GROUP 1 - Signal Poles & Mast Arms:				Ameron International		Valmont Industries		McGain Inc		Imperial Pipe		Leotek Electronics		Southwest Fabrication		Phoenix Highway Products		Cem-Tec Corporation		CS Construction		Brown Wholesale	
Item #	Est Qty.	UOM	Description	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
1	4	EA	R-Pole, Manufacturer:	\$ 3,877.00	\$ 15,508.00	\$ 3,585.00	\$ 14,340.00	\$ -	\$ -	\$ 4,437.00	\$ 17,748.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	1	EA	K-Pole, Manufacturer:	\$ 3,076.00	\$ 3,076.00	\$ 2,745.00	\$ 2,745.00	\$ -	\$ -	\$ 3,845.00	\$ 3,845.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	7	EA	G-Pole, Manufacturer:	\$ 3,150.00	\$ 22,050.00	\$ 2,695.00	\$ 18,865.00	\$ -	\$ -	\$ 3,815.00	\$ 26,705.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4	1	EA	J-Pole, Manufacturer:	\$ 2,469.00	\$ 2,469.00	\$ 2,535.00	\$ 2,535.00	\$ -	\$ -	\$ 3,310.00	\$ 3,310.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5	1	EA	F-Pole, Manufacturer:	\$ 1,572.00	\$ 1,572.00	\$ 1,290.00	\$ 1,290.00	\$ -	\$ -	\$ 2,257.00	\$ 2,257.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	1	EA	G-Pole, Manufacturer:	\$ 1,119.00	\$ 1,119.00	\$ 960.00	\$ 960.00	\$ -	\$ -	\$ 1,253.00	\$ 1,253.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7	5	EA	A-Pole, Manufacturer:	\$ 394.00	\$ 1,970.00	\$ 600.00	\$ 3,000.00	\$ -	\$ -	\$ 450.00	\$ 2,250.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
8	6	EA	R-pole powder-coated cocoa brown	\$ 4,069.00	\$ 24,534.00	\$ 3,580.00	\$ 21,480.00	\$ -	\$ -	\$ 4,437.00	\$ 26,622.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
9	2	EA	K-pole powder-coated cocoa brown	\$ 3,187.00	\$ 6,374.00	\$ 2,760.00	\$ 5,520.00	\$ -	\$ -	\$ 3,845.00	\$ 7,690.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
10	6	EA	G-pole powder-coated cocoa brown	\$ 3,390.00	\$ 20,340.00	\$ 2,660.00	\$ 15,960.00	\$ -	\$ -	\$ 3,815.00	\$ 22,890.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
11	2	EA	J-pole powder-coated cocoa brown	\$ 2,613.00	\$ 5,226.00	\$ 2,485.00	\$ 4,970.00	\$ -	\$ -	\$ 3,310.00	\$ 6,620.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12	6	EA	A-pole powder-coated cocoa brown	\$ 510.00	\$ 3,060.00	\$ 625.00	\$ 3,750.00	\$ -	\$ -	\$ 450.00	\$ 2,700.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
			Subtotal:		\$ 107,298.00		\$ 96,416.00				\$ 123,880.00												
			Sales Tax:		\$ 8,389.00		\$ 6,774.00				\$ -												
			Total:		\$ 115,687.00		\$ 102,189.00				\$ 123,880.00												
13	10	EA	55' Mast Arms, Manufacturer:	\$ 3,634.00	\$ 36,340.00	\$ 2,125.00	\$ 21,250.00	\$ -	\$ -	\$ 3,165.00	\$ 31,650.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14	5	EA	50' Mast Arms, Manufacturer:	\$ 2,810.00	\$ 14,050.00	\$ 1,420.00	\$ 7,100.00	\$ -	\$ -	\$ 2,910.00	\$ 14,550.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
15	10	EA	45' Mast Arms, Manufacturer:	\$ 2,631.00	\$ 26,310.00	\$ 1,400.00	\$ 14,000.00	\$ -	\$ -	\$ 2,459.00	\$ 24,590.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
16	8	EA	40' Mast Arms, Manufacturer:	\$ 1,779.00	\$ 14,232.00	\$ 1,300.00	\$ 10,400.00	\$ -	\$ -	\$ 2,213.00	\$ 17,704.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
17	6	EA	35' Mast Arms, Manufacturer:	\$ 1,666.00	\$ 9,996.00	\$ 1,320.00	\$ 7,920.00	\$ -	\$ -	\$ 2,018.00	\$ 12,108.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
18	8	EA	30' Mast Arms, Manufacturer:	\$ 896.00	\$ 7,168.00	\$ 740.00	\$ 5,920.00	\$ -	\$ -	\$ 1,740.00	\$ 13,920.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
19	8	EA	25' Mast Arms, Manufacturer:	\$ 870.00	\$ 6,960.00	\$ 615.00	\$ 4,920.00	\$ -	\$ -	\$ 1,544.00	\$ 12,352.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
20	4	EA	55' Mast Arm powder-coated cocoa brown	\$ 4,091.00	\$ 16,364.00	\$ 2,125.00	\$ 8,500.00	\$ -	\$ -	\$ 3,200.00	\$ 12,800.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
21	2	EA	50' Mast Arm powder-coated cocoa brown	\$ 3,241.00	\$ 6,482.00	\$ 1,475.00	\$ 2,950.00	\$ -	\$ -	\$ 3,000.00	\$ 6,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
22	2	EA	45' Mast Arm powder-coated cocoa brown	\$ 3,011.00	\$ 6,022.00	\$ 1,415.00	\$ 2,830.00	\$ -	\$ -	\$ 2,500.00	\$ 5,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
23	2	EA	40' Mast Arm powder-coated cocoa brown	\$ 2,134.00	\$ 4,268.00	\$ 1,310.00	\$ 2,620.00	\$ -	\$ -	\$ 2,250.00	\$ 4,500.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
24	4	EA	35' Mast Arm powder-coated cocoa brown	\$ 1,895.00	\$ 7,580.00	\$ 1,315.00	\$ 5,260.00	\$ -	\$ -	\$ 2,050.00	\$ 8,200.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
25	2	EA	30' Mast Arm powder-coated cocoa brown	\$ 1,109.00	\$ 2,218.00	\$ 760.00	\$ 1,520.00	\$ -	\$ -	\$ 1,780.00	\$ 3,560.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
26	2	EA	25' Mast Arm powder-coated cocoa brown	\$ 1,026.00	\$ 2,052.00	\$ 630.00	\$ 1,260.00	\$ -	\$ -	\$ 1,550.00	\$ 3,100.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
			Subtotal:		\$ 160,042.00		\$ 96,460.00				\$ 170,034.00												
			Sales Tax:		\$ 12,483.00		\$ 8,648.00				\$ -												
			Total:		\$ 172,525.00		\$ 103,298.00				\$ 170,034.00												
27	8	EA	20 Luminaire Arms, Manufacturer:	\$ 487.00	\$ 3,896.00	\$ 415.00	\$ 3,320.00	\$ -	\$ -	\$ 940.00	\$ 7,520.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
28	15	EA	15 Luminaire Arms, Manufacturer:	\$ 388.00	\$ 5,820.00	\$ 225.00	\$ 3,375.00	\$ -	\$ -	\$ 503.00	\$ 7,545.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
29	1	EA	8' Luminaire Arms, Manufacturer:	\$ 203.00	\$ 203.00	\$ 135.00	\$ 135.00	\$ -	\$ -	\$ 400.00	\$ 400.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
30	8	EA	20 Luminaire Mast Arm powder-coated cocoa brown	\$ 624.00	\$ 4,992.00	\$ 440.00	\$ 3,520.00	\$ -	\$ -	\$ 940.00	\$ 7,520.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
31	4	EA	15 Luminaire Mast Arm powder-coated cocoa brown	\$ 519.00	\$ 2,076.00	\$ 250.00	\$ 1,000.00	\$ -	\$ -	\$ 503.00	\$ 2,012.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
32	2	EA	8' Luminaire Mast Arm powder-coated cocoa brown	\$ 314.00	\$ 628.00	\$ 160.00	\$ 320.00	\$ -	\$ -	\$ 400.00	\$ 800.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
			Subtotal:		\$ 17,616.00		\$ 11,870.00				\$ 26,797.00												
			Sales Tax:		\$ 1,374.00		\$ 829.00				\$ -												
			Total:		\$ 18,989.00		\$ 12,489.00				\$ 26,797.00												
GROUP 2 - Streetlight Poles																							
33	1	EA	SL-1 35' Pole, Manufacturer:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 556.00	\$ 556.00	\$ -	\$ -	\$ 438.00	\$ 438.00	\$ -	\$ -	\$ -	\$ -
34	22	EA	SL-1 "F" 35' Pole (Foundation),	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 557.00	\$ 12,254.00	\$ -	\$ -	\$ 456.00	\$ 10,032.00	\$ -	\$ -	\$ -	\$ -
35	31	EA	SL-1 30' Pole, Manufacturer:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 477.00	\$ 14,787.00	\$ -	\$ -	\$ 400.00	\$ 12,400.00	\$ -	\$ -	\$ -	\$ -
36	21	EA	SL-1 "F" 30' Pole (Foundation)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 482.00	\$ 10,332.00	\$ -	\$ -	\$ 428.00	\$ 8,988.00	\$ -	\$ -	\$ -	\$ -
37	7	EA	SL-6 Pole, Manufacturer:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 436.00	\$ 3,052.00	\$ -	\$ -	\$ 388.00	\$ 2,716.00	\$ -	\$ -	\$ -	\$ -
38	8	EA	SL-6 Pole, Manufacturer:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 561.00	\$ 4,488.00	\$ -	\$ -	\$ 544.00	\$ 4,352.00	\$ -	\$ -	\$ -	\$ -

**CITY OF CHANDLER PURCHASE CONTRACT
TRAFFIC SIGNAL POLES, HARDWARE & MISC.
AGREEMENT NO.: TE0-550-2765**

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 **VALMONT INDUSTRIES INC.**, a Corporation in the State of Delaware, hereinafter referred to as "CONTRACTOR".

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

1. CONTRACT ADMINISTRATION AND OPERATION:

- 1.1. Contract Administrator:** CONTRACTOR shall act under the authority and approval of the Traffic Signal Senior Engineer /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.
 - 1.2. 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.
 - 1.3. 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.
 - 1.4. Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.
 - 1.5. Ordering Process.** Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.
 - 1.6. Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report on an annual basis, delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.
- 2. GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit C, all as more specifically set forth in the Specifications and details included therein.
- 2.1 Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.
 - 2.2 Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.3 Product Discontinuance (Categories): In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

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

2.5 Contract Orders: CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

2.6 Advertising, Publishing and Promotion of Contract: The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

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

2.7.1 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").

2.7.2 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.

2.7.3 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.

2.7.4 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.

2.7.5 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.

- 2.7.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.7.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. **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 CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes.
- 2.10. **Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. **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.
- 2.12. **New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.13. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

3. Warranties:

- 3.1 **Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 3.2 **Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
 - 3.3 Of a quality to pass without objection in the trade under the Contract description;
 - 3.4 Fit for the intended purposes for which the materials are used;
 - 3.5 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.6 Adequately contained, packaged and marked as the Contract may require; and
 - 3.7 Conform to the written promises or affirmations of fact made by CONTRACTOR.

- 3.8 Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.9 Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.10 Warranty.** CONTRACTOR must provide a manufacturer's warranty on all goods or equipment supplied pursuant to this Contract.
- 4. ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification.
- 4.1. Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 4.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
- 4.3. Delivery.** Delivery shall be made within seventy-two (72) calendar days after receipt of a Contract Purchase Order (ARO).
- 5. PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed **Two Hundred Seventeen Thousand Nine Hundred Eighty-Six Dollars (\$217,986.00)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.
- 5.1. Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.

- 5.4. Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.
- 5.6. IRS W-9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
- 5.7. Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 5.8. Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 5.9. Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
- 6. TERM:** The term of the Contract is one (1) year (s), commencing on the **1st day of September, 2009** and terminating on **August 31, 2010** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **four (4)** additional terms of one year each. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
- 7. USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.
- 7.1.** CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.
- 7.2. Emergency Purchases:** CITY reserves the right to purchase from other sources those items that are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
- 7.3. Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
- 8. CITY'S CONTRACTUAL REMEDIES:**

- 8.1. Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 8.3. Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.4. Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. TERMINATION:

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

9.2 Termination for Cause: City may terminate this Agreement for Cause:

Upon the occurrence of any one or more of the following events:

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

9.3. Termination for Misrepresentation. CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual

remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

- 9.4. Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 9.5. Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 9.6. Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 9.7. Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 9.8. No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 9.9. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 10. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 11. DISPUTE RESOLUTION.**
- 11.1 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.

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

11.3 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.

11.4 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.

12. INDEMNIFICATION: To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

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

In the case of CITY		In the case of the CONTRACTOR	
Department:	<u>Traffic Division</u>	Firm Name:	<u>Valmont Industries Inc</u>
Contact:	<u>Hector Peralta</u>	Contact:	<u>Matthew Burke</u>
Mailing Address:	<u>PO Box 4008 - 910</u>	Address:	<u>PO Box 358</u>
Physical Address:	<u>975 E Armstrong Way Bldg B</u>	City, State, Zip	<u>Valley, NE 68064-0358</u>
City, State, Zip	<u>Chandler, AZ 85244</u>	Phone:	<u>402-359-2201</u>
Phone:	<u>480-782-3456</u>	FAX:	<u>402-359-4025</u>
FAX:	<u>480-782-3444</u>	EMAIL:	<u>Matthew.Burke@Valmont.com</u>

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

14. Conflict of Interest:

- 14.1 No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.
- 14.2 Kickback Termination:** CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3 No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
- 15. GENERAL TERMS:**
- 15.1. Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 15.2. Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.3. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 15.5. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes
- 15.6. Independent CONTRACTOR:** The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.7. No Parole Evidence:** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, 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: Mark E. Greiner
Signature

ATTEST:

SEAL

ATTEST If Corporation/
Mike Burke
Secretary

City Clerk

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

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

Contract Number: TEO-550-2765					
Name (as listed in the contract): Valmont Industries Inc.					
Street Name and Number: PO Box 358					
City:	Valley	State:	NE	Zip Code:	68064-0358

I hereby attest that:

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

Signature of Contractor (Employer) or Authorized Designee:


Printed Name: MATTHEW BURKE
Title: Regional Manager
Date (month/day/year): 9/14/09

EXHIBIT B

CONTRACTOR shall supply CITY with signal poles, mast arms and streetlight mast arms as identified in these specifications. Equipment and hardware shall be of sufficient type and quantity to enable CITY to assemble complete signal and streetlight units as identified in Exhibit B. CONTRACTOR shall be responsible for obtaining a current copy of CITY's Streetlight Manual and/or Construction Standards Book.

Items listed herein shall be considered an estimated annual usage only.

1. **GENERAL.** All items submitted with the offer may be purchased under this contract at the discounts listed on the manufacturers price list/catalog. CONTRACTOR shall provide a comprehensive selection of products and price list and/or catalog. Pricing for these items shall be based upon a single discount percentage (%) for each item.

CONTRACTOR shall provide a unit price and an extended price for all items listed on the price sheet. Quantities listed on pricing sheet are for evaluation purposes only and not a guarantee of a purchase.

CONTRACTOR shall be responsible for adhering to the requirements of each agency if their requirements vary from that of the City of Chandler.

CONTRACTOR shall be responsible for off-loading all material in Groups 1 and Group 2 only.

For the City of Avondale, a metal tag shall be permanently attached to the pole above the hand hole stating the manufacturer's name, pole type, and pole drawing number, shaft length, and gauge number.

2. **TRAFFIC SIGNAL POLES, SIGNAL MAST ARMS, AND STREETLIGHT MAST ARMS.**

Any product provided to CITY shall be in accordance with Arizona Department of Transportation (ADOT), Division of Highways Standard Specifications for Road and Bridge Construction, 2000 (or newer), and the Arizona Department of Transportation (ADOT), Division of Highway Standard Drawings for Traffic Signals and Lighting, 2004.

CONTRACTOR shall submit show drawings and specifications with their response for type "A", "J", "K", "Q", and "R" poles and all mast arm poles and accessories for items being offered. The CITY currently uses black polycarbonate heads; however, CONTRACTOR is welcome to provide pricing for both polycarbonate and aluminum. All items shall be ITE compliant.

All signal poles shall be supplied completed with 1-1/4" – 7ASTM A 325 high strength bolts for mounting signal mast arms. All "Q" and "R" signal poles shall be supplied completed with 3/4" – 7 ASTM A 325 high strength bolts for mounting streetlight mast arms. All "J" and "K" poles shall be modified in accordance to the CITY detail 110A.

All signal poles, signal mast arms, and streetlight mast arms shall be galvanized in accordance with the requirements of ASTM A 123. The visual appearance of the finish shall be uniform. Discoloration of the galvanized finish such as dark areas, dark streaks, dark rings or any transportation handling marks, which are considered excessive by the Contract Administrator/designee, will not be allowed.

All signal poles shall be supplied with anchor bolts as per ADOT specifications and standard drawing T.S. 4-20.

The number of tenons installed on each signal mast arm shall correspond to the following schedule:

<u>Pole length</u>	<u># of Tenons</u>
<20 ft.	1

EXHIBIT C - PRICING

GROUP 1 - Signal Poles & Mast Arms:

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	4	EA	R-Pole; Manufacturer:	\$3,585.00	\$14,340.00
2	1	EA	K-Pole; Manufacturer:	\$2,745.00	\$2,745.00
3	7	EA	Q-Pole; Manufacturer:	\$2,695.00	\$18,865.00
4	1	EA	J-Pole; Manufacturer:	\$2,535.00	\$2,535.00
5	1	EA	F-Pole; Manufacturer:	\$1,290.00	\$1,290.00
6	1	EA	G-Pole; Manufacturer:	\$960.00	\$960.00
7	5	EA	A-Pole; Manufacturer:	\$600.00	\$3,000.00
8	6	EA	R-pole powder-coated cocoa brown	\$3,580.00	\$21,480.00
9	2	EA	K-pole powder-coated cocoa brown	\$2,760.00	\$5,520.00
10	6	EA	Q-pole powder-coated cocoa brown	\$2,660.00	\$15,960.00
11	2	EA	J-pole powder-coated cocoa brown	\$2,485.00	\$4,970.00
12	6	EA	A-pole powder-coated cocoa brown	\$625.00	\$3,750.00
SUB-TOTAL				\$	\$95,415.00
Sales Tax				\$	\$6,774.00
TOTAL				\$	\$102,189.00

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
13	10	EA	55' Mast Arms; Manufacturer:	\$2,125.00	\$21,250.00
14	5	EA	50' Mast Arms; Manufacturer:	\$1,420.00	\$7,100.00
15	10	EA	45' Mast Arms; Manufacturer:	\$1,400.00	\$14,000.00
16	8	EA	40' Mast Arms; Manufacturer:	\$1,300.00	\$10,400.00
17	6	EA	35' Mast Arms; Manufacturer:	\$1,320.00	\$7,920.00
18	8	EA	30' Mast Arms; Manufacturer:	\$740.00	\$5,920.00
19	8	EA	25' Mast Arms; Manufacturer:	\$615.00	\$4,920.00
20	4	EA	55' Mast Arm powder-coated cocoa brown	\$2,125.00	\$8,500.00
21	2	EA	50' Mast Arm powder-coated cocoa brown	\$1,475.00	\$2,950.00
22	2	EA	45' Mast Arm powder-coated cocoa brown	\$1,415.00	\$2,830.00
23	2	EA	40' Mast Arm powder-coated cocoa brown	\$1,310.00	\$2,620.00
24	4	EA	35' Mast Arm powder-coated cocoa brown	\$1,315.00	\$5,260.00
25	2	EA	30' Mast Arm powder-coated cocoa brown	\$760.00	\$1,520.00
26	2	EA	25' Mast Arm powder-coated cocoa brown	\$630.00	\$1,260.00
SUB-TOTAL				\$	\$96,450.00
Sales Tax				\$	\$6,848.00
TOTAL				\$	\$103,298.00

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
27	8	EA	20' Luminaire Arms; Manufacturer:	\$415.00	\$3,320.00
28	15	EA	15' Luminaire Arms; Manufacturer:	\$225.00	\$3,375.00
29	1	EA	8' Luminaire Arms; Manufacturer:	\$135.00	\$135.00
30	8	EA	20' Luminaire Mast Arm powder-coated cocoa brown	\$440.00	\$3,520.00
31	4	EA	15' Luminaire Mast Arm powder-coated cocoa brown	\$250.00	\$1,000.00
32	2	EA	8' Luminaire Mast Arm powder-coated cocoa brown	\$160.00	\$ 320.00
SUB-TOTAL				\$	\$11,670.00

Sales Tax	\$	\$ 829.00
TOTAL	\$	\$12,499.00

CONTRACTOR states that all items will be delivered within 72 calendar days after receiving order.

**CITY OF CHANDLER PURCHASE CONTRACT
TRAFFIC SIGNAL POLES, HARDWARE & MISC.
AGREEMENT NO.: TE0-550-2765**

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 **CEM-TEC CORPORATION**, a Corporation in the State of Arizona, hereinafter referred to as "CONTRACTOR".

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

1. CONTRACT ADMINISTRATION AND OPERATION:

- 1.1. **Contract Administrator:** CONTRACTOR shall act under the authority and approval of the Traffic Signal Senior Engineer /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.
- 1.2. **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.
- 1.3. **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.
- 1.4. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.
- 1.5. **Ordering Process.** Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.
- 1.6. **Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report on an annual basis, delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit C, all as more specifically set forth in the Specifications and details included therein.

- 2.1 **Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.
- 2.2 **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.3 Product Discontinuance (Categories): In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

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

2.5 Contract Orders: CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

2.6 Advertising, Publishing and Promotion of Contract: The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

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

2.7.1 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").

2.7.2 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.

2.7.3 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.

2.7.4 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.

2.7.5 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.

- 2.7.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.7.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. **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 CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes.
- 2.10. **Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. **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.
- 2.12. **New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.13. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
- 3. **Warranties:**
 - 3.1 **Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
 - 3.2 **Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
 - 3.3 Of a quality to pass without objection in the trade under the Contract description;
 - 3.4 Fit for the intended purposes for which the materials are used;
 - 3.5 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.6 Adequately contained, packaged and marked as the Contract may require; and
 - 3.7 Conform to the written promises or affirmations of fact made by CONTRACTOR.

- 3.8 Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.9 Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.10 Warranty.** CONTRACTOR must provide a manufacturer's warranty on all goods or equipment supplied pursuant to this Contract.
- 4. ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification.
- 4.1. Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 4.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
- 4.3. Delivery.** Delivery shall be made within forty-five (45) calendar days after receipt of a Contract Purchase Order (ARO).
- 5. PRICE:** CITY shall pay to CONTRACTOR a total amount not to exceed **Seventy-Eight Thousand Nine Hundred Seventy Dollars and 19/100 (\$78,970.19)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.
- 5.1. Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.

- 5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.
- 5.6. **IRS W-9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
- 5.7. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 5.8. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is one (1) year (s), commencing on the **1st day of September, 2009** and terminating on **August 31, 2010** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **four (4)** additional terms of one year each. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
7. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.
- 7.1. CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.
- 7.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items that are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
- 7.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
8. **CITY'S CONTRACTUAL REMEDIES:**

- 8.1. Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 8.3. Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.4. Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. TERMINATION:

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

Upon the occurrence of any one or more of the following events:

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

- 9.3. Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual

remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

- 9.4. Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 9.5. Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 9.6. Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 9.7. Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 9.8. No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 9.9. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 10. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 11. DISPUTE RESOLUTION.**
- 11.1 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.

- 11.2 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 11.3 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.
- 11.4 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.
- 12. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.
- 13. NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of CITY	
Department:	<u>Traffic Division</u>
Contact:	<u>Hector Peralta</u>
Mailing Address:	<u>PO Box 4008 – MS 910</u>
Physical Address:	<u>975 E Armstrong Way Bldg B</u>
City, State, Zip	<u>Chandler AZ 85244</u>
Phone:	<u>480-782-3456</u>
FAX:	<u>480-782-3444</u>

In the case of the CONTRACTOR	
Firm Name:	<u>Cem-Tec Corporation</u>
Contact:	<u>Jack Albert</u>
Address:	<u>3745 S 7th Ave</u>
City, State, Zip	<u>Phoenix AZ 85041</u>
Phone:	<u>602-268-8895</u>
FAX:	<u>602-276-7251</u>
EMAIL:	<u>Jalbert@Cem-Tec.com</u>

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

14. Conflict of Interest:

- 14.1 No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.
- 14.2 Kickback Termination:** CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3 No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
- 15. GENERAL TERMS:**
- 15.1. Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 15.2. Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.
- 15.3. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 15.5. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes
- 15.6. Independent CONTRACTOR:** The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.7. No Parole Evidence:** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, 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: Jack Albert
Signature

ATTEST:

SEAL

ATTEST: (if Corporation)

City Clerk

Rachel V Moran
Secretary

Approved as to form:

City Attorney [Signature]



EXHIBIT A

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

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

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

Contract Number: TE0-550-2765					
Name (as listed in the contract): CEM-TEC CORPORATION					
Street Name and Number: 3745 S. 7 th Ave					
City:	Phoenix	State:	AZ	Zip Code:	85041

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:

Jack Albert

Printed Name: JACK ALBERT

Title: GENERAL MANAGER

Date (month/day/year): 9/9/09

EXHIBIT B

CONTRACTOR shall supply CITY with signal poles, mast arms and streetlight mast arms as identified in these specifications. Equipment and hardware shall be of sufficient type and quantity to enable CITY to assemble complete signal and streetlight units as identified in Exhibit B. CONTRACTOR shall be responsible for obtaining a current copy of CITY's Streetlight Manual and/or Construction Standards Book.

Items listed herein shall be considered an estimated annual usage only.

- 1. GENERAL.** All items submitted with the offer may be purchased under this contract at the discounts listed on the manufacturers price list/catalog. CONTRACTOR shall provide a comprehensive selection of products and price list and/or catalog. Pricing for these items shall be based upon a single discount percentage (%) for each item.

CONTRACTOR shall provide a unit price and an extended price for all items listed on the price sheet. Quantities listed on pricing sheet are for evaluation purposes only and not a guarantee of a purchase.

CONTRACTOR shall be responsible for adhering to the requirements of each agency if their requirements vary from that of the City of Chandler.

CONTRACTOR shall be responsible for off-loading all material in Groups 1 and Group 2 only.

For the City of Avondale, a metal tag shall be permanently attached to the pole above the hand hole stating the manufacturer's name, pole type, and pole drawing number, shaft length, and gauge number.

2. TRAFFIC SIGNAL POLES, SIGNAL MAST ARMS, AND STREETLIGHT MAST ARMS.

Any product provided to CITY shall be in accordance with Arizona Department of Transportation (ADOT), Division of Highways Standard Specifications for Road and Bridge Construction, 2000 (or newer), and the Arizona Department of Transportation (ADOT), Division of Highway Standard Drawings for Traffic Signals and Lighting, 2004.

CONTRACTOR shall submit show drawings and specifications with their response for type "A", "J", "K", "Q", and "R" poles and all mast arm poles and accessories for items being offered. The CITY currently uses black polycarbonate heads; however, CONTRACTOR is welcome to provide pricing for both polycarbonate and aluminum. All items shall be ITE compliant.

All signal poles shall be supplied completed with 1-1/4" – 7ASTM A 325 high strength bolts for mounting signal mast arms. All "Q" and "R" signal poles shall be supplied completed with 3/4" – 7 ASTM A 325 high strength bolts for mounting streetlight mast arms. All "J" and "K" poles shall be modified in accordance to the CITY detail 110A.

All signal poles, signal mast arms, and streetlight mast arms shall be galvanized in accordance with the requirements of ASTM A 123. The visual appearance of the finish shall be uniform. Discoloration of the galvanized finish such as dark areas, dark streaks, dark rings or any transportation handling marks, which are considered excessive by the Contract Administrator/designee, will not be allowed.

All signal poles shall be supplied with anchor bolts as per ADOT specifications and standard drawing T.S. 4-20.

The number of tenons installed on each signal mast arm shall correspond to the following schedule:

<u>Pole length</u>	<u># of Tenons</u>
<20 ft.	1

20-30 ft.	2
35-40 ft.	3
≥ 45 ft.	4

Multiple tenons shall be placed 12' apart with the first tenon located 4" from the tip of the arm.

All indications must be LED fully assembled except Items 55, 60, and 64 listed on Exhibit C (attached). All items, with the exception of the aforementioned 3, include LED's and shall come provided with all mounting hardware and backing plates already attached. LED's shall have an incandescent look. Signals are 12" and can be either poly or aluminum. The CITY requires aluminum pedestrian signals. Z-crate visors are not required. All hardware for signals and pedestrian signals may be either iron or aluminum but are required to be schedule 40. Pipe nipple lengths shall be per ADOT specifications.

EXHIBIT C - PRICING

GROUP 2 – Streetlight Poles:

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
33	1	EA	SL-1 35' Pole; Manufacturer:	\$438.00	\$438.00
34	22	EA	SL-1 "F" 35' Pole (Foundation); Manufacturer:	\$456.00	\$10,032.00
35	31	EA	SL-1 30' Pole; Manufacturer:	\$400.00	\$12,400.00
36	21	EA	SL-1 "F" 30' Pole; (Foundation) Manufacturer:	\$428.00	\$8,988.00
37	7	EA	SL-6 Pole; Manufacturer:	\$388.00	\$2,716.00
38	8	EA	SL-8 Pole; Manufacturer:	\$544.00	\$4,352.00
39	1	EA	SL-10 30' Pole; Manufacturer:	\$2,050.00	\$2,050.00
40	1	EA	SL-10 40' Pole; Manufacturer:	\$2,300.00	\$2,300.00
41	20	EA	SL-16 35' "F" Single Pole; (Foundation) Manufacturer:	\$455.00	\$9,100.00
42	19	EA	SL-16 35' "F" Double Pole; (Foundation) Manufacturer:	\$578.00	\$10,982.00
43	1	EA	SL-16 22' Single Pole; Manufacturer:	\$383.00	\$383.00
44	1	EA	SL-1 17' Pole; Manufacturer:	\$708.00	\$708.00
45	1	EA	Single 6' Pole; Manufacturer:	\$77.00	\$77.00
46	1	EA	Single 6' Pole; Manufacturer:	\$109.00	\$109.00
47	1	EA	Single 4' Pole; Manufacturer:	\$63.00	\$63.00
48	10	EA	Shoe Box Style Street Light Pole per Avondale Detail # A1084-2	\$447.00	\$4,470.00
49	5	EA	Shoe Box Style Street Light Pole mast Arm, Single, per Avondale Detail # A1084-3	\$169.00	\$845.00
50	5	EA	Shoe Box Style Street Light Pole mast Arm, Dual, per Avondale Detail # A1084-3	\$301.00	\$1,505.00
SUB-TOTAL				\$10,294.00	\$71,518.00
Sales Tax				\$854.40	\$5,935.99
TOTAL				\$11,148.00	\$77,453.99

GROUP 6 – Anchor Bolts:

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
88	100	EA	Anchor Bolt, 1" x 36" x 4", fully-galvanized A-36	\$14.00	\$1,400.00
SUB-TOTAL				\$14.00	\$1,400.00
Sales Tax				\$1.16	\$116.20
TOTAL				\$15.16	\$1,516.20

CONTRACTOR states that all items will be delivered within 30-45 calendar days after receiving order.

Group 2 - -0-% discount off like items
Group 6 - -0-% discount off like items

**CITY OF CHANDLER PURCHASE CONTRACT
TRAFFIC SIGNAL POLES, HARDWARE & MISC.
AGREEMENT NO.: TE0-550-2765**

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

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

1. CONTRACT ADMINISTRATION AND OPERATION:

- 1.1. **Contract Administrator:** CONTRACTOR shall act under the authority and approval of the Traffic Signal Senior Engineer /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.
- 1.2. **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.
- 1.3. **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.
- 1.4. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.
- 1.5. **Ordering Process.** Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.
- 1.6. **Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report on an annual basis, delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit C, all as more specifically set forth in the Specifications and details included therein. Performance Bond (Exhibit D1) and Payment Bond (Exhibit D2) are attached and incorporated herein by reference.

2.1 Safety Standards: All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

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

- 2.3 Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:
- A formal announcement from the manufacturer that the product or model has been discontinued.
 - Documentation from the manufacturer that names the replacement product or model.
 - Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
 - Documentation confirming that the price for the replacement is the same as or less than the discontinued model.
- If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.
- 2.4 Licenses:** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.
- 2.5 Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 2.6 Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.7. Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
- 2.7.1** 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").
- 2.7.2** 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.
- 2.7.3** 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.
- 2.7.4** 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.
- 2.7.5** 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.

- 2.7.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.7.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. **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 CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes.
- 2.10. **Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. **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.
- 2.12. **New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.13. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
3. **Warranties:**
 - 3.1 **Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
 - 3.2 **Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
 - 3.3 Of a quality to pass without objection in the trade under the Contract description;
 - 3.4 Fit for the intended purposes for which the materials are used;
 - 3.5 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.6 Adequately contained, packaged and marked as the Contract may require; and
 - 3.7 Conform to the written promises or affirmations of fact made by CONTRACTOR.

- 3.8 **Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.9 **Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.10 **Warranty.** CONTRACTOR must provide a manufacturer's warranty on all goods or equipment supplied pursuant to this Contract.
4. **ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification.
- 4.1. **Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 4.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
- 4.3. **Delivery.** Delivery shall be made within thirty (30) calendar days after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed **Five Hundred Twenty-Nine Thousand Seventy Five Dollars (\$529,075,000)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.
- 5.1. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.

- 5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.
- 5.6. **IRS W-9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
- 5.7. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 5.8. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is one (1) year (s), commencing on the **1st day of September, 2009** and terminating on **August 31, 2010** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **four (4)** additional terms of one year each. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
7. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.
- 7.1. CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.
- 7.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items that are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
- 7.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
8. **CITY'S CONTRACTUAL REMEDIES:**

- 8.1. Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 8.3. Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.4. Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. TERMINATION:

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

- 9.2 Termination for Cause:** City may terminate this Agreement for Cause:

Upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
 - 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
 - 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
 - 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR 'S property;
 - 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
 - 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
 - 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.
- 9.3. Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

- 9.4. **Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 9.5. **Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 9.6. **Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 9.7. **Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 9.8. **No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 9.9. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
10. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
11. **DISPUTE RESOLUTION.**
- 11.1 **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.

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

11.3 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.

11.4 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.

12. INDEMNIFICATION: To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

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

In the case of CITY		In the case of the CONTRACTOR	
Department:	<u>Traffic Division</u>	Firm Name:	<u>CS Construction Inc</u>
Contact:	<u>Hector Peralta</u>	Contact:	<u>Ross Genenbacher</u>
Mailing Address:	<u>PO Box 4008 – MS 910</u>	Address:	<u>22023 N 20th Ave Ste A</u>
Physical Address:	<u>975 E Armstrong Way Bldg B</u>	City, State, Zip	<u>Phoenix AZ 85027</u>
City, State, Zip	<u>Chandler AZ 85244</u>	Phone:	<u>623-889-7650</u>
Phone:	<u>480-782-3456</u>	FAX:	<u>623-889-7651</u>
FAX:	<u>480-782-3444</u>	EMAIL:	<u>Rgenenbacher@CSCompanies.com</u>

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

14. Conflict of Interest:

14.1 No Kickback: CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or

contingent fee; and that no member of City Council or any employee of 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 CITY.

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

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

15. GENERAL TERMS:

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

15.2. Entire Agreement: This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

15.3. Arizona Law: This Contract shall be governed and interpreted according to the laws of the State of Arizona.

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

15.5. Amendments: The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes

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

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

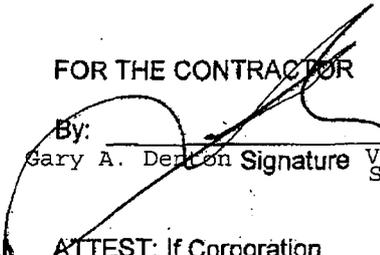
15.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, 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: 
Gary A. Denton Signature Vice President and Secretary

ATTEST:

City Clerk

SEAL ATTEST: If Corporation

Secretary

Approved as to form:

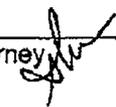
City Attorney 

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

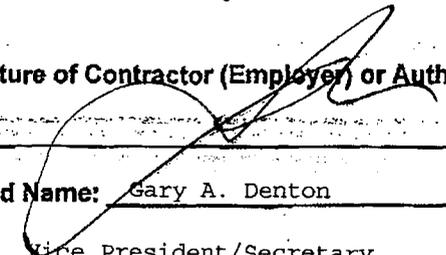
By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: TE0-550-2765					
Name (as listed in the contract): CS CONSTRUCTION INC					
Street Name and Number: 22023 N 20 th Ave Ste A					
City:	Phoenix	State:	AZ	Zip Code:	85027

I hereby attest that:

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

Signature of Contractor (Employer) or Authorized Designee:



Printed Name: Gary A. Denton

Title: Vice President/Secretary

Date (month/day/year): 9/10/2009

EXHIBIT B

CONTRACTOR shall supply CITY with signal poles, mast arms and streetlight mast arms as identified in these specifications. Equipment and hardware shall be of sufficient type and quantity to enable CITY to assemble complete signal and streetlight units as identified in Exhibit B. CONTRACTOR shall be responsible for obtaining a current copy of CITY's Streetlight Manual and/or Construction Standards Book.

Items listed herein shall be considered an estimated annual usage only.

- 1. GENERAL.** All items submitted with the offer may be purchased under this contract at the discounts listed on the manufacturers price list/catalog. CONTRACTOR shall provide a comprehensive selection of products and price list and/or catalog. Pricing for these items shall be based upon a single discount percentage (%) for each item.

CONTRACTOR shall provide a unit price and an extended price for all items listed on the price sheet. Quantities listed on pricing sheet are for evaluation purposes only and not a guarantee of a purchase.

CONTRACTOR shall be responsible for adhering to the requirements of each agency if their requirements vary from that of the City of Chandler.

CONTRACTOR shall be responsible for off-loading all material in Groups 1 and Group 2 only.

For the City of Avondale, a metal tag shall be permanently attached to the pole above the hand hole stating the manufacturer's name, pole type, and pole drawing number, shaft length, and gauge number.

2. TRAFFIC SIGNAL POLES, SIGNAL MAST ARMS, AND STREETLIGHT MAST ARMS.

Any product provided to CITY shall be in accordance with Arizona Department of Transportation (ADOT), Division of Highways Standard Specifications for Road and Bridge Construction, 2000 (or newer), and the Arizona Department of Transportation (ADOT), Division of Highway Standard Drawings for Traffic Signals and Lighting, 2004.

CONTRACTOR shall submit show drawings and specifications with their response for type "A", "J", "K", "Q", and "R" poles and all mast arm poles and accessories for items being offered. The CITY currently uses black polycarbonate heads; however, CONTRACTOR is welcome to provide pricing for both polycarbonate and aluminum. All items shall be ITE compliant.

All signal poles shall be supplied completed with 1-1/4" – 7ASTM A 325 high strength bolts for mounting signal mast arms. All "Q" and "R" signal poles shall be supplied completed with 3/4" – 7 ASTM A 325 high strength bolts for mounting streetlight mast arms. All "J" and "K" poles shall be modified in accordance to the CITY detail 110A.

All signal poles, signal mast arms, and streetlight mast arms shall be galvanized in accordance with the requirements of ASTM A 123. The visual appearance of the finish shall be uniform. Discoloration of the galvanized finish such as dark areas, dark streaks, dark rings or any transportation handling marks, which are considered excessive by the Contract Administrator/designee, will not be allowed.

All signal poles shall be supplied with anchor bolts as per ADOT specifications and standard drawing T.S. 4-20.

The number of tenons installed on each signal mast arm shall correspond to the following schedule:

<u>Pole length</u>	<u># of Tenons</u>
<20 ft.	1

20-30 ft.	2
35-40 ft.	3
≥ 45 ft.	4

Multiple tenons shall be placed 12' apart with the first tenon located 4" from the tip of the arm.

All indications must be LED fully assembled except Items 55, 60, and 64 listed on Exhibit C (attached). All items, with the exception of the aforementioned 3, include LED's and shall come provided with all mounting hardware and backing plates already attached. LED's shall have an incandescent look. Signals are 12" and can be either poly or aluminum. The CITY requires aluminum pedestrian signals. Z-crate visors are not required. All hardware for signals and pedestrian signals may be either iron or aluminum but are required to be schedule 40. Pipe nipple lengths shall be per ADOT specifications.

- FIBER OPTIC CABLE (Group 7).** CONTRACTOR shall be responsible for providing and installing fiber optic cable items. All work completed and cabling provided shall be subject to all applicable ADOT and CITY specifications as well as the latest special provisions for the installation of fiber optic cable issued by CITY.

Contract Administrator/designee shall approve all materials prior to installation. CONTRACTOR shall be prepared to install a quantity of (1) where items are provided by the "each", or 100' where items are listed by the "linear foot". All backfill, clean-up and final detail work shall be required for each item to be completed to the satisfaction of the Contract Administrator/designee.

CONTRACTOR's responding to Group 7 shall be required to post a \$25,000 Performance & Payment Bond. (Forms attached).

EXHIBIT C - PRICING

GROUP 7 – Fiber Optic Cable

Item No.	EST. QTY.	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
89	5,000	L.F.	Provide and install 4" PVC conduit	\$11.20	\$56,000.00
90	5,000	L.F.	Provide and install 3" PVC conduit	\$9.00	\$45,000.00
91	5,000	L.F.	Provide and install 4" conduit (jack and bore)	\$26.70	\$133,500.00
92	5,000	L.F.	Provide and install 3" conduit (jack and bore)	\$26.00	\$130,000.00
93	5,000	L.F.	Provide and install 3 1-1/4" inner-ducts in 4" conduit	\$3.00	\$15,000.00
94	5,000	L.F.	Provide and install 48 strand SMFO	\$1.50	\$7,500.00
95	5,000	L.F.	Provide and install 96 strand SMFO	\$2.00	\$10,000.00
96	5,000	L.F.	Provide and install 144 strand SMFO	\$2.50	\$12,500.00
97	15	EA	Provide and install #9 pull box with torsion ass't lid	\$3,615.00	\$54,225.00
98	30	EA	Provide and install #7 pull box with extension	\$430.00	\$12,900.00
99	5	EA	Provide and install 200' jack and bore 4" conduit	\$4,500.00	\$22,500.00
100	10	EA	Provide splice enclosure, size A	\$595.00	\$5,950.00
101	10	EA	Provide splice enclosure, size C	\$485.00	\$4,850.00
102	10	EA	Install splice enclosure, size A; 72 hours	\$865.00	\$8,650.00
103	6	EA	Provide gator patch; 12 strand	\$755.00	\$4,530.00
104	10	EA	Provide cabinet fiber termination panel; 12 strand	\$175.00	\$1,750.00
105	5,000	L.F.	Install #12 AWG detectable copper wire cable	\$.70	\$3,500.00
106	120	L.F.	Install Gator Patch	\$6.00	\$720.00
TOTAL				\$	\$529,075.00

CONTRACTOR states that all items will be delivered within 30 calendar days after receiving order.

**EXHIBIT D1
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 **TRAFFIC SIGNAL POLES, HARDWARE & MISC.; Bid No. TE0-550-2765**, 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 _____, 2004.

PRINCIPAL

SEAL

AGENT OF RECORD

BY

SURETY

SEAL

AGENT ADDRESS

**EXHIBIT D2
PAYMENT BOND**

ARIZONA STATUTORY PAYMENT BOND
PURSUANT TO TITLES 28, 34, AND 41, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Bond 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 office in the City of _____, 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, are held and firmly bound unto the City of Chandler, (hereinafter "Obligee") 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 _____, 20____, for **TRAFFIC SIGNAL POLES, HARDWARE & MISC.; Bid No. TE0-550-2765**, 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 Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise it remains in full force and effect.

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

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 2009.

PRINCIPAL SEAL

AGENT OF RECORD

BY _____

AGENT ADDRESS

SURETY SEAL

**CITY OF CHANDLER PURCHASE CONTRACT
TRAFFIC SIGNAL POLES, HARDWARE & MISC.
AGREEMENT NO.: TE0-550-2765**

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 LEOTEK ELECTRONICS USA CORP, a Corporation in the State of California, hereinafter referred to as "CONTRACTOR".

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

1. CONTRACT ADMINISTRATION AND OPERATION:

- 1.1. Contract Administrator:** CONTRACTOR shall act under the authority and approval of the Traffic Signal Senior Engineer /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.
- 1.2. 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.
- 1.3. 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.
- 1.4. Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.
- 1.5. Ordering Process.** Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.
- 1.6. Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report on an annual basis, delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit C, all as more specifically set forth in the Specifications and details included therein.

- 2.1 Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.
- 2.2 Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.3 Product Discontinuance (Categories): In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

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

2.5 Contract Orders: CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

2.6 Advertising, Publishing and Promotion of Contract: The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

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

2.7.1 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").

2.7.2 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.

2.7.3 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.

2.7.4 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.

2.7.5 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.

- 2.7.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.7.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. **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 CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes.
- 2.10. **Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. **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.
- 2.12. **New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.13. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

3. **Warranties:**

- 3.1 **Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 3.2 **Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
 - 3.3 Of a quality to pass without objection in the trade under the Contract description;
 - 3.4 Fit for the intended purposes for which the materials are used;
 - 3.5 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.6 Adequately contained, packaged and marked as the Contract may require; and
 - 3.7 Conform to the written promises or affirmations of fact made by CONTRACTOR.

- 3.8 Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.9 Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.10 Warranty.** CONTRACTOR must provide a manufacturer's warranty on all goods or equipment supplied pursuant to this Contract.
- 4. ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification.
- 4.1. Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 4.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
- 4.3. Delivery.** Delivery shall be made within forty-five (45) calendar days after receipt of a Contract Purchase Order (ARO).
- 5. PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed **Seventy-Seven Thousand Two Hundred Seventy Five Dollars (\$77,275.00)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.
- 5.1. Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.

- 5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.
- 5.6. **IRS W-9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
- 5.7. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 5.8. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is one (1) year (s), commencing on the **1st day of September, 2009** and terminating on **August 31, 2010** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **four (4)** additional terms of one year each. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
7. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.
- 7.1. CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.
- 7.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items that are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
- 7.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
8. **CITY'S CONTRACTUAL REMEDIES:**

- 8.1. Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 8.3. Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.4. Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. TERMINATION:

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

9.2 Termination for Cause: City may terminate this Agreement for Cause:

Upon the occurrence of any one or more of the following events:

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

9.3. Termination for Misrepresentation. CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual

remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

- 9.4. Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 9.5. Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 9.6. Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 9.7. Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 9.8. No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 9.9. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 10. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 11. DISPUTE RESOLUTION.**
- 11.1 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.

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

11.3 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.

11.4 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.

12. INDEMNIFICATION: To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

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

In the case of CITY		In the case of the CONTRACTOR	
Department:	<u>Traffic Division</u>	Firm Name:	<u>Leotek Electronics USA Corp</u>
Contact:	<u>Hector Peralta</u>	Contact:	<u>Meg Meyers</u>
Mailing Address:	<u>PO Box 4008 - 910</u>	Address:	<u>1330 Memorex Dr</u>
Physical Address:	<u>975 E Armstrong Way Bldg B</u>	City, State, Zip	<u>Santa Clara CA 95050</u>
City, State, Zip	<u>Chandler, AZ 85244</u>	Phone:	<u>408-988-4668</u>
Phone:	<u>480-782-3456</u>	FAX:	<u>480-980-0538</u>
FAX:	<u>480-782-3444</u>	EMAIL:	<u>Meg@leotek.com</u>

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

14. Conflict of Interest:

- 14.1 No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.
- 14.2 Kickback Termination:** CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3 No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
- 15. GENERAL TERMS:**
- 15.1. Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 15.2. Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.
- 15.3. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 15.5. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes
- 15.6. Independent CONTRACTOR:** The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.7. No Parole Evidence:** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, 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: Meeg Meyers
Signature

ATTEST:

SEAL

ATTEST: If Corporation

City Clerk

Carol Davis
Secretary

Approved as to form:

City Attorney [Signature]

EXHIBIT A

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

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

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

Contract Number:	TE0-550-2765		
Name (as listed in the contract):	Leotek Electronics USA Corp		
Street Name and Number:	1330 Memorex Dr		
City:	Santa Clara	State:	CA
		Zip Code:	95050

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:

Meg Meyers

Printed Name: Meg Meyers

Title: Sr. Internal Marketing Manager

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

EXHIBIT B

CONTRACTOR shall supply CITY with signal poles, mast arms and streetlight mast arms as identified in these specifications. Equipment and hardware shall be of sufficient type and quantity to enable CITY to assemble complete signal and streetlight units as identified in Exhibit B. CONTRACTOR shall be responsible for obtaining a current copy of CITY's Streetlight Manual and/or Construction Standards Book.

Items listed herein shall be considered an estimated annual usage only.

1. **GENERAL.** All items submitted with the offer may be purchased under this contract at the discounts listed on the manufacturers price list/catalog. CONTRACTOR shall provide a comprehensive selection of products and price list and/or catalog. Pricing for these items shall be based upon a single discount percentage (%) for each item.

CONTRACTOR shall provide a unit price and an extended price for all items listed on the price sheet. Quantities listed on pricing sheet are for evaluation purposes only and not a guarantee of a purchase.

CONTRACTOR shall be responsible for adhering to the requirements of each agency if their requirements vary from that of the City of Chandler.

CONTRACTOR shall be responsible for off-loading all material in Groups 1 and Group 2 only.

For the City of Avondale, a metal tag shall be permanently attached to the pole above the hand hole stating the manufacturer's name, pole type, and pole drawing number, shaft length, and gauge number.

2. **TRAFFIC SIGNAL POLES, SIGNAL MAST ARMS, AND STREETLIGHT MAST ARMS.**

Any product provided to CITY shall be in accordance with Arizona Department of Transportation (ADOT), Division of Highways Standard Specifications for Road and Bridge Construction, 2000 (or newer), and the Arizona Department of Transportation (ADOT), Division of Highway Standard Drawings for Traffic Signals and Lighting, 2004.

CONTRACTOR shall submit show drawings and specifications with their response for type "A", "J", "K", "Q", and "R" poles and all mast arm poles and accessories for items being offered. The CITY currently uses black polycarbonate heads; however, CONTRACTOR is welcome to provide pricing for both polycarbonate and aluminum. All items shall be ITE compliant.

All signal poles shall be supplied completed with 1-1/4" – 7ASTM A 325 high strength bolts for mounting signal mast arms. All "Q" and "R" signal poles shall be supplied completed with 3/4" – 7 ASTM A 325 high strength bolts for mounting streetlight mast arms. All "J" and "K" poles shall be modified in accordance to the CITY detail 110A.

All signal poles, signal mast arms, and streetlight mast arms shall be galvanized in accordance with the requirements of ASTM A 123. The visual appearance of the finish shall be uniform. Discoloration of the galvanized finish such as dark areas, dark streaks, dark rings or any transportation handling marks, which are considered excessive by the Contract Administrator/designee, will not be allowed.

All signal poles shall be supplied with anchor bolts as per ADOT specifications and standard drawing T.S. 4-20.

The number of tenons installed on each signal mast arm shall correspond to the following schedule:

<u>Pole length</u>	<u># of Tenons</u>
<20 ft.	1
20-30 ft.	2
35-40 ft.	3
≥ 45 ft.	4

Multiple tenons shall be placed 12' apart with the first tenon located 4" from the tip of the arm.

EXHIBIT C - PRICING

GROUP 5 – Indications:

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
78	300	EA	Red – LED; 12"; Manufacturer:	\$39.72	\$11,916.00
79	100	EA	Red – LED; 8"; Manufacturer:	\$30.92	\$3,092.00
80	300	EA	Green – LED; 12"; Manufacturer:	\$60.92	\$18,276.00
81	100	EA	Green – LED; 8"; Manufacturer:	\$52.27	\$5,227.00
82	300	EA	Yellow – LED; 12"; Manufacturer:	\$67.97	\$20,391.00
83	100	EA	Yellow – LED; 8"; Manufacturer:	\$44.47	\$4,447.00
84	100	EA	Red – A; Manufacturer:	\$35.92	\$3,592.00
85	100	EA	Green – A; Manufacturer:	\$53.62	\$5,362.00
86	100	EA	Yellow – A; Manufacturer:	\$41.22	\$4,122.00
87	100	EA	Yellow ; incandescent; Manufacturer:	\$8.50	\$850.00
TOTAL				\$435.53	\$77,275.00

CONTRACTOR states that all items will be delivered within 45 calendar days after receiving order.

Group 5 - -0-% discount off like items

**CITY OF CHANDLER PURCHASE CONTRACT
TRAFFIC SIGNAL POLES, HARDWARE & MISC.
AGREEMENT NO.: TE0-550-2765**

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 **WESCO DISTRIBUTION dba BROWN WHOLESALE ELECTRIC**, a Corporation in the State of Pennsylvania, hereinafter referred to as "CONTRACTOR".

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

1. CONTRACT ADMINISTRATION AND OPERATION:

- 1.1. Contract Administrator:** CONTRACTOR shall act under the authority and approval of the Traffic Signal Senior Engineer /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.
- 1.2. 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.
- 1.3. 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.
- 1.4. Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.
- 1.5. Ordering Process.** Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.
- 1.6. Annual Usage Report.** CONTRACTOR shall furnish CITY a usage report on an annual basis, delineating the acquisition activity governed by the contract. The format of the report shall be approved by CITY and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit C, all as more specifically set forth in the Specifications and details included therein.

- 2.1 Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.
- 2.2 Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.3 Product Discontinuance (Categories): In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

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

2.5 Contract Orders: CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

2.6 Advertising, Publishing and Promotion of Contract: The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

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

2.7.1 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").

2.7.2 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.

2.7.3 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.

2.7.4 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.

2.7.5 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.

- 2.7.6** In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.7.7** In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.8. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. 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 CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes.
- 2.10. Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. 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.
- 2.12. New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.13. Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
- 3. Warranties:**
- 3.1 Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 3.2 Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
- 3.3** Of a quality to pass without objection in the trade under the Contract description;
- 3.4** Fit for the intended purposes for which the materials are used;
- 3.5** Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 3.6** Adequately contained, packaged and marked as the Contract may require; and
- 3.7** Conform to the written promises or affirmations of fact made by CONTRACTOR.

- 3.8 Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.9 Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.10 Warranty.** CONTRACTOR must provide a manufacturer's warranty on all goods or equipment supplied pursuant to this Contract.
- 4. ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification.
- 4.1. Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 4.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
- 4.3. Delivery.** Delivery shall be made within seventy-two (72) calendar days after receipt of a Contract Purchase Order (ARO).
- 5. PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed **One Hundred Ninety Five Thousand Six Hundred Four Dollars and 20/100 (\$195,604.20)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.
- 5.1. Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY

will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.

- 5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.
- 5.6. **IRS W-9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
- 5.7. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 5.8. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 5.9. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** The term of the Contract is one (1) year (s), commencing on the **1st day of September, 2009** and terminating on **August 31, 2010** unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to **four (4)** additional terms of one year each. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
7. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.
 - 7.1. CONTRACTOR is aware that there is more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.
 - 7.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items that are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
 - 7.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

8. CITY'S CONTRACTUAL REMEDIES:

- 8.1. Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 8.3. Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.4. Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. TERMINATION:

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

Upon the occurrence of any one or more of the following events:

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

- 9.3. Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual

remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

- 9.4. Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 9.5. Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 9.6. Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 9.7. Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 9.8. No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 9.9. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 10. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 11. DISPUTE RESOLUTION.**
- 11.1 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.

- 11.2 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 11.3 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.
- 11.4 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.
- 12. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.
- 13. NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of CITY

Department: Traffic Division
Contact: Hector Peralta
Mailing Address: PO Box 4008 – MS 910
Physical Address: 975 E Armstrong Way Bldg B
City, State, Zip: Chandler AZ 85244
Phone: 480-782-3456
FAX: 480-782-3444

In the case of the CONTRACTOR

Firm Name: Brown Wholesale Electric
Contact: Laura Sundberg
Address: 3425 E Van Buren Ste 140
City, State, Zip: Phoenix AZ 85008
Phone: 602-275-8521
FAX: 602-275-9632
EMAIL: Lsundberg@BrownWholesa.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 Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of 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 CITY.
- 14.2 Kickback Termination:** CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3 No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
- 15. GENERAL TERMS:**
- 15.1. Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 15.2. Entire Agreement:** This Contract, 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 Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.3. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 15.5. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. 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 those changes
- 15.6. Independent CONTRACTOR:** The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.7. No Parole Evidence:** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, 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: *[Handwritten Signature]*
Signature

ATTEST:

SEAL

ATTEST: If Corporation

City Clerk

Secretary

Approved as to form:

City Attorney *[Handwritten Signature]*

EXHIBIT A

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

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

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

Contract Number: TE0-550-2765			
Name (as listed in the contract): BROWN WHOLESALE ELECTRIC			
Street Name and Number: 3425 E Van Buren Ste 140			
City: Phoenix	State: AZ	Zip Code: 85008	

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:

Laurea Sundberg

Printed Name: LAUREA SUNDBERG

Title: Account Representative

Date (month/day/year): 9/10/09

EXHIBIT B

CONTRACTOR shall supply CITY with signal poles, mast arms and streetlight mast arms as identified in these specifications. Equipment and hardware shall be of sufficient type and quantity to enable CITY to assemble complete signal and streetlight units as identified in Exhibit B. CONTRACTOR shall be responsible for obtaining a current copy of CITY's Streetlight Manual and/or Construction Standards Book.

Items listed herein shall be considered an estimated annual usage only.

- 1. GENERAL.** All items submitted with the offer may be purchased under this contract at the discounts listed on the manufacturers price list/catalog. CONTRACTOR shall provide a comprehensive selection of products and price list and/or catalog. Pricing for these items shall be based upon a single discount percentage (%) for each item.

CONTRACTOR shall provide a unit price and an extended price for all items listed on the price sheet. Quantities listed on pricing sheet are for evaluation purposes only and not a guarantee of a purchase.

CONTRACTOR shall be responsible for adhering to the requirements of each agency if their requirements vary from that of the City of Chandler.

CONTRACTOR shall be responsible for off-loading all material in Groups 1 and Group 2 only.

For the City of Avondale, a metal tag shall be permanently attached to the pole above the hand hole stating the manufacturer's name, pole type, and pole drawing number, shaft length, and gauge number.

2. TRAFFIC SIGNAL POLES, SIGNAL MAST ARMS, AND STREETLIGHT MAST ARMS.

Any product provided to CITY shall be in accordance with Arizona Department of Transportation (ADOT), Division of Highways Standard Specifications for Road and Bridge Construction, 2000 (or newer), and the Arizona Department of Transportation (ADOT), Division of Highway Standard Drawings for Traffic Signals and Lighting, 2004.

CONTRACTOR shall submit show drawings and specifications with their response for type "A", "J", "K", "Q", and "R" poles and all mast arm poles and accessories for items being offered. The CITY currently uses black polycarbonate heads; however, CONTRACTOR is welcome to provide pricing for both polycarbonate and aluminum. All items shall be ITE compliant.

All signal poles shall be supplied completed with 1-1/4" – 7 ASTM A 325 high strength bolts for mounting signal mast arms. All "Q" and "R" signal poles shall be supplied completed with 3/4" – 7 ASTM A 325 high strength bolts for mounting streetlight mast arms. All "J" and "K" poles shall be modified in accordance to the CITY detail 110A.

All signal poles, signal mast arms, and streetlight mast arms shall be galvanized in accordance with the requirements of ASTM A 123. The visual appearance of the finish shall be uniform. Discoloration of the galvanized finish such as dark areas, dark streaks, dark rings or any transportation handling marks, which are considered excessive by the Contract Administrator/designee, will not be allowed.

All signal poles shall be supplied with anchor bolts as per ADOT specifications and standard drawing T.S. 4-20.

The number of tenons installed on each signal mast arm shall correspond to the following schedule:

<u>Pole length</u>	<u># of Tenons</u>
<20 ft.	1

20-30 ft.	2
35-40 ft.	3
≥ 45 ft.	4

Multiple tenons shall be placed 12' apart with the first tenon located 4" from the tip of the arm.

All indications must be LED fully assembled except Items 55, 60, and 64 listed on Exhibit C (attached). All items, with the exception of the aforementioned 3, include LED's and shall come provided with all mounting hardware and backing plates already attached. LED's shall have an incandescent look. Signals are 12" and can be either poly or aluminum. The CITY requires aluminum pedestrian signals. Z-crate visors are not required. All hardware for signals and pedestrian signals may be either iron or aluminum but are required to be schedule 40. Pipe nipple lengths shall be per ADOT specifications.

EXHIBIT C - PRICING

GROUP 3 – Signal Heads & Pedestrian Signals:

****All indications must be LED fully assembled except items 37, 42, and 46.**

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
51	16	EA	Q – Type II; Manufacturer:	\$494.22	\$7,907.52
52	16	EA	Q – Type IV; Manufacturer:	\$628.22	\$10,051.52
53	16	EA	Q – Type V; Manufacturer:	\$598.22	\$9,571.52
54	8	EA	Q, F – Type VI; Manufacturer:	\$904.44	\$7,235.52
55	16	EA	Q – No mount; Manufacturer:	\$436.22	\$6,979.52
56	8	EA	R – Type II; Manufacturer:	\$311.50	\$2,492.00
57	8	EA	R – Type IV; Manufacturer:	\$443.50	\$3,548.00
58	8	EA	R – Type V; Manufacturer:	\$414.50	\$3,316.00
59	8	EA	R, F – Type VII; Manufacturer:	\$698.72	\$5,589.76
60	1	EA	R – No mount; Manufacturer:	\$253.50	\$253.50
61	16	EA	F – Type II; Manufacturer:	\$323.22	\$5,171.52
62	16	EA	F – Type IV; Manufacturer:	\$455.22	\$7,283.52
63	16	EA	F – Type V; Manufacturer:	\$426.22	\$6,819.52
64	16	EA	F – No mount; Manufacturer:	\$265.22	\$4,243.52
65	1	EA	Pedestrian Signal – No mount; Manufacturer:	\$180.00	\$180.00
66	1	EA	Pedestrian Signal – Type V; Manufacturer:	\$331.00	\$331.00
67	1	EA	Pedestrian Signal – Type VII; Manufacturer:	\$400.00	\$400.00
68	6	EA	S – Type II	\$591.22	\$3,547.32
69	2	EA	S – No mount	\$545.22	\$1,090.44
70	4	EA	Vehicle Signal – Type V	\$161.00	\$644.00
71	4	EA	Vehicle Signal – Type VII	\$182.00	\$728.00
SUB-TOTAL				\$	\$86,739.70
Sales Tax				\$	\$7,199.39
TOTAL				\$	\$93,939.09

GROUP 4 – Hand / Man:

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
72	20	EA	Count Down; Manufacturer:	\$200.00	\$4,000.00
73	40	EA	LED; Manufacturer:	\$122.34	\$4,893.60
74	40	EA	9 x 12 ADA Compliant Ped. Push Buttons; Manufacturer:	\$158.00	\$6,320.00
75	20	EA	Momentary Bulldog; retrofit for existing 9 x 12 push button assembly, including mounting plate; Manufacturer:	\$	\$
76	20	EA	Navigator/Audible – Tactile Push Button; Manufacturer:	\$	\$
77	20	EA	Navigator CCU Unit, control unit for cabinet; Manufacturer:	\$	\$
SUB-TOTAL				\$	\$15,213.60
Sales Tax				\$	\$1,262.73

TOTAL	\$	\$16,476.33
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GROUP 5 – Indications:

ITEM No.	EST. QTY	U.O.M.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
78	300	EA	Red – LED; 12"; Manufacturer:	\$41.50	\$12,450.00
79	100	EA	Red – LED; 8"; Manufacturer:	\$34.04	\$3,404.00
80	300	EA	Green – LED; 12"; Manufacturer:	\$53.20	\$15,960.00
81	100	EA	Green – LED; 8"; Manufacturer:	\$53.20	\$5,320.00
82	300	EA	Yellow – LED; 12"; Manufacturer:	\$58.52	\$17,556.00
83	100	EA	Yellow – LED; 8"; Manufacturer:	\$53.20	\$5,320.00
84	100	EA	Red – A; Manufacturer:	\$41.50	\$4,150.00
85	100	EA	Green – A; Manufacturer:	\$52.13	\$5,213.00
86	100	EA	Yellow – A; Manufacturer:	\$47.87	\$4,787.00
87	100	EA	Yellow ; incandescent; Manufacturer:	\$45.00	\$4,500.00
SUB-TOTAL				\$	\$78,660.00
Sales Tax				\$	\$6,528.78
TOTAL				\$	\$85,188.78

CONTRACTOR states that all items will be delivered within 60 calendar days after receiving order.

- Group 3 - 50% discount off like items
- Group 4 - 50% discount off like items
- Group 5 - 50% discount off like items