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NOV 19 2009

MEMORANDUM

Public Works Department - Memo No. TN10-13

DATE: NOVEMBER 17, 2009

TO: MAYOR & COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
R.J. ZEDER, PUBLIC WORKS DIRECTOR
DANIEL W. COOK, DEPUTY PUBLIC WORKS DIRECTOR

FROM: RICK BECKER, TRANSIT SERVICES COORDINATOR

SUBJECT: CITY BUS SHELTER IMPROVEMENTS

At Monday night's study session, Council asked whether our bus shelter maintenance and installation contractor, CBS Outdoors, owned any of the shelters to be refurbished or replaced under the City's bus shelter rehabilitation program.

The City's proposed agreement with Lacor/Streetscape to fabricate or refurbish bus shelters and associated furniture applies only to City-owned bus shelters and associated furniture.

The City currently owns 61 of the 129 bus shelters located throughout the City. Bus shelter ownership normally transfers from CBS Outdoors to the City after a ten-year amortization period. A negotiated change to the maintenance and installation contract renewed earlier this year states that ownership of all bus shelters will transfer to the City, regardless of installation date, when the current contract period ends in June 2015.

In exchange for the right to advertise at most bus shelter locations, our shelter installation & maintenance contractor is responsible for cleaning and general maintenance of all bus shelters, regardless of ownership.



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

MEMO NO. TN10-014

1. Agenda Item Number:

15

2. Council Meeting Date:

November 19, 2009

TO: MAYOR & COUNCIL

3. Date Prepared: October 19, 2009

THROUGH: CITY MANAGER

4. Requesting Department: Public Works

5. SUBJECT: Approval of Agreement TE0-155-2766 with Lacor/Streetscape for the purchase of Bus Shelters and Bus Shelter Furniture for a two-year period in an amount not to exceed \$300,000.

6. RECOMMENDATION: Recommend approval of Agreement TE0-155-2766 with Lacor/Streetscape for the purchase of Bus Shelters and Bus Shelter Furniture for a two-year period in an amount not to exceed \$300,000.

7. BACKGROUND/DISCUSSION: In February 2009, City Council approved a bus shelter replacement program for older bus shelters located throughout the City. This program includes the purchase and installation of 18 new solar-lit bus shelters to replace existing, older shelters at pre-approved locations throughout the City. It also includes purchasing and refurbishing portions of shelter benches, advertising kiosks, and trash receptacles. This purchase of shelters and related furniture will upgrade the quality of bus shelter amenities used by the public. During this two-year agreement, the purchase and replacement of approximately ten additional shelters and associated furniture will occur. This agreement provides for two, two-year renewal term options for additional bus shelter & furniture purchases.

8. EVALUATION PROCESS: On August 12, 2009, staff issued a Request for Proposals (RFP) for the purchase of Bus Shelters and Bus Shelter Furniture. The RFP was advertised and all registered vendors were notified. Eight responses were received and evaluated. The selection process was conducted in accordance with established City policies and procedures. An evaluation committee consisting of staff from Purchasing, Engineering, Streets, Transportation and Transit was formed to evaluate the proposals received using the evaluation criteria listed in the RFP. The evaluation committee recommends award to Lacor/Streetscape due to their experience, ability to meet scope of work, qualifications and cost. The final evaluation scores for each offeror are as follows:

Ranking	Firm	Score
1	Lacor/Streetscape	89
2	A.J. Roberts Industrial	83
3	Killer Shade	69
4	Magnum Architectural	65
5	LNI Custom Mfg.	59
6	PVB Fabrications	51
7	Sure Solutions	44
8	Fluoresco	41

9. FINANCIAL IMPLICATIONS:

Cost: \$300,000

Savings: N/A

Long Term Savings: N/A

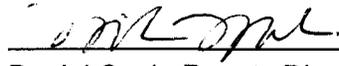
Funding:

<u>Acct No:</u>	<u>Fund:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
216.3340.0000.6517.10T015	LTAf	Bus Stops & Improvements	FY09/10	\$300,000

10. PROPOSED MOTION: Move to approve Agreement TE0-155-2766 with Lacor/Streetscape for the purchase of Bus Shelters and Bus Shelter Furniture for a two-year period in an amount not to exceed \$300,000.

APPROVALS

11. Requesting Department



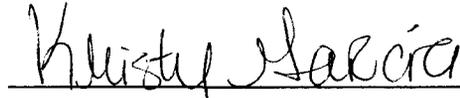
Daniel Cook, Deputy Director of Public Works

12. Department Head



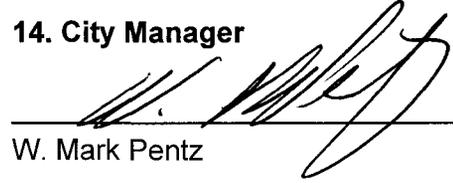
RJ Zeder, Public Works Director

13. Procurement Officer



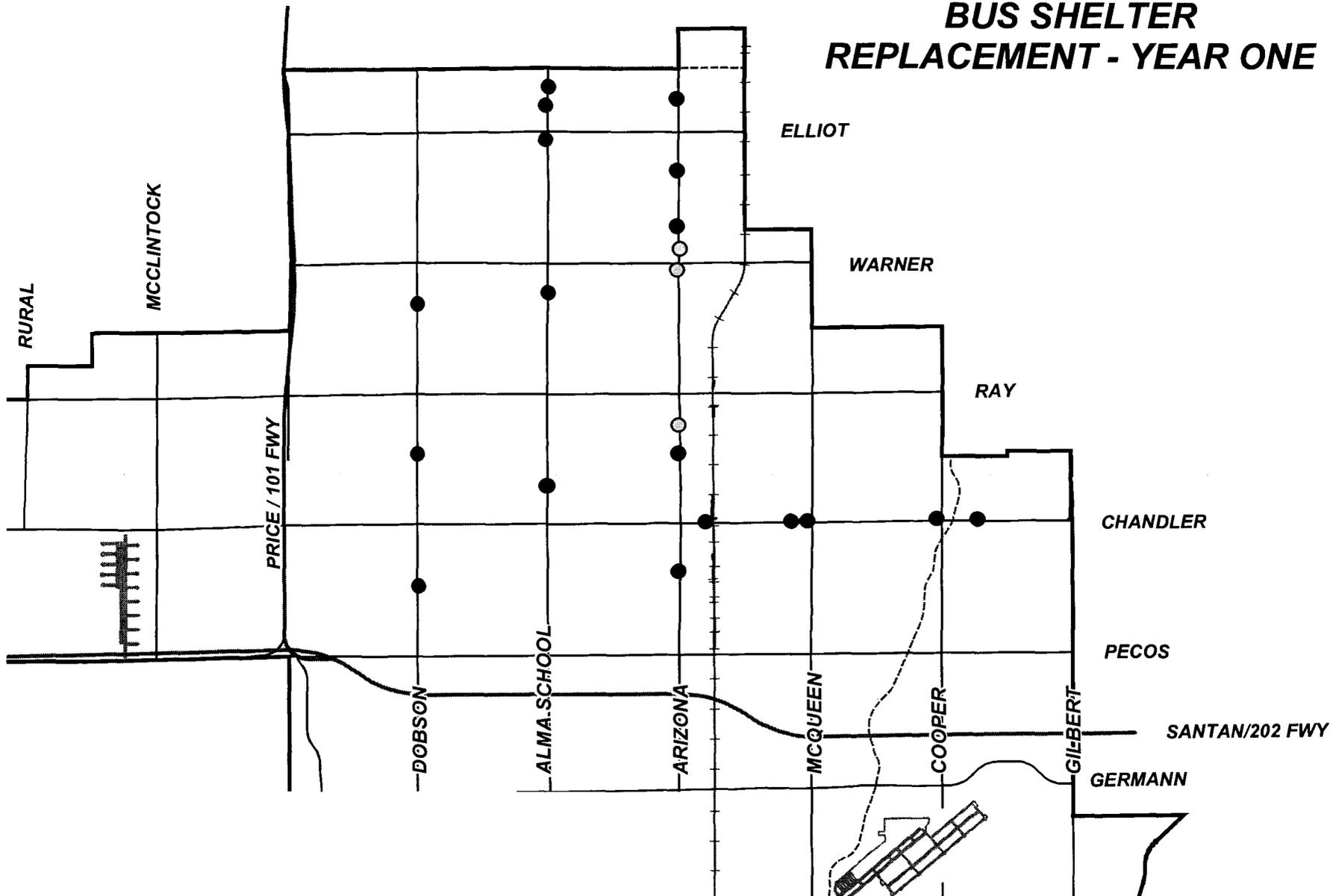
Kristy Garcia, CPPB

14. City Manager



W. Mark Pentz

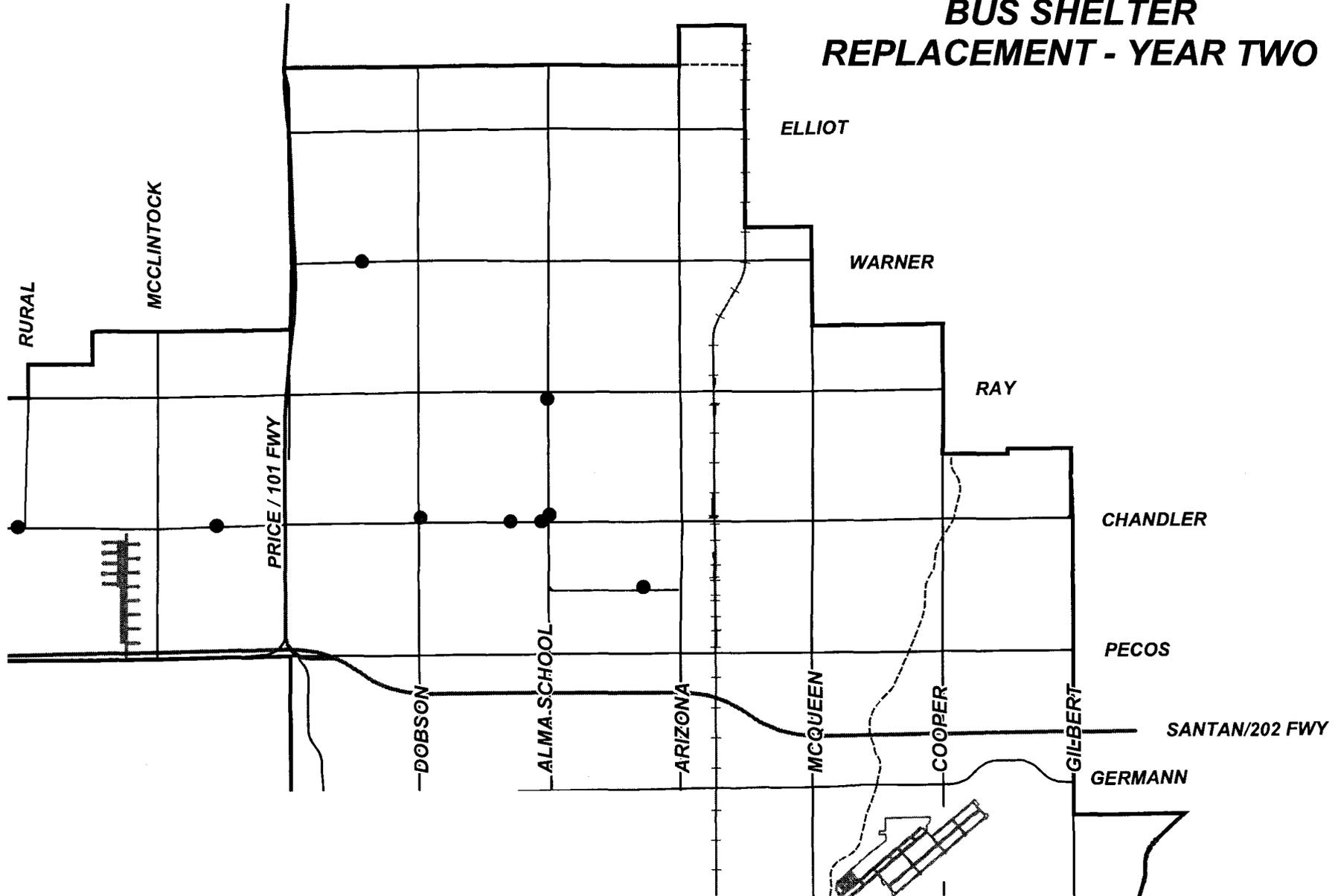
CITY OF CHANDLER BUS SHELTER REPLACEMENT - YEAR ONE



- BRT STATION REPLACEMENTS
- STOPS FOR REPLACEMENT - YEAR ONE



CITY OF CHANDLER BUS SHELTER REPLACEMENT - YEAR TWO



● STOPS FOR REPLACEMENT - YEAR TWO



CITY OF CHANDLER PURCHASE CONTRACT
BUS SHELTERS AND BUS SHELTER FURNITURE
AGREEMENT NO.: TE0-155-2766

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 Laçor/ Streetscape, 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 Transit Services Coordinator /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.
- 1.2. **Ordering Instructions.** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.
- 1.3. **Usage Report.** Annually CONTRACTOR shall furnish CITY a usage report 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 described in Exhibit A attached hereto and made a part hereof by reference, at the prices listed on Exhibit B and B-1, 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 license and permit requirements.
- 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 B (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. **Current Models.** It is CITY's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.13. **Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.14. **New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.15. **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.
- 2.16. **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:
 - 3.2.1.** Of a quality to pass without objection in the trade under the Contract description;
 - 3.2.2.** Fit for the intended purposes for which the materials are used;
 - 3.2.3.** Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.2.4.** Adequately contained, packaged and marked as the Contract may require; and
 - 3.2.5.** Conform to the written promises or affirmations of fact made by CONTRACTOR.
- 3.3. Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.4. Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.5. One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all goods or equipment supplied pursuant to this Contract.
- 3.6. Warranty (Equipment).** All equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one (1) year from the date of acceptance by CITY. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

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 ninety (90) calendar days after receipt of a Contract Purchase Order (ARO). **The CONTRACTOR shall deliver and unload all items to the City of Chandler Central Supply Yard at 975 E. Armstrong Way, Bldg. I, Chandler, AZ 85249.**

5. PRICE. CITY shall pay to CONTRACTOR an amount not to exceed Three Hundred Thousand Dollars (\$300,000) 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 B and Exhibit B-1, 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 (Exhibit A).

5.1.1. Pricing: Prices stated on supplemental orders (Exhibit B-1) include all insurance, warranty costs, and any other applicable costs, excluding freight. Charge to deliver and offload shall be determined at time of order.

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. **CONTRACTOR shall make arrangements with the contract administrator for the time and date of delivery.**

5.4. Risk of Loss: CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.

5.5. TAXES: CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.

5.6. IRS W9 Form. In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.

5.7. Price Adjustment. All prices offered herein shall be firm and fixed against any increase for two (2) years from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. Price adjustments will only be reviewed during contract renewal. 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 contract term is for a two (2) year period, commencing on the 1st day of December, 2009 and terminating on November 30, 2011 unless sooner terminated in accordance with the provisions herein. Contract term is subject to mutually agreed upon additional successive periods of a maximum twenty-four months per extension with a maximum aggregate including all extensions not to exceed six (6) years. Additionally, the contract may be extended unilaterally for a period of thirtyone days or a portion thereof.

7. USE OF THIS CONTRACT:

7.1. 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.

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

7.3. **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:

6.1. **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.

6.2. 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. INSURANCE:

13.1. Insurance Representations and Requirements:

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

- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

13.2. Proof of Insurance – Certificates of Insurance

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

13.3. Coverage

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

- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA0011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

13.4. Commercial General Liability - Minimum Coverage Limits.

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

13.5. Worker's Compensation and Employer's Liability

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

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

14. **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: Transit Services
 Contact: Rick Becker
 Mailing Address: PO Box 4008, MS 412
 Physical Address: 215 E. Buffalo St., Ste. 205
 City, State, Zip Chandler, AZ 85225
 Phone: 480-782-3443
 FAX: 480-782-3445

In the case of the CONTRACTOR
 Firm Name: Lacor Streetscape
 Contact: Jeffrey Sherman
 Address: 8837 N. Central Ave.
 City, State, Zip Phoenix, AZ 85020
 Phone: 602-371-3110
 FAX: 602-371-3721

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.

15. GENERAL TERMS:

- 15.1. **Entire Agreement:** This Contract, including Exhibits A, B and B-1 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.
- 15.2. **Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 15.3. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 15.4. **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.

16. CONFLICT OF INTEREST:

- 16.1. **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.
- 16.2. **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).
- 16.3. **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.
- 16.4. **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.
- 16.5. **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.
- 16.6. **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.

16.7. **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.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of _____ 20__ .

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: _____
Signature

ATTEST:

City Clerk

SEAL ATTEST: _____
Secretary

Approved as to form:

City Attorney *[Signature]*

**EXHIBIT A
TECHNICAL SPECIFICATIONS**

1.1 GENERAL

- 1.1.1 All shelters shall have eyebolts in the top of the shelter located in an area that allows for lifting of the shelter. The eyebolts must be located in such a way that the shelter can be lifted straight up by the use of a crane. The eyebolts must also be structurally sound and attached to hold one and a half times the weight of the shelters.
- 1.1.2 The transit shelters and furniture shall be designed from bent pipe and perforated steel. The shelter and all furniture shall be fully assembled when delivered and ready for installation.
- 1.1.3 A certified welder shall perform all welding and related work. An independent testing laboratory shall certify the welds and welding procedure. A copy of the certification shall be submitted before delivery.
- 1.1.4 All pipe coping shall be done using the machine coping procedure (not with a torch).
- 1.1.5 All designs must comply with Americans with Disabilities Act (ADA) regulations.
- 1.1.6 All anchoring shall be with welded footplates with holes in the footplates of half-inch (0.5") diameter for anchor bolts. Products shall be anchored with a dual bolt base anchoring system with a minimum of two, half-inch (0.5") bolt holes per foot plate per column.
- 1.1.7 No sharp or pointed edges. Any object that could be considered a threat or create harm to someone will not be acceptable. The Manufacture shall replace or repair at its own cost.

1.2 MATERIALS/FABRICATION

- 1.2.1 Shelter Roof Frame and Vertical Supports: Minimum three inch (3") schedule 40 standard pipe meeting ASTM A500 testing.
- 1.2.2 Shelter Size: Approximately 8'7" long by 6' deep by 8'tall at highest point of roof and 7' at lowest point of roof.
- 1.2.3 Seating: Minimum 1-1/2" X .120 tube steel meeting ASTM A500 testing. Armrests shall be 2" schedule 40 standard pipe.
- 1.2.4 Shelter Screen and Bench Seating Screens: Shelter Screens shall be a minimum of sixteen (16) gauge steel forty-two percent (42%) perforated with one inch (1") solid channel border around outside. Bench Seating Screens shall be a minimum of ten (10) gauge steel one-quarter inch (0.25") forty-two percent (42%) perforated.
- 1.2.5 Metal Channel: All shelter screens are to be riveted using three-sixteenths inch (3/16") stainless steel rivets to a one inch (1") piece of metal channel, the one inch (1") channels are to be riveted using three-sixteenths inch (3/16") stainless steel rivets to the shelter every twelve inches (12"). Rivets are to start one inch (1") from each side of the corners of the main shelter frame and channel and work to the center of the frame and channel on the outside perimeters of the shelter.
- 1.2.6 Screens are to be riveted in place every six inches (6") using three-sixteenths inch (3/16") stainless steel rivets. Rivets are to start one inch (1") from each side of the corners of the screen and channel and work to the center of the screen and channel on the outside perimeters of the shelter. There

shall be no more than a six- inch (6") gap between rivets.

- 1.2.7 The mid-screen shelter shall have a shelter framing two inch (2") schedule 40 standard pipe, in the center, at top and bottom of screen, running lengthwise (side to side) welded to the three inch (3") vertical support uprights for the top and bottom screen to attach to. The top of shade screen frame shall run lengthwise approximately 9" below the center underside of the roof. The bottom frame of the shade screen shall run lengthwise approximately 4" above the concrete shelter pad.
- 1.2.8 Bench Seating: The bench seating frames shall be welded to the shelter frame. There will be two integrated bench seats, one on each side of the mid-screen and offset from each other, each approximately 4' 3-1/2" in length. Bench screening shall be welded to the bench frame.
- 1.2.9 Steel Material: As a minimum all steel material shall be tested and conform to ASTM A36-96 standards.
- 1.2.10 Shelter Roofing: Preferred or equal to BERRIDGE MANUFACTURING COMPANY. Roof shall be a standing-seam steel roof with a color of PREWEATHERED GALVALUME COPPER-COTE TM. Required certified testing results form American Society for Testing and the National Coil Coaters Association. All parts including the parts and materials for the removable roof shall be tamper proof and vandal resistant. Premium fluoropolymer coating produced with full strength Kynar 500 or Hylar 5000 resin.
- 1.2.11 Color: All shelters and furniture, including advertising kiosks described (except the roof) shall be oven-baked powder coated to match DUNN EDWARDS brand color DE-EX11 per manufacture recommendations. Exterior TGIC polyester powder coated finish with a minimum mil thickness of 1.5 on all materials. Application per manufacturer's recommendations and testing requirements.

1.3 SOLAR LIGHTING UNITS

- 1.3.1 Solar lighting units are to provide solar lighting to make transit stops safer and more inviting to night-time riders, without the expense of connecting and maintaining utilities.
- 1.3.2 The system shall be a complete operating system, with each subcomponent integrated and operating in parallel with each other.
- 1.3.3 Low Profile Installation: All equipment shall fit the contour and shape of the shelter structure with minimal visibility at street level. All wiring shall be hidden out of view.
- 1.3.4 The solar system and all solar system parts shall be vandalism and theft resistant and shall be incorporate into the shelter to be as discreet and low profile as possible to attract as little attention as possible.
- 1.3.5 Equipment Frame/Casework shall use security hardware and be used throughout. Excluding the metal roof and solar panel fasteners, all exposed lighting equipment and related components shall be powder-coated to match the shelter color.
- 1.3.6 The whole system shall be lightweight and will be installed on the shelters without structural modifications (other than system fasteners, cable routing and brackets etc.).
- 1.3.7 The system will be fully integrated (as part of the shelter design) canopy which includes solar LED dusk to dawn lighting system capable of providing a minimum of 3 foot candle within the canopy area of the shelter wit a minimum 4 year batterylife. Candle intensity shall be measured at the bench.

1.4 ADVERTISING KIOSKS – TWO AND THREE SIDED

- 1.4.1 The two-sided kiosk box will have space to hold two, 4' x 6' posters in side hinged acrylic polycarbon plexie (.177 thickness) front enclosures. Support legs shall be 3" schedule 40 standard pipe.
- 1.4.2 The three-sided kiosk box will have space to hold three, 4' x 6' posters in side hinged acrylic polycarbon plexie (.177 thickness) front enclosures. Frame shall be 3" schedule 40 standard pipe.
- 1.4.3 Color shall be oven-baked powder coated to match DUNN EDWARDS brand color DE-EX11 per manufacture recommendations.

1.5 TRASH RECEPTACLE

- 1.5.1 Trash receptacles constructed on one and one-inch (1") steel channel frame with 16 gauge forty-two (42%) perforated steel with pin-fastened eight-inch (8") diameter pipe pedestal six inches (6") tall. Includes steel lid.
- 1.5.2 The trash receptacle lid shall have a six (6") hole for the trash to be thrown in to the inside of the trash receptacle. The lid shall have a chain welded to it. The chain shall mount to a one-quarter inch (1/4") bolt that is welded inside the trash receptacle. The chain shall mount to the bolt with a lock nut fastening the chain on the bolt and against the trash receptacle.
- 1.5.3 The trash receptacle shall have drainage holes located in the bottom outside edges of the trash receptacle.
- 1.5.4 Size: Thirty-gallon (30 gal) receptacle; top lid two feet (2') in diameter.
- 1.5.5 Anchoring: One half-inch (1/2") anchor bolt through bottom (center) of pedestal.

**EXHIBIT B
PRICING**

Company Name: Lacor/Streetscape

ITEM	U.O.M.	QUANTITY	DESCRIPTION	COST PER UNIT	EXTENDED AMOUNT
1	Each	18	New shelter/bench unit (Copper-Cote Metallic Roof) with LED solar unit	\$ 7,635.00	\$ 137,430.00
2	Each	14	New 2-sided kiosk – no lighting	\$ 2,442.00	\$ 34,188.00
3	Each	5	New 30 gallon trash receptacle	\$ 531.00	\$ 2,655.00
4	Each	4	Remove, repair and refurbish kiosks (includes sanding, repainting, installing new glass and diffusers) *see below for locations	*see details below	\$ 8,426.00
5	Each	5	Remove and refurbish benches – various locations	\$ 341.00	\$ 1,705.00
6	Each	13	Remove and refurbish trash receptacles – various locations	\$ 341.00	\$ 4,433.00
			SUBTOTAL AMOUNT (Line 1-6)		\$ 188,837.00
			TAX (8.3%)		\$ 15,673.47
			TOTAL AMOUNT		\$ 204,510.47

***Item 4 – Locations:**

West Bound Chandler Blvd., Far Side Delaware - #CH2512	= \$2,305.00
South Bound Arizona Ave., Near Side Galveston – no CH#	= \$1,834.00
South Bound Alma School, Near Side Erie - #CH1607	= \$2,442.00
North Bound Alma School, Far Side Highland - #CH1602	= \$1,845.00
	<u>\$8,426.00</u>

**EXHIBIT B-1
SUPPLEMENTAL PRICING FOR FUTURE ORDERS**

Company Name: Lacor/Streetscape

MODEL	DESCRIPTION	Single Unit	2-5 Units	6-10 Units	11-20 Units	21+ Units
PM8BBR2C	Primavera 8' Shelter Bench Unit w/Copper-Cote Metallic Roof	\$ 6,765	\$ 6,538	\$ 6,343	\$ 6,087	\$ 5,900
SW5000	LED Solar Unit (installed at time of shelter fabrication)	\$ 1,657	\$ 1,619	\$ 1,567	\$ 1,528	\$ 1,482
ARK2	Arcadia 2-Sided Kiosk (no lighting)	\$ 2,700	\$ 2,598	\$ 2,486	\$ 2,422	\$ 2,402
OAK3	Oasis 3-Sided Kiosk (no lighting)	\$ 3,391	\$ 3,153	\$ 2,986	\$ 2,868	\$ 2,747
OATR30	Oasis 30 gal. Trash Receptacle	\$ 550	\$ 512	\$ 475	\$ 464	\$ 451

Miscellaneous Refub Work	
Remove and Refurbish Bench	\$ 325 each
Remove and Refurbish Receptacle	\$ 325 each
Remove and Refurbish 3-sided Kiosk	\$ TBD*

Notes:

Charge to deliver and offload at City Yard to be determined at time of future order(s) and will be dependent upon quantities and models purchased.

Above prices do not include applicable sales tax.

*Cost to refurbish 3-sided kiosks varies (dependent upon extent of damage and missing/broken components requiring repair and/or replacement) and will be quoted on individual basis after field inspection.