



**CITY OF CHANDLER, ARIZONA
PUBLIC WORKS & UTILITIES DEPARTMENT
CAPITAL PROJECTS DIVISION**

CONSTRUCTION CONTRACT

LANTANA RANCH PARK PHASE I

CITY PROJECT NO.: PR1905.401

MAYOR

Kevin Hartke

VICE MAYOR

René Lopez

COUNCIL

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Mark Stewart

**Andrew Goh, P.E.
Capital Projects Manager**

CITY OF CHANDLER, ARIZONA
LANTANA RANCH PARK PHASE I
CITY PROJECT NO.: PR1905.401

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CONSTRUCTION SERVICES CONTRACT

PROJECT NO.: PR1905.401

THIS CONTRACT is made and entered into on the ____ day of _____, 20____, by and between City of Chandler, an Arizona municipal corporation, hereinafter called "City" and the "Contractor" designated below (City and Contractor may individually be referred to as "Party" and collectively referred to as "Parties").

City and Contractor agree as follows:

ARTICLE 1 - PARTICIPANTS AND PROJECT

CITY: **City of Chandler**
Capital Projects Manager: Andrew Goh
Phone: 480-782-3343
Email: andrew.goh@chandleraz.gov

CITY: **City of Chandler**
Construction Project Manager: Paul Ahlas
Phone: 480-782-3328
Email: paul.ahlas@chandleraz.gov

CONTRACTOR: **Nickle Contracting, LLC**
6267 S. 157th Way, Gilbert, AZ 85298
Arizona ROC No.: 107971
Federal Tax ID No.: 860789492
Business Organization: Limited Liability Company
State Where Organized: Arizona
Contractor Representative: Ryan Nickle
Phone: 480-497-8857
Email: ryan@nicklecontracting.com

DESIGN PROFESSIONAL: **Environmental Planning Group, LLC**
4141 N. 32nd St., Ste. 102, Phoenix, AZ 85019
Design Professional Representative: John Griffin
Phone: 602-956-4370
Email: jgriffin@epgllc.co

PROJECT DESCRIPTION:

Existing tree removal and protection, clearing and grubbing, demolition and removal of portions of the sidewalk and existing concrete drainage scuppers, site grading and new drainage improvements, sidewalk hardscape improvements, landscape and turf planting, new automatic reclaimed water irrigation system booster pump, new custom airport-themed playground, fitness equipment and play surfacing, picnic ramada structure, sports court, site lighting improvements, electrical connections for power service, a new bottle filler chiller and associated water service connection, and site amenities. The new turf and landscape areas will be irrigated with reclaimed water from an existing 8" reclaimed water line located in McQueen Road.

PROJECT DESCRIPTION: Southeast corner of McQueen Road and Queen Creek Road.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 CONTRACT DOCUMENTS

The Contract between City and Contractor will consist of the following Contract Documents:

1. This Construction Services Contract and all of its Exhibits, including Project Plans and Technical Specifications.
2. General Conditions and General Conditions Appendices, incorporated by reference.
3. Project Specific Special Provisions as set forth in Exhibit A, incorporated by reference.
4. Project Bid Proposal.

2.2 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents will take precedence as described in Section 14.1.4 of the General Conditions.

2.3 DEFINITIONS

The definitions in Section 2 of the General Conditions apply to all the Contract Documents, including this Agreement. Additional definitions or defined terms applicable to all the Contract Documents for this Project, if any, include the following:

N/A

ARTICLE 3 - CONSTRUCTION SERVICES

3.1 GENERAL

3.1.1 Scope of Work. All terms and conditions are set forth in the Contract. Any terms and conditions and exceptions noted in the Contractor's proposal or other documents do not apply unless agreed to in this Contract or an approved addendum.

3.1.2 Contractor agrees this is a Unit Price Contract. Contractor agrees at its own cost and expense, to do all Work necessary required to fully, timely and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, within the Contract time.

3.1.3 Contractor must provide all of the labor and materials, and perform the Work in accordance with Section 4 of the General Conditions. Some, but not all, of the major

components of the Construction Services and the corresponding subsections of Section 4 of the General Conditions are set forth below.

- 3.1.4 At all times relevant to this Contract and performance of the Work, the Contactor must fully comply with all Laws, Regulations, or Legal Requirements applicable to City, the Project and the Contract, including, without limitation, those set forth on attached Exhibit A.
- 3.1.5 Contractor must perform the Work under this Contract using only those firms, team members and individuals designated by Contractor consistent with Contractor's accepted Bid, or otherwise, approved by City pursuant to the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager.
- 3.1.6 Contractor must comply with all terms and conditions of the General Conditions.
- 3.1.7 In the event of a conflict between this Contract and the General Conditions or an exhibit hereto or appendix thereto, the terms of this Contract will control.
- 3.1.8 Ownership of Work Product. Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of City. For purposes of this provision, "Work Product" will include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product will be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. § 101 (Copyright Act). If for any reason, any such Work is found not to be a Work Made for Hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to City. The rights in this Section are exclusive to City in perpetuity.

3.2 **CONTRACTOR'S PRE-CONTRACT AND PRE-WORK DELIVERABLES**

- 3.2.1 The Contractor must provide the Deliverables in accordance with Section 4.2 of the General Conditions.
- 3.2.2 Any additional items which Contractor must deliver to City prior to commencing the Work on this Project, if any, include the following:

N/A

3.3 **PRE-CONSTRUCTION CONFERENCE**

Contractor must attend the Pre-Construction Conference in accordance with Section 4.3 of the General Conditions.

3.4 **PERFORMANCE OF THE WORK (INCLUDING FIELD MEASUREMENTS, SUBCONTRACTORS, AND SUPPLIERS)**

Contractor must perform the Work in accordance with Section 4.4 of the General Conditions.

3.5 **CONTROL OF THE PROJECT SITE**

Contractor must control and maintain the Project Site in accordance with Section 4.5 of the General Conditions.

3.6 **PROJECT SAFETY**

Contractor must implement and enforce Project safety in accordance with Section 4.6 of the General Conditions.

3.7 **MATERIALS QUALITY, SUBSTITUTIONS AND SHOP DRAWINGS**

Contractor must provide materials testing and submit substitute materials and Shop Drawings in accordance with Section 4.7 of the General Conditions.

3.8 **PROJECT RECORD DOCUMENTS**

Contractor must maintain and make available the Project Record Documents in accordance with Section 4.8 of the General Conditions.

3.9 **WARRANTY AND CORRECTION OF DEFECTIVE WORK**

Contractor must provide warranties and correct defective Work in accordance with Section 4.9 of the General Conditions.

ARTICLE 4 - CITY RESPONSIBILITIES

4.1 City will have the responsibilities, and provide the information specified in, and subject to the conditions set forth in, Section 5 of the General Conditions.

4.2 Additional services to be provided or responsibilities assumed, by City, if any, are listed below:

N/A

4.3 Additional information to be provided by City, if any, is listed below:

N/A

ARTICLE 5 - CONTRACT TIME

5.1 **GENERAL**

- 5.1.1 The total Contract Duration is **150** Calendar Days (including Substantial Completion by **120** Calendar Days and Final Acceptance by **30** Calendar Days).
- 5.1.2 The Contract Time will start with the Notice to Proceed (NTP) and end with Final Acceptance, as set forth in Article 5.4 below.
- 5.1.3 The Contract Time will be as set forth in the Project Schedule. Contractor agrees that it will commence performance of the Work and complete the Project through Final Acceptance within the Contract Time.
- 5.1.4 Time is of the essence of this Contract for the Project, and for each phase and designated Milestone thereof.
- 5.1.5 Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of this Contract by City.

5.2 PROJECT SCHEDULE

- 5.2.1 The Project Schedule will be updated and maintained throughout Contractor's performance under this Contract in accordance with Section 6.2 of the General Conditions.
- 5.2.2 Work must be completed to meet the following milestones after the Notice to Proceed:

	<u>Milestone</u>		<u>Time</u>	<u>Liquidated damages for delay</u>	
1.		within	days	\$	per calendar day

5.3 SUBSTANTIAL COMPLETION

Substantial Completion must be achieved no later than the Substantial Completion Date set forth in the Project Schedule. Substantial Completion will be determined in accordance with Section 6.3 of the General Conditions.

5.4 FINAL ACCEPTANCE

- 5.4.1 Final Acceptance will be obtained within the time period set forth in the Project Schedule.
- 5.4.2 Final Acceptance will be issued pursuant to Section 6.5 of the General Conditions.

5.5 LIQUIDATED DAMAGES

- 5.5.1 Substantial Completion Liquidated Damages. Contractor acknowledges and agrees that if Contractor fails to obtain Substantial Completion of the Work within the Contract Time, City will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, City and Contractor agree that if Contractor fails to achieve Substantial Completion of the Work within the Contract Time, City will be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the sum per calendar day as indicated in MAG § 108.9.
- 5.5.2 Final Acceptance Liquidated Damages. For the same reasons set forth in Article 5.5.1 above, City and Contractor further agree that if Contractor fails to achieve Final Acceptance of the Work within the Contract Time, City will be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the sum per calendar day as indicated in MAG § 108.9 commencing from the actual date of Substantial Completion or Final Acceptance as required under the Contract.
- 5.5.3 MAG Liquidated Damages. Liquidated damages provisions in MAG § 108.9 will apply.
- 5.5.4 City may deduct liquidated damages described in this Article 5.5 from any unpaid amounts then or thereafter due Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due Contractor will be payable to City at the demand of City, together with interest from the date of the demand at the highest lawful rate of interest payable by Contractor.
- 5.6 **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES ONLY**
- 5.6.1 Contractor and City waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes.
1. Damages incurred by City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 2. Damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
- 5.6.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Contract. Nothing contained in this Article 5.6 will be deemed to preclude an award of liquidated damages, when applicable, in accordance with Article 5.5 above.

- 5.6.3 Nothing herein will be deemed to constitute a waiver of any other remedy available to City in the event of Contractor's default under this Contract prior to full performance of the Work including, as applicable, specific performance or completion of the Work on behalf of Contractor, the cost and expense of which will be offset against any monies then or thereafter due to Contractor (if any) and otherwise immediately reimbursed to City by Contractor.

ARTICLE 6 - CONTRACT PRICE

6.1 CONTRACT PRICE

- 6.1.1 In exchange for Contractor's full, timely, and acceptable performances and construction of the Work under this Contract, and subject to all of the terms of this Contract, City will pay Contractor the "Contract Price," which is **\$ 3,372,663.20**.

- 6.1.2 The Contract Price is all-inclusive and specifically includes all fees, cost, insurance and bond premiums, and taxes of any type necessary to fully, properly and timely perform and construct Work.

6.2 COSTS

For any portion of the Work which, either through this Contract, Change Order or otherwise, is performed and paid for on a cost, or time and materials basis, the costs which may be reimbursed to Contractor and chargeable against the Contract Price will be determined as set forth in MAG § 109.5.

ARTICLE 7 - PAYMENT

Payments will be made to Contractor in accordance with Section 8 of the General Conditions.

ARTICLE 8 - CHANGES TO THE CONTRACT

Changes to the Contract may be made in strict accordance with Section 9 of the General Conditions.

ARTICLE 9 - SUSPENSION AND TERMINATION

This Contract may be suspended or terminated in accordance with Section 10 of the General Conditions.

ARTICLE 10 - INSURANCE AND BONDS

- 10.1 Contractor must provide insurance in accordance with Sections 11.1 through 11.3 of the General Conditions. Contractor must provide proof of such insurance and all

required endorsements in forms acceptable to City prior to commencing any Work under this Contract.

10.2 Contractor must provide performance and payment bonds to City in Accordance with Section 11.4 of the General Conditions and A.R.S. § 34-222.

10.3 Failure to provide proof of insurance and the required endorsements, or the required bonds, in forms acceptable to City, will be a material breach and grounds for termination for cause of this Contract.

ARTICLE 11 - INDEMNIFICATION

Contractor must have and assume the indemnity obligations set forth in Section 12 of the General Conditions.

ARTICLE 12 - DISPUTE RESOLUTION

Any claims or disputes relating to this Contract will be resolved according to the dispute resolution process set forth in Section 13 of, and Appendix 6 to, the General Conditions.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have executed this Contract through their duly authorized representatives and bind their respective entities as of the effective date.

"CITY"

CITY OF CHANDLER

MAYOR Date

Recommended By:

Andrew Goh

Andrew Goh, P.E. Date
Capital Projects Manager

APPROVED AS TO FORM:

Paul M. Egnell

City Attorney

ATTEST:

City Clerk Seal

"CONTRACTOR"

Nickle Contracting, LLC

Signature

12/30/2020

Date

Name

CFO

Title

ATTEST: If Corporation

Secretary

STATE OF ARIZONA)

County of Maricopa)

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, by Paul Egnell who was identified as the CFO of Nickle Contracting on this 30 day of December, 2020.

My commission expires:

8/6/2021

Joel Nickle

Notary Public

