CITY CLERK ORIGINAL

C-9771
03/24/2015

LINKING AGREEMENT BETWEEN THE CITY OF GLENDALE, ARIZONA AND HORIZON DISTRIBUTORS, INC.

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this 24 day of March, 2015, between the City of Glendale, an Arizona municipal corporation (the "City"), and Horizon Distributors, Inc., a Delaware corporation, authorized to do business in Arizona, ("Contractor"), collectively, the "Parties."

RECITALS

A. On **September 27, 2013**, under the **S.A.V.E. Cooperative Purchasing Group Intergovernmental Agreement,** the City entered into a contract with Contractor to purchase the goods and services described in the **Plumbing and Irrigation Supplies, Contract No. WH4-670-3284**, which is attached hereto as **Exhibit A.** The **Plumbing and Irrigation Supplies Contract** permits its cooperative use by other governmental agencies of which the City is a participating member. The **S.A.V.E. Cooperative Purchasing Group Intergovernmental Agreement,** is hereinafter referred at as the Cooperative Purchasing Agreement.

B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.

C. Section 2-149 also provides that Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.

D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement.

The City is purchasing the supplies and/or services from Contractor pursuant to Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement award and rate sheet, which are attached hereto as part of **Exhibit B**, purchases can be made by governmental entities from the date of award, which was **September 27, 2013**, until the date the contract expires on **September 26, 2015**, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not extend the contract beyond **September 26, 2018**. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such a **one-year** renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached hereto as **Exhibit B**.

B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporate into and are an enforceable part of this Agreement.

3. Compensation.

A. City shall pay Contractor compensation at the same rate and on the same schedule as the Cooperative Purchasing Agreement, unless the City and Contractor agree otherwise, as provided in **Exhibit C** hereto.

B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed $85,000 annually for a maximum of $340,000 for the term of the contract.

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

6. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Max Morales
6210 W. Myrtle Avenue, Suite #111
Glendale, Arizona 85301
623-930-2671

and

Horizon Distributors, Inc.
c/o Kevan D. Lawrence
5214 S. 30th Street
Phoenix, AZ 85040
602-305-6054

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

"City"

City of Glendale, an Arizona
municipal corporation

By: _____
Richard A. Bowers
Acting City Manager

"Contractor"

Horizon Distributors, Inc.
a Delaware corporation

By: _____
Kevan D. Lawrence, Sales

ATTEST:

_____
Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

EXHIBIT A

City of Chandler Contract No. WH4-670-3284 - Plumbing and Irrigation Supplies

PLUMBING AND IRRIGATION SUPPLIES
AGREEMENT NO.: WH4-670-3284

THIS AGREEMENT is made and entered into this 27 day of September 2013, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Horizon Distributors, Inc., 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 Central Supply Supervisor/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 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.

1.4 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 B, all as more specifically set forth in the Specifications and details included therein. The goods and merchandise shall be provided pursuant to the specifications set forth on Exhibit A.

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.

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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. **Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.

2.13. **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.

2.14. **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.

2.15. 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.*

2.16. 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.

2.17. 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.

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 **3-5** calendar days after receipt of a Contract Purchase Order (ARO).

5. **PRICE:** CITY shall pay to CONTRACTOR a total amount including all companion Agreements, not to exceed One Hundred Twenty Thousand Dollars ($120,000) 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, 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 legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.

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 (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:** Effec. 9-27-13 with max extension to 9-26-18

6.1 The contract term is for a one year period subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five (5) years. 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.

- 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.

7.1. **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.

7.2. **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.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

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

11.2 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.

11.3 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, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.

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:	Management Services—Central Supply
Contact:	Giulio Gentile
Mailing Address:	PO Box 4008—MS 903 Chandler, AZ 85244
Physical Address:	975 E. Armstrong Way, Bldg. I
City, State, Zip	Chandler, AZ 85286
Phone:	480-782-2419
FAX:	480 782 2420
E-Mail:	giulio.gentile@chandleraz.gov

In the case of the CONTRACTOR

Firm Name:	Horizon Distributors Inc.
Contact:	Rachelle Posvar
Address:	261 N. Roosevelt Ave.
City, State, Zip	Chandler, AZ 85226
Phone:	480 337 6676
FAX:	480 619-6316
E-mail:	Rachelle.posvar@horizononline.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. GENERAL TERMS:

14.1. Entire Agreement: This Contract, including all 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.

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

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

14.4. 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.

14.5. Conflict of Interest:

14.5.1 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.

14.5.2 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).

14.5.3 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.

14.6. 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.

14.7. 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.

14.8. 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.

14.9. 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 27 day of September, 2013.

FOR THE CITY OF CHANDLER

Approved as to form

City Attorney

ATTEST::

City Clerk

SEAL

FOR THE CONTRACTOR
Horizon Distributors, Inc.

By:

Signature

ATTEST: If Corporation

Secretary

CITY OF CHANDLER CORPORATE SEAL ARIZONA

EXHIBIT A
SPECIFICATIONS

1. INTRODUCTION

1.1. It is the intent of the City of Chandler to establish a pricing agreement for the order and delivery of plumbing and irrigation supplies on an "as needed" basis. ***As applicable, Public Law 111-380 shall be adhered to. The Reduction of Lead in Drinking Water Act (Act) begins 1/4/2014. However, the City will begin ordering the required items under the Act upon the effective date of the contract.***

1.2. City of Chandler operates one main warehouse from which its departments purchase stocked items.

1.3. City shall also purchase non-City warehouse items from the Contractor.

2. GENERAL SPECIFICATIONS

2.1. Contractor shall maintain sufficient local parts inventory to support the City's needs for plumbing and irrigation parts.

2.2. In addition to the items listed on the Price Sheet, bidders may also provide a statement of applicable discount percentage off catalog prices for all other plumbing and irrigation supplies not listed on Price Sheet.

2.3. Updates on reference catalogs shall be provided at no cost to the City when pricing changes. Contractors are encouraged to provide web/electronic catalog access, if applicable.

2.4. The quantities referenced in this agreement are an estimate ONLY and are to be used for information purposes only. No commitment of any quantity is made during this contract.

3. DELIVERY

3.1. Contractor shall deliver all plumbing and irrigation supplies to Central Supply (Warehouse) located at 975 E. Armstrong Way, Bldg. I, Chandler, AZ 85286 or direct to other user divisions in the City.

3.2. Deliveries shall be made on regularly scheduled workdays between 8:00 a.m. and 3:00 p.m., or as requested by the contract administrator.

3.3. Deliveries and/or pickup of supplies may also be made on weekends/off hours due to emergencies. Delivery locations may vary.

EXHIBIT B
PRICING

Item #	City Stock Number	Description	Est Qty	UOM	Brand/Model Quoted (also note if bidding lead free (LF)	Unit Cost	Ext Cost
47		Rainbird 8005 Rotor SS Reclaim	80	EA		$38.18	$3054.40
48		Rainbird 6005 High Speed Falcon SS Reclaim	80	EA		$29.98	$2,318.40
49		Rainbird 1804 pop up head, 4"	60	EA		$0.99	$59.40
50		Rain B34183 100PEB 1" Electric Valve 24VAC F X F NPT	4	EA	Rainbird	$44.80	$ 179.20
51		Rain B34383 150PEB 1-1/2" Electric Plastic Valve 24VAC FNPT	2	EA	Rainbird	$59.57	$119.14
52		Rain B34583 200PEB 2" Electric Valve 24VAC FNPT	4	EA	Rainbird	$82.57	$330.28
53		Rain 208143 Dia. Assy > 1 PEB Valve Rainbird 208143	6	EA	Rainbird	$21.95	$131.70
54		Rain 208605 Diaphragm Assembly For 150/200 PE, PEB Rain Bird Valves	6	EA	Rainbird	$31.19	$187.14
55		Rain 20953202 Solenoid PEB Rainbird	6	EA	Rainbird	$17.48	$104.88

Delivery: 3-5 days ARO
Tax: 7.8% Chandler
Will accept P card

Specify percentage off list price and/or catalogs for like items not named in pricing list. Add additional lines as needed.

Manufacturer	Catalog No. and Date	Percent off Price List
Rainbird Irrigation Whole Goods	Current Mfr. Price List	56%
Rainbird Irrigation Parts	"	15%
Hunter Irrigation Whole Goods	"	58%
Hunter Irrigation Parts	"	15%
Irritrol Irrigation Whole Goods	"	50%
Irritrol Irrigation Parts	"	15%
Toro Irrigation Whole Goods	"	50%
Toro Irrigation Parts	"	15%
PVC Pipe	Current vendor list	15%

EXHIBIT B

City of Chandler Plumbing and Irrigation Supplies per Solicitation Invitation No. WH4-670-3284

Chandler • Arizona
Where Values Make The Difference

CITY OF CHANDLER, ARIZONA

NOTICE OF FORMAL SOLICITATION

SOLICITATION TYPE: **INVITATION FOR BIDS**

SOLICITATION INVITATION NO.: WH4-670-3284

BID DUE DATE AND TIME: July 29, 2013 – 2:00 pm local Arizona time

LOCATION:
Purchasing Division
175 S Arizona Ave, 3rd Floor
Chandler, Arizona 85225

MAILING ADDRESS:
Mail Stop 901
P.O. Box 4008
Chandler, AZ 85244-4008

Sealed bids for the commodity or service specified will be received by the Purchasing Division, City of Chandler, 175 S. Arizona Ave, 3rd Floor, Chandler, Arizona 85225, until the time and date cited above. Solicitations received by the correct time and date will be opened publicly and the prices shall be read aloud at the Purchasing Division Office.

Bids must be in the actual possession of the Purchasing Division Office and stamped by a member of the Purchasing Division staff on or prior to the exact time and date indicated above. Late submittals or unsigned submittals will not be considered under any circumstances.

Bids must be submitted in a sealed envelope with the solicitation invitation number and the Bidder's name and address clearly indicated on the envelope. All bids must be completed in ink or typewritten. Additional instructions for preparing your bid are provided on the following pages.

Commodity and/or Service **Plumbing and Irrigation Supplies**

Contract Type and Period **Term Contract**

Issue Date: July 12, 2013

CONTACT:

Robert Descheemaker, CPPB
Purchasing and Materials Supervisor
PH: (480) 782-2416 / FAX: (480) 782-2420
Email: Robert.Descheemaker@chandleraz.gov

THIS BID IS SUBMITTED BY:

Name of Company _____

Contact Name _____

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IMPORTANT
VENDOR/BIDDER'S CHECK LIST

[ ] 1. The bid has been signed in the Vendor/Bidder's Offer Section. (Bids not signed in this section will not be considered.)

[ ] 2. The bid prices offered have been reviewed.

[ ] 3. The price extensions and totals have been checked.

[ ] 4. Any required drawings or descriptive literature have been included.

[ ] 5. All items listed on the Bid Sheet have been responded to as applicable/required (see Information and Instructions to Bidders Section 4.5)

[ ] 6. Any addendums have been included/noted on Bid Sheet.

[ ] 7. The mailing envelope/package has been addressed to:

Location:	**Mailing**:
City of Chandler	City of Chandler
Purchasing Division	Purchasing Division
175 S. Arizona Ave, 3rd Floor	P.O. Box 4008 – MS 901
Chandler, AZ 85225	Chandler, AZ 85244-4008

[ ] 8. Bid Package/Envelope has been identified with bid number and title.

[ ] 9. Bid Bond has been included (if applicable).

[ ] 10. The bid is mailed in time to be received and stamped in by Purchasing representative no later than specified time on designated date. (Otherwise the bid cannot be considered.)

INFORMATION AND INSTRUCTIONS TO BIDDERS

1. **IFB.** This procurement is an Invitation to Bid for **Plumbing and Irrigation Supplies;** Bid WH4-670-3284.

2. **GENERAL INFORMATION**

2.1. Bids must be received by City of Chandler Purchasing Office, 175 S. Arizona Ave., 3rd Floor, Chandler, Arizona 85225, on or before 2:00 P.M. local Arizona time, on **July 29, 2013.** **Late Bids will not be accepted.**

2.2. **Late Bids.** Late submittals and/or unsigned Bids will not be considered under any circumstances. Envelopes containing Bids with insufficient postage will not be accepted by the CITY. It is the sole responsibility of the Bidder to see that his/her Bid is delivered and received by the proper time and at the proper place.

2.3. **Addendum.** This IFB may only be modified by a written Addendum. Potential Bidders are responsible for obtaining all addendums via the CITY's Vendor Registration/Notification system or other means. See Paragraph 2.12 for registration instructions.

2.4. **Sealed Envelope or Package.** Each Bid shall be submitted to the Purchasing Office in a sealed envelope or package. The envelope or package should be clearly identified as a Bid and be marked with name of the Bidder and Solicitation number. CITY may open envelopes or package to identify contents if the envelope or package is not clearly identified as specific.

2.5. **Bid Amendment or Withdrawal.** A Bid may be withdrawn anytime before the Bid due date and time. A Bid may not be amended or withdrawn after the Bid due date and time except as otherwise provided by applicable law.

2.6. **Bid Opening**. Bids shall be opened and prices shall be read on the date and time, and the place designated on the Notice page of this document, unless amended in writing by the Procurement Officer issuing the solicitation. Bids, modifications and all other information received in response to the Invitation for Bid shall be shown only to authorized CITY personnel having a legitimate interest in the evaluation.

2.7. **Public Record.** All Bids submitted in response to this Solicitation and all evaluation related records shall become property of CITY and shall become a matter of public record for review, subsequent to publication by the City of the proposed award in the agenda for the City Council Meeting or award by the appropriate approving authority or otherwise provided by law.

2.7.1 Request for nondisclosure of data such as trade secrets and other proprietary data, must be made known to CITY in Bids submitted, and the information sought to be protected clearly marked as proprietary.

2.7.2 CITY will not insure confidentiality of any portion of the Solicitation documents that are submitted in the event that a public record request is made.

2.7.3 CITY will provide 48 hours notice before releasing materials identified by the Bid as confidential or proprietary in order for the Bidder to apply for a court order blocking the release of the information.

2.8. **Cost of Bid Preparation.** CITY will not reimburse any Bidder the cost of responding to this IFB.

2.9. **Persons with Disabilities.** Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer. Requests shall be made as early as possible to allow time to arrange the accommodation.

2.10. Bid Acceptance Period. All Bids shall remain open for 90 days after the day of the opening of Bids, but CITY may, at its sole discretion, release any Bid and return the bid security (as applicable) prior to that date. No Bidder may withdraw his Bid during this period without written permission from the CITY. Should any bidder refuse to enter into a contract, under the terms and conditions of the procurement, CITY may retain the security (as applicable), not as a penalty, but as liquidated damages.

2.11. Term of Contract. Please see the attached contract for a description of the term of the contract.

2.12. Vendor Registration. Vendor Registration. Vendors (Offerors) must register via the on-line Vendor Registration system at www.chandleraz.gov, in order to automatically receive notification of Addenda to this Solicitation or notice of other solicitation opportunities. Select the BUSINESS tab, then select DOING BUSINESS WITH THE CITY, then click on VENDOR REGISTRATION SYSTEM, read or print the instructions, then select REGISTER OR LOG-IN NOW. A vendor who is not so registered must contact the Purchasing Office to make other arrangements to receive notice of Addenda to this Solicitation.

3. DESCRIPTION OF GOODS BEING PROCURED

3.1. The City intends to establish a term contract to fulfill the City's requirements for Plumbing and Irrigation Supplies for various City departments including Building and Facilities, Parks, Aquatics, Municipal Utilities, Housing and the City's Central Supply (warehouse). It is anticipated that the City will award multiple contracts to fulfill the requirements. The City has an on-going requirement for the items listed. Supplies will be ordered on an 'as needed' basis and stocked in the City's Central Supply warehouse in addition to purchases being made at contractor's location or direct ordered items from City divisions. Quantities listed are a sample for the purpose of evaluation. The City's annual requirements are estimated to be $120,000. Actual quantities ordered may vary. Refer to Exhibit A for Specifications and Exhibit B for a list of items/pricing.

3.2 Cooperative Use of Contract. Please see the attached contract for the cooperative use provisions.

3.3 **Samples.** Samples of items, when requested, must be submitted within 7 days. Samples shall be furnished at no expense to CITY and shall be identified as to the supplier, manufacturer, part number, model number, type, grade, applicable stock number, etc. If not destroyed by testing, samples will be returned at the Bidder's request and expense. If no instructions are received for their return, samples will be discarded 30 days after award date. CITY shall be the sole judge of whether the samples submitted meet the specifications.

3.4 Current Products. Supplies and materials Bid shall be of current design and meet specifications. Bidder must identify the manufacturer of each product being Bid. Bidder should supply all information necessary for CITY to determine (a) whether the product Bid meets the requirements of the specifications, and (b) exactly what the Bidder proposes to furnish.

3.5 **New Products.** All products Bid must be new, not previously used or owned.

3.6 Brand Name. Any manufacturer's names, trade names, brand names or catalog numbers used in the specifications are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict a Bid by any Bidder but is only enumerated in order to advise potential Bidders of the requirements of CITY. Any Bid, which proposes equal quality, design or performance, will be evaluated.

3.7 **Warranty (Period of Time).** Each Bid must provide a manufacturer's warranty/guarantee against defects in materials, workmanship and/or performance for all items.

3.8 **Health and Safety.** All items to be supplied hereunder by Bidder shall conform in all respects to the requirements of applicable insurance and governmental health and safety regulations, including

regulations administered by OSHA.

4. BID PREPARATION

4.1. Format. Bidders shall submit their Bid with **an original and __0___ copies** and shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document must be legible and contain the same information requested on the forms. **SUBMITTALS SHOULD BE BOUND BY STAPLE OR BINDER CLIP AND SHOULD CONSIST OF PAPER ONLY. ALL BINDERS, PLASTIC SEPARATORS, NON-RECYCLABLE MATERIAL, ETC., ARE DISCOURAGED. SUBMITTALS WILL NOT BE EVALUATED ON THE AESTHETICS OF THE PACKAGE.**

4.2. No Facsimile or Electronic Mail Bids. Bids may not be submitted in facsimile or electronically. A facsimile or electronic mail Bid shall be rejected.

4.3. Typed or Ink Corrections. The Bid shall be typed or in ink. Erasures, interlineations or other modifications in the Bid shall be initialed in ink by the person signing the Bid.

4.4. No Modifications. Modifications shall not be permitted after Bids have been opened except as otherwise provided under applicable law.

4.5. Content. The Bid Section shall contain all of the following information:

4.5.1 Brief description of the Bidder, including legal organization. Include name, address, phone, fax, e-mail and location of the firm's principle and local office.

4.5.2 **Tax ID Number.** Bidder must provide its Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided in the Bid Section. A City of Chandler Sales Tax Number, if applicable, must also be supplied.

4.5.3 **City of Chandler Transaction Privilege Tax (TPT).** Bidder shall provide their Chandler TPT number, if applicable, including the original date of issue, and indicate if the proposed purchase is subject to Chandler TPT.

4.5.4 **Exceptions to Solicitation.** Any exceptions to the Specifications or Contract terms must be included with the Bid and submitted in the 'Exceptions to IFB' area in the Bid Section or equivalent in which the Bidder clearly identifies the specific objection and/or exceptions. Failure to list an exception or objection shall preclude a request for changes to the specifications or Contract language. The proposed Form of Contract is included as a part of this Solicitation. In your Bid you must include a statement that you have reviewed the contract and list any objections to them. Any objections to specifications or the Form Contract will be considered and included in CITY's evaluation of your Bid. If you fail to list any objections to the specifications or form of contract, you will not be allowed to raise any objections later if you are selected for award. A Bid that takes exception to a material requirement of any part of the Solicitation, specifications or contract, shall be rejected as non-responsive.

4.5.5 **Disclosure.** If the firm, business or person submitting this Bid has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Bidder shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Bid. The Bidder shall include a letter with its Bid setting forth the name and address of the governmental entity, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

4.5.6 Prices. Prices shall be listed in the Bid Section and shall include all freight, insurance, warranty costs,

and any other applicable costs.

4.5.7 Catalogs/Contract Price Listing. If awarded a contract, Bidder(s) shall be required to furnish free of charge, to all requesting departments catalogs outlining contract prices.

4.5.8 Prompt Payment Terms. Bidder must indicate prompt payment terms in the areas provided in the Bid Section.

4.5.9 Shipment & Delivery. The price(s) Bid shall include cost, if any, of shipment and delivery to the specified CITY location and shall be made F.O.B. Destination (Chandler), delivered and unloaded to the designated delivery point(s).

4.5.10 Delivery. The bid must indicate Bidder's promised delivery schedule, in the areas indicated in the Bid Section. As applicable, the bidder shall meet or exceed the delivery terms listed in the contract.

4.5.11 Taxes. Bidder must list all applicable taxes separately in the areas provided in the Bid Section.

4.5.12 Options and Alternatives. Bidder is requested to provide price quotes for any special options or alternatives available for its goods or equipment, which may not have been covered in the bid specification. The option and/or alternative prices will not be considered in the bid evaluation process. Also, CITY may or may not elect to purchase these options or alternatives.

4.5.13 Descriptive Literature. All Bids must include complete manufacturer's descriptive literature regarding the equipment they propose to furnish. Literature shall be sufficient in detail to allow full and fair evaluation of the Bid submitted. Failure to include this information may result in the Bid being rejected.

4.5.14 References. Bidder shall list, in the Bid Section, at least three references of other governmental agencies to which Bidder has supplied similar goods or services, including names, addresses and telephone numbers.

4.5.15 Payment. Bidders may agree to accept the City Procurement Card (Mastercard) for payment. It is requested that each Bidder indicate on the Bid Section of this IFB, their willingness to accept City Procurement Card (Mastercard) payments. The inability to accept payment by City Procurement Card (Mastercard) will not disqualify a bid response.

Bidders may also agree to accept other traditional payment methods, including automated clearinghouse (ACH). Payment terms for traditional payment methods are Net 30 upon receipt of an accurate invoice, although the Bidder may offer additional discounts for early payment within this IFB.

4.5.16 Solicitation Addendum Acknowledgement. Each Solicitation Addendum shall be acknowledged in the Bid Section, which shall be submitted together with the Bid on the Bid due date and time. Failure to note a Solicitation Addendum may result in rejection of the Bid.

4.5.17 Evidence of Intent to be Bound. The Bid form within the Solicitation shall be submitted with the Bid and shall include a signature by a person authorized to sign the Bid. The signature shall signify the Bidder's intent to be bound by its Bid and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of intent to be bound, such as an original signature, shall result in rejection of the Bid.

4.5.18 Non-Collusion and Non-Discrimination. By signing and submitting the Bid, the Bidder certifies that:

A. The Bidder did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Bid; and

B. The Bidder does not discriminate against any employee or applicant for employment or person to

whom it provides services because of race, color, religion, age, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

C. The Bidder understands that the Bidder will be responsible for and shall pay all sales, consumer, use, and other taxes. When equipment, materials or supplies generally taxable to the Bidder are eligible for a tax exemption due to the nature of the item, Bidder shall assist CITY in applying for and obtaining such tax credits and exemptions which shall be paid or credited to CITY.

5. INQUIRIES

5.1. Duty to Examine. It is the responsibility of each Bidder to examine the entire Solicitation, seek clarification (inquiries), and examine its Bid for accuracy before submitting the Bid. Lack of care in preparing a Bid shall not be grounds for modifying or withdrawing the Bid after the Bid due date and time, nor shall it give rise to any Contract claim.

5.2. Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation should be directed solely to the Procurement Officer listed on the cover page of the solicitation. The Bidder shall not contact or direct inquiries concerning this Solicitation to any other CITY employee unless the Solicitation specifically identifies a person other than the Procurement Officer as a contact.

5.3. Submission of Inquiries. All inquiries except those at the Pre-Bid Conference shall be submitted in writing and shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as a Bid and not be opened until after the Bid due date and time. CITY shall consider the relevancy of the inquiry but is not required to respond in writing.

5.4. Timeliness. Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least ten (10) days before the Bid due date and time for review and determination by CITY. Failure to do so may result in the inquiry not being considered for a Solicitation Addendum.

5.5. No Right to Rely on Verbal Responses. A Bidder shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the Solicitation.

6. EVALUATION

6.1. Disqualification. A Bidder (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity may have its Bid rejected.

6.2. Clarifications. CITY reserves the right to obtain Bidder clarifications where necessary to arrive at full and complete understanding of Bidder's product, service, and/or solicitation response. Clarification means a communication with a Bidder for the sole purpose of eliminating ambiguities in the Bid and does not give Bidder an opportunity to revise or modify its bid.

6.3. Waiver and Rejection Rights. City of Chandler reserves the right to reject any or all Bids or to cancel the solicitation altogether, to waive any informality or irregularity in any Bid received, and to be the sole judge of the merits of the respective Bids received.

6.4. Taxes. Bids will be ranked on the pre-tax cost. If Chandler Administrative Regulation MS-16 is applicable, any applicable Chandler Transaction Privilege Tax will be deducted from the pre-tax cost for the purpose of evaluation pursuant to Chandler Administration Regulation MS-16.

6.5. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.

7. AWARD

7.1. **Lowest Bid.** If a Contract is to be awarded, it will be awarded to the lowest responsive and responsible Bidder who has neither been disqualified nor rejected pursuant to Section 6 above.

7.2. **Number or Types of Awards.** CITY reserves the right to make multiple awards (e.g. awarding a contract to multiple Bidders) or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, whichever is most advantageous to CITY. If the Procurement Officer determines that an aggregate award to one Bidder is not in CITY'S best interest, "all or none" Bids shall be rejected.

7.3 **Execution of Contract.** Within ten (10) days of Notice that Bidder is the apparent awardee, Bidder shall execute and return the original Contract to Purchasing.

8. PROTESTS

8.1 A Protest must be in writing and be filed with the Purchasing Office.

A protest of a Solicitation shall be received before the Solicitation opening date.

A protest of a proposed award requiring City Council approval must be filed within 5 calendar days of the first posting of the award recommendation. Award recommendations are posted on the Purchasing web site at www.chandleraz.gov/purchasing and/or the City Clerk web site at http://www.chandleraz.gov/default.aspx?pageid=1007 if the due date occurs on a weekend or holiday the protest must be filed the next business day.

A protest of an award not requiring City Council approval (less than $50,000 or $30,000 for Consultants) must be submitted within ten (10) days after the protester knows or should have known the basis of the protest.

8.2 **A protest must include:**

- The name, address and telephone number of the protester;
- The signature of the protester or its representative;
- Identification of the project and the solicitation or contract number;
- A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and the form of relief requested.

8.3 **CITY will review the protest and issue a written response.**

9. COMMENTS WELCOME

The City's Purchasing Office periodically reviews the Information and Instructions to and welcomes any comments you may have. Please submit your comments to: City of Chandler Purchasing Office, ATTN: Purchasing, Mail Stop 901, P.O. Box 4008, Chandler, AZ 85244-4008.

BID SECTION
(Including all information required to be submitted with Bid)

1. **BIDDER**

Firm Name: _____

Contact Name: _____

Principal Address: _____

_____

Phone: _____

Fax: _____

E-Mail: _____

Local Address: _____

_____

Type of Organization: _____

Tax ID #: _____

Chandler TPT #, original date of issue and if proposed purchase is subject to Transaction Privilege tax:
_____

2. Exceptions to IFB (§4.5.4 Exceptions to Solicitation):_____

3. Disclosure of Debarment information (§4.5.5 Disclosure):_____

4. Prices:

A. Price list. Refer to Exhibit B

B. Prompt Payment Terms:_____

C. Delivery Days after receiving order (ARO):_____

D. Tax Percentage_____

E. Will you accept a City Procurement Card (MasterCard) for payment of invoices? _____

F. Will you accept automated clearinghouse (ACH) for payment of invoices? _____

5. REFERENCES (Must be provided)

Provide names, addresses and telephone numbers of government agencies/business' to which you have provided similar goods or services.

A. Company: _____

Address: _____

Contact: _____

Phone: _____

Email: _____

Goods or Services supplied and when provided: _____

_____

B. Company: _____

Address: _____

Contact: _____

Phone: _____

Email: _____

Goods or Services supplied and when provided: _____

_____

C. Company: _____

Address: _____

Contact: _____

Phone: _____

Email: _____

Goods or Services supplied and when provided: _____

_____

11. Receipt of Addenda:

Bidder acknowledges receipt of the following Solicitation Addendum(s):

Addendum No.	Date

12. Other Information Requested: _____

13. Intent to be bound by Bid:

SIGNATURE PAGE

If BIDDER is:

An Individual

By: _____
(Individual's Signature)

_____
(Printed or Typed Name of Individual)

Doing business as: _____

License or Registration No.: _____

Business Address: _____

_____

Phone No.: _____

Fax No.: _____

A Partnership

By: _____
(Firm Name)

_____
(Partner's Signature)

_____
(Printed or Typed Name of Partner)

License or Registration Number: _____

Business Address: _____

_____

_____

Phone No.: _____

Fax No.:

A Corporation

By: _____
(Corporation Name)

_____
(State of Incorporation)

By: _____
(Signature of Officer Authorized to Sign)

_____
(Printed or Typed Name)

Attest: _____
(Secretary)

Federal I. D. Number: _____

Business Address: _____

_____

_____

Phone No.: _____

Fax No.: _____

A Joint Venture

By: _____
(Signature)

_____
(Printed or Typed Name)

_____
(Address)

By: _____
(Signature)

_____
(Printed or Typed Name)

_____
(Address)

(Each party to the joint venture must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.)

CITY OF CHANDLER PURCHASE CONTRACT
PLUMBING AND IRRIGATION SUPPLIES
AGREEMENT NO.: WH4-670-3284

THIS AGREEMENT is made and entered into this ____ day of _____, 2013, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and _____, 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 Central Supply Supervisor/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 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.

1.4 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 A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B, 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. **Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.

2.13. **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.

2.14. **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.

2.15. **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.

2.16. **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.

2.17. 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.

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 (_____) calendar days after receipt of a Contract Purchase Order (ARO).

5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed _____ Dollars ($_____) 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 legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.

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 (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:**

6.1 The contract term is for a one year period subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five (5) years. 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.

- 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.

7.1. **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.

7.2. **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.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

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

11.2 **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, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations,

which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.

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:	Management Services—Central Supply	Firm Name:	
Contact:	Giulio Gentile	Contact:	
Mailing Address:	PO Box 4008—MS 903 Chandler, AZ 85244	Address:	
Physical Address:	975 E. Armstrong Way, Bldg. I	City, State, Zip	
City, State, Zip	Chandler, AZ 85286	Phone:	
Phone:	480-782-2419	FAX:	
FAX:	480 782 2420	E-mail:	
E-Mail:	giulio.gentile@chandleraz.gov		

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. **GENERAL TERMS:**

14.1. **Entire Agreement:** This Contract, including all 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.

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

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

14.4. **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.

14.5. **Conflict of Interest:**

14.5.1 **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.

14.5.2 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).

14.5.3 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.

14.6. 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.

14.7. 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.

14.8. 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.

14.9. 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 _____, 2013.

FOR THE CITY OF CHANDLER

_____

FOR THE CONTRACTOR

By: _____

_____

Signature

ATTEST: SEAL ATTEST: If Corporation

_____ _____

City Clerk Secretary

Approved as to form:

_____

City Attorney

EXHIBIT A
SPECIFICATIONS

1. INTRODUCTION

1.1. It is the intent of the City of Chandler to establish a pricing agreement for the order and delivery of plumbing and irrigation supplies on an "as needed" basis. ***As applicable, Public Law 111-380 shall be adhered to. The Reduction of Lead in Drinking Water Act (Act) begins 1/4/2014. However, the City will begin ordering the required items under the Act upon the effective date of the contract.***

1.2. City of Chandler operates one main warehouse from which its departments purchase stocked items.

1.3. City shall also purchase non-City warehouse items from the Contractor.

2. GENERAL SPECIFICATIONS

2.1. Contractor shall maintain sufficient local parts inventory to support the City's needs for plumbing and irrigation parts.

2.2. In addition to the items listed on the Price Sheet, bidders may also provide a statement of applicable discount percentage off catalog prices for all other plumbing and irrigation supplies not listed on Price Sheet.

2.3. Updates on reference catalogs shall be provided at no cost to the City when pricing changes. Contractors are encouraged to provide web/electronic catalog access, if applicable.

2.4. The quantities referenced in this agreement are an estimate ONLY and are to be used for information purposes only. No commitment of any quantity is made during this contract.

3. DELIVERY

3.1. Contractor shall deliver all plumbing and irrigation supplies to Central Supply (Warehouse) located at 975 E. Armstrong Way, Bldg. I, Chandler, AZ 85286 or direct to other user divisions in the City.

3.2. Deliveries shall be made on regularly scheduled workdays between 8:00 a.m. and 3:00 p.m., or as requested by the contract administrator.

3.3. Deliveries and/or pickup of supplies may also be made on weekends/off hours due to emergencies. Delivery locations may vary.

EXHIBIT B
PRICING

Item #	City Stock Number	Description	Qty	UOM	Brand/Model Quoted (also note if bidding lead free (LF)	Unit Cost	Ext Cost
1	4130.021.8017	Filter, Pentaircrbn, 20" #155111-43	30	EA		$	$
2	4130.383.0010	Filter, Cartridge, 10" 20 Micron	144	EA		$	$
3	4130.386.0077	Filter, Calypso Blue, #03901496420, Pleated, 20"	20	EA		$	$
4	4510.002.5000	Cartridge Assembly, for Drinking Fountain, 7701PFSB-LF	48	EA		$	$
5	4510.007.0001	Toilet, Repair Kit, Sloan #A-38A, Water Closet	20	EA		$	$
6	4510.007.0002	Toilet, Repair Kit, Sloan #A-37A, Urinal	5	EA		$	$
7	4510.007.0008	Kit, Repair, Closet Handle, Repair, Sloan #B-50-A	5	EA		$	$
8	4510.007.0010	Toilet, Vacuum Breaker Repair Kit, Sloan #SL-192	16	EA		$	$
9	4510.007.1000	Valve, Flush, Closet, Sloan #3010100	7	EA		$	$
10	4510.007.1100	Valve, Flush, Urinal, Sloan #3012600	3	EA		$	$
11	4510.007.2010	Valve, Hose Bibb, 3/4" MIP	13	EA		$	$
12	4510.103.3390	Flapper Assembly, Repair kit, Fluidmaster	1	EA		$	$
13	4510.103.3405	Faucet, Kitchen, Double Handle, 8" Center, Less Spray, Moen Sanistream #8799	5	EA		$	$
14	4510.103.3450	Faucet, Lavatory, Moen #8800	12	EA		$	$
15	4510.103.5836	Line, Water Supply, 3/8" x 20", for Lavatory	12	EA		$	$
16	4510.103.6800	Spindle, Shower, Symmons #606410	6	EA		$	$
17	4510.103.7817	Ring, Wax, Toilet w/ Polyethylene Flange	1	EA		$	$
18	4510.104.7818	Bolt, Toilet, Break Away, ¼" x 2 ¼", Ring, Wax	1	EA		$	$
19	4710.100.3400	Pipe, PVC, SCH 40, 3/4"	30	FT		$	$
20	4710.100.3800	Pipe, PVC, SCH 40, 1"	6	FT		$	$
21	4730.240.0500	Adapter, PVC, SCH 40, Female Iron-Pipe x Slip, 3/4"	2	EA		$	$

22	4730.240.2400	Adapter, PVC, SCH 40, Male Iron-Pipe x Slip, 3/4"	20	EA		$	$
23	4730.240.2800	Adapter, PVC, SCH 40, Male Iron-Pipe x Slip, 2"	1	EA		$	$
24	4730-240-2995	Elbow, PVC, Sch 40, Slip by Slip, 90 x ½"	6	EA		$	$
25	4730.240.3050	Cap, PVC, Sch 40, Slip, ½"	4	EA		$	$
26	4730.240.3055	CAP, PVC, Schedule 40, Slip, 3/4"	2	EA		$	$
27	4730.240.3060	Cap, PVC, Schedule 40, Slip, 1"	2	EA		$	$
28	4730.240.5702	Coupling, PVC, EXP, S X Spigot, 1/2", Sprears # SH118-05 EPDM	5	EA		$	$
29	4730.240.5704	Coupling, PVC, EXP, S x Spigot, 3/4", Spears #SH118-07 EPDM	29	EA		$	$
30	4730.240.5705	Coupling, PVC, EXP, S x Spigot, 1", Spears #SH11810 EPDM	4	EA		$	$
31	4730.240.5715	Coupling, PVC, EXP, S x Spigot, 1-1/2", 117-15	2	EA		$	$
32	4730.240.5720	Coupling, PVC, EXP, S x Spigot, 2", Spears #SH11820 EPDM	2	EA		$	$
33	4730.240.5995	Coupling, PVC, Pipe, Schedule 40, S X S, 1/2"	4	EA		$	$
34	4730.240.6000	Coupling, PVC, SCH, 40, S x S, 3/4"	22	EA		$	$
35	4730.240.6300	Coupling, PVC, SCH, 40, S x S, 1-1/4"	5	EA		$	$
36	4730.242.2525	Elbow, PVC, SCH 40, Slip by Slip, 45 x 3/4"	5	EA		$	$
37	4730.242.3000	Elbow, PVC, SCH 40, Slip by Slip, 90 x 3/4"	15	EA		$	$
38	4820.110.0315	Valve, Ball, PVC/VIT, NIBCO, SCH 80, 1"	2	EA		$	$
39	4820.110.0412	Valve, Ball, PVC, Chemtrol, SCH 80, 2"	2	EA		$	$
40	4820.110.0422	Valve, Ball, PVC, 1", Spears #1829-010	20	EA		$	$
41	4820.110.0428	Valve, Ball, PVC, 1-1/2", Spears #3629-015	6	EA		$	$
42	4820.110.0429	Valve, Ball, PVC, 2", Series 2000, Spears #3629-020	5	EA		$	$
43		Hunter I-20 ARS Rotor SS Reclaim	300	EA		$	$
44		Hunter I-35 ARS Rotor SS Reclaim	150	EA		$	$

45		Hunter I-35 ARS Rotor High Speed SS Reclaim	150	EA		$	$
46		Hunter I-40 ARS Rotor SS Reclaim	300	EA		$	$
47		Rainbird 8005 Rotor SS Reclaim	80	EA		$	$
48		Rainbird 6005 High Speed Falcon SS Reclaim	80	EA		$	$
49		Rainbird 1800 Pop-Up Heads	60	EA		$	$
50		Rain B34183 100PEB 1" Electric Valve 24VAC F X F NPT	4	EA		$	$
51		Rain B34383 150PEB 1-1/2" Electric Plastic Valve 24VAC FNPT	2	EA		$	$
52		Rain B34583 200PEB 2" Electric Valve 24VAC FNPT	4	EA		$	$
53		Rain 208143 Dia. Assy > 1 PEB Valve Rainbird 208143	6	EA		$	$
54		Rain 208605 Diaphragm Assembly For 150/200 PE, PEB Rain Bird Valves	6	EA		$	$
55		Rain 20953202 Solenoid PEB Rainbird	6	EA		$	$
56		3629-010 1 PVC Ball Valve	2	EA		$	$
57		Watt FBV-4 1-1/2" 2PC Brass Ball Valve Full Port Threaded FIP	2	EA		$	$
58		Watt FBV-4 2" 2PC Brass Ball Valve Full Port Threaded FIP	2	EA		$	$
59		Carson 12204070 T-Cover Purple	10	EA		$	$
60		Carson 12204004 T-Cover Tan	5	EA		$	$
	TOTAL—if all items have been bid upon						**$**

Specify percentage off list price and/or catalogs for like items not named in pricing list.
Add additional lines as needed.

Manufacturer	Catalog No. and Date	Percent off Price List

EXHIBIT C

Horizon Distributors, Inc. – Pricing Sheet

EXHIBIT B
PRICING

Item #	City Stock Number	Description	Est Qty	UOM	Brand/Model Quoted (also note if bidding lead free (LF)	Unit Cost	Ext Cost
47		Rainbird 8005 Rotor SS Reclaim	80	EA		$38.18	$3054.40
48		Rainbird 6005 High Speed Falcon SS Reclaim	80	EA		$29.98	$2,318.40
49		Rainbird 1804 pop up head, 4"	60	EA		$0.99	$59.40
50		Rain B34183 100PEB 1" Electric Valve 24VAC F X F NPT	4	EA	Rainbird	$44.80	$ 179.20
51		Rain B34383 150PEB 1-1/2" Electric Plastic Valve 24VAC FNPT	2	EA	Rainbird	$59.57	$119.14
52		Rain B34583 200PEB 2" Electric Valve 24VAC FNPT	4	EA	Rainbird	$82.57	$330.28
53		Rain 208143 Dia. Assy > 1 PEB Valve Rainbird 208143	6	EA	Rainbird	$21.95	$131.70
54		Rain 208605 Diaphragm Assembly For 150/200 PE, PEB Rain Bird Valves	6	EA	Rainbird	$31.19	$187.14
55		Rain 20953202 Solenoid PEB Rainbird	6	EA	Rainbird	$17.48	$104.88

Delivery: 3-5 days ARO
Tax: 7.8% Chandler
Will accept P card

Specify percentage off list price and/or catalogs for like items not named in pricing list.
Add additional lines as needed.

Manufacturer	Catalog No. and Date	Percent off Price List
Rainbird Irrigation Whole Goods	Current Mfr. Price List	56%
Rainbird Irrigation Parts	"	15%
Hunter Irrigation Whole Goods	"	58%
Hunter Irrigation Parts	"	15%
Irritrol Irrigation Whole Goods	"	50%
Irritrol Irrigation Parts	"	15%
Toro Irrigation Whole Goods	"	50%
Toro Irrigation Parts	"	15%
PVC Pipe	Current vendor list	15%