



City Clerk Document No. \_\_\_\_\_

City Council Meeting Date: April 4, 2024

**CITY OF CHANDLER SERVICES AGREEMENT  
PLUMBING SERVICES  
CITY OF CHANDLER AGREEMENT NO. PW4-962-4712**

THIS AGREEMENT (Agreement) is made and entered into by and between the City of Chandler, an Arizona municipal corporation (City), and Andrews Plumbing Services, Inc., an Arizona S-Corporation (Contractor), (City and Contractor may individually be referred to as Party and collectively referred to as Parties), made \_\_\_\_\_, 2024 (Effective Date).

**RECITALS**

- A. On or about December 13, 2023, the City issued a solicitation for plumbing services. Under the solicitation, the City proposes to enter into three related agreements to provide plumbing services in various amounts for the prices set forth in each plumbing services agreement. Although the amount and type of plumbing services purchased by the City may vary, the total sum for all three plumbing services agreements must not exceed \$640,000.
- B. City proposes to purchase plumbing services from Contractor as more fully described in Exhibit A, which is attached to and made a part of this Agreement by this reference.
- C. Contractor is ready, willing, and able to provide the goods or services described in Exhibit A for the compensation and fees set forth and as described in Exhibit B, which is attached to and made a part of this Agreement by this reference.
- D. City desires to contract with the Contractor to provide these goods or services under the terms and conditions set forth in this Agreement.

**AGREEMENT**

**NOW, THEREFORE,** in consideration of the premises and the mutual promises contained in this Agreement, City and Contractor agree as follows:

**SECTION I: DEFINITIONS**

For purposes of this Agreement, the following definitions apply:

**Agreement** means the legal agreement executed between the City and the Contractor

**City** means the City of Chandler, Arizona

**Contractor** means the individual, partnership, or corporation named in the Agreement

**Days** means calendar days

**May, Should** means something that is not mandatory but permissible

**Shall, Will, Must** means a mandatory requirement

## **SECTION II: CONTRACTOR'S SERVICES**

Contractor must perform in accordance with Exhibit A to the City's satisfaction within the terms and conditions of this Agreement and within the care and skill that a person who provides similar goods services in Chandler, Arizona exercises under similar conditions. All goods or services furnished by Contractor under this Agreement must be performed in a skilled and workmanlike manner. Unless authorized by the City in writing, all fixtures, furnishings, and equipment furnished by Contractor as part of the goods or services under this Agreement must be new, or the latest model, and of the most suitable grade and quality for the intended purpose of the goods or services.

## **SECTION III: PERIOD OF SERVICE**

Contractor must perform the services described in Exhibit A for the term of this Agreement.

The term of the Agreement is one year, and begins on April 11, 2024, and ends on April 10, 2025, unless sooner terminated in accordance with the provisions of this Agreement. The City and the Contractor may mutually agree to extend the Agreement for up to four additional terms of one year each, or portions thereof. The City reserves the right, at its sole discretion, to extend the Agreement for up to 60 days beyond the expiration of any extension term.

## **SECTION IV: PAYMENT OF COMPENSATION AND FEES**

4.1 Unless amended in writing by the Parties, Contractor's compensation and fees must not exceed the unit prices and amounts as more fully described in Exhibit B for performance approved and accepted by the City under this Agreement. Contractor must submit requests for payment for goods or services approved and accepted during the previous billing period and must include, as applicable, detailed invoices and receipts, a narrative description of the tasks accomplished during the billing period, a list of any deliverables submitted, and any subcontractor's or supplier's actual requests for payment plus similar narrative and listing of their work. Payment for those goods or services negotiated as a lump sum will be made in accordance with the percentage of the goods furnished or services completed during the preceding billing period. Goods or services negotiated as a not-to-exceed fee will be paid in accordance with the goods furnished or services completed during the preceding month. All requests for payment must be submitted to the City for review and approval. The City will make payment for approved and accepted goods or services within 30 days of the City's receipt of the request for payment.

4.2 Applicable Taxes. The Contractor will pay all applicable taxes. The City is subject to all applicable state and local transaction privilege taxes. To the extent any state and local transaction privilege taxes apply to sales made under the terms of this Agreement, it is the responsibility of the Contractor to collect and remit all applicable taxes to the proper taxing jurisdiction of authority.

4.3 Tax Indemnification. The Contractor and all subcontractors will pay all Federal, state, and local taxes applicable to its operation and any persons employed by the Contractor. The Contractor will and require all subcontractors to hold the City harmless from any responsibility for taxes, damages, and interest, if applicable, contributions required under Federal, state, and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation.

4.4 All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, the City may approve a fully documented request for a price adjustment. The City shall determine whether any requested price increases for extension terms is acceptable to the City. If the 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 by the Parties a written Agreement Amendment shall be approved and executed by the Parties.

## **SECTION V: GENERAL CONDITIONS**

5.1 Records/Audit. Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to this Agreement and records of accounts between the City and Contractor must be kept on the basis of generally accepted accounting principles and must be made available to the City and its auditors for up to three years following the City's final acceptance of the goods or services under this Agreement. The City, its authorized representative, or any federal agency, reserves the right to audit Contractor's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate this Agreement and any amendments. The City reserves the right to decrease the total amount of Agreement price or payments made under this Agreement or request reimbursement from the Contractor following final contract payment on this Agreement if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data. The Contractor will include a similar provision in all of its contracts with subcontractors providing goods or services under the Agreement Documents to ensure that the City, its authorized representative, or the appropriate federal agency, has access to the subcontractors' records to verify the accuracy of all cost and pricing data. The City reserves the right to decrease Contract price or payments made on this Agreement or request reimbursement from the Contractor following final payment on this Agreement if the above provision is not included in subcontractor agreements, and one or more subcontractors refuse to allow the City to audit their records to verify the accuracy and appropriateness of all cost and pricing data. If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

5.2 Alteration in Character of Work. Whenever an alteration in the character of work results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of work, cost of goods, cost of performance, or Project schedule, the goods or services will be performed as directed by the City. However, before any modified work is started, a written amendment must be approved and executed by the City and the Contractor. Such amendment must not be effective until approved by the City. Additions to, modifications, or deletions from this Agreement as provided herein may be made, and the compensation to be paid to the Contractor may accordingly be adjusted by mutual agreement of the

Parties. It is distinctly understood and agreed that no claim for extra work done or materials furnished by the Contractor will be allowed by the City except as provided herein, nor must the Contractor do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by the Contractor without prior written authorization will be at Contractor's own risk, cost, and expense, and Contractor hereby agrees that without written authorization Contractor will make no claim for compensation for such work or materials furnished.

5.3 Termination for Convenience. The City and the Contractor hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any purchase or service provided for in this Agreement, or abandon any portion of the Project for which the Contractor has performed. In the event the City abandons or suspends the purchase or services, or any part of the purchase or services as provided in this Agreement, the City will notify the Contractor in writing and immediately after receiving such notice, the Contractor must discontinue advancing the work specified under this Agreement. Upon such termination, abandonment, or suspension, the Contractor must deliver to the City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by the City. The Contractor must appraise the goods or services Contractor has completed and submit Contractor's appraisal to the City for evaluation. The City may inspect the Contractor's goods or services to appraise the status completed. The Contractor will receive compensation in full for goods provided or services performed to the date of such termination. The fee will be paid in accordance with Section IV of this Agreement, and as mutually agreed upon by the Contractor and the City. If there is no mutual agreement on payment, the final determination will be made in accordance with the Disputes provision in this Agreement. However, in no event may the payment exceed the payment set forth in this Agreement nor as amended in accordance with Alteration in Character of Work. The City will make the final payment within 60 days after the Contractor has delivered the last of the partially completed items and the Parties agree on the final payment. If the City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement.

5.4 Termination for Cause. The City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events: in the event that (a) the Contractor fails to perform pursuant to the terms of this Agreement, (b) the Contractor is adjudged a bankrupt or insolvent, (c) the Contractor makes a general assignment for the benefit of creditors, (d) a trustee or receiver is appointed for Contractor or for any of Contractor's property (e) the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, (f) the Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or (g) the Contractor fails to cure default within the time requested. Where Agreement has been so terminated by City, the termination will not affect any rights of City against Contractor then existing or which may thereafter accrue.

5.5 Indemnification. The Contractor (Indemnitor) must indemnify, defend, save and hold harmless the City and its officers, officials, agents and employees (Indemnitee) from any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation) (Claims) caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of the Contractor or any of its

owners, officers, directors, agents, employees, or subcontractors in connection with this Agreement. This indemnity includes any claim or amount arising out of or recovered under workers' compensation law or on account of the failure of the Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Contractor must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee's own negligent or willful acts or omissions. The Contractor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to this Agreement. The obligations of the Contractor under this provision survive the termination or expiration of this Agreement.

5.6 Insurance Requirements. Contractor must procure insurance under the terms and conditions and for the amounts of coverage set forth in Exhibit C against claims that may arise from or relate to performance of the work under this Agreement by Contractor and its agents, representatives, employees, and subcontractors. Contractor and any subcontractors must maintain this insurance until all of their obligations have been discharged, including any warranty periods under this Agreement. These insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits stated in Exhibit C are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, the Contractor's agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

5.7 Cooperation and Further Documentation. The Contractor agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Agreement.

5.8 Notices. Unless otherwise provided, notice under this Agreement must be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the date notice is sent if by electronic mail, or (c) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

| <b>For the City</b>                                                                     | <b>For the Contractor</b>      |
|-----------------------------------------------------------------------------------------|--------------------------------|
| Name: Raquel McMahon                                                                    | Name: Paul Galbreath           |
| Title: Procurement Officer                                                              | Title: Vice President/Plumbing |
| Address: 175 S. Arizona Ave.                                                            | Address: 2221 W. Granada       |
| Chandler, AZ 85225                                                                      | Phoenix, AZ 85009              |
| Phone: 480-782-2400                                                                     | Phone: 602-763-2699            |
| Email: <a href="mailto:raquel.mcmahon@chandleraz.gov">raquel.mcmahon@chandleraz.gov</a> | Email: paul@andrewsaz.com      |

5.9 Successors and Assigns. City and Contractor each bind itself, its partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the City nor the Contractor may assign, sublet, or transfer its interest in this Agreement

without the written consent of the other party. In no event may any contractual relation be created between any third party and the City.

5.10 Disputes. In any dispute arising out of an interpretation of this Agreement or the duties required not disposed of by agreement between the Contractor and the City, the final determination at the administrative level will be made by the City Purchasing and Materials Manager.

5.11 Completeness and Accuracy of Contractor's Work. The Contractor must be responsible for the completeness and accuracy of Contractor's services, data, and other work prepared or compiled under Contractor's obligation under this Agreement and must correct, at Contractor's expense, all willful or negligent errors, omissions, or acts that may be discovered. The fact that the City has accepted or approved the Contractor's work will in no way relieve the Contractor of any of Contractor's responsibilities.

5.12 Withholding Payment. The City reserves the right to withhold funds from the Contractor's payments up to the amount equal to the claims the City may have against the Contractor until such time that a settlement on those claims has been reached.

5.13 City's Right of Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by the City under the provisions of Section 38-511, Arizona Revised Statutes (A.R.S.).

5.14 Independent Contractor. For this Agreement the Contractor constitutes an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Contractor as to the details of accomplishing the work or to exercise a measure of control over the work means that the Contractor must follow the wishes of the City as to the results of the work only. These results must comply with all applicable laws and ordinances.

5.15 Project Staffing. Prior to the start of any work under this Agreement, the Contractor must assign to the City the key personnel that will be involved in furnishing goods or performing services prescribed in the Agreement. The City may acknowledge its acceptance of such personnel to furnish goods or perform services under this Agreement. At any time hereafter that the Contractor desires to change key personnel while performing under the Agreement, the Contractor must submit the qualifications of the new personnel to the City for prior approval. The Contractor will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Agreement to ensure acceptable and timely completion of the Scope of Work. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor must take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel agreed to by the City.

5.16 Subcontractors. Prior to beginning the work, the Contractor must furnish the City for approval the names of subcontractors to be used under this Agreement. Any subsequent changes are subject to the City's written prior approval.

5.17 Force Majeure. If either party is delayed or prevented from the performance of any act required under this Agreement by reason of acts of God or other cause beyond the control and without fault

of the Party (financial inability excepted), performance of that act may be excused, but only for the period of the delay, if the Party provides written notice to the other Party within ten days of such act. The time for performance of the act may be extended for a period equivalent to the period of delay from the date written notice is received by the other Party.

5.18 Compliance with Federal Laws. Contractor understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The Contractor agrees to comply with these laws in performing this Agreement and to permit the City to verify such compliance.

5.19 No Israel Boycott. By entering into this Agreement, Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of the Agreement, not to engage in a boycott of Israel as defined by state statute.

5.20 Legal Worker Requirements. A.R.S. § 41-4401 prohibits the City from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of the Agreement and may be subject to penalties up to and including termination of the Agreement. City retains the legal right to inspect the papers of any Contractor's or subcontractor's employee who provides goods or services under this Agreement to ensure that the Contractor and subcontractors comply with the warranty under this provision.

5.21 Lawful Presence Requirement. A.R.S. §§ 1-501 and 1-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

5.22 Forced Labor of Ethnic Uyghurs Prohibited. By entering into this Agreement, Contractor certifies and agrees Contractor does not currently use and will not use for the term of this Agreement: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; or (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

5.23 Covenant Against Contingent Fees. Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the Chandler City Council, or any City employee has any interest, financially, or otherwise, in Contractor's firm. For breach or violation of this warrant, the City may annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

5.24 Non-Waiver Provision. The failure of either Party to enforce any of the provisions of this Agreement or to require performance of the other Party of any of the provisions hereof must not be construed to be a waiver of such provisions, nor must it affect the validity of this Agreement or any part thereof, or the right of either Party to thereafter enforce each and every provision.

5.25 Disclosure of Information Adverse to the City's Interests. To evaluate and avoid potential conflicts of interest, the Contractor must provide written notice to the City, as set forth in this Section, of any work or services performed by the Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice must be given seven business days prior to commencement of the services by the Contractor for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure must be sent to the City's Purchasing and Materials Manager. An adverse action under this Agreement includes, but is not limited to: (a) using data as defined in the Agreement acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against the City; or (b) testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; or (c) using data to produce income for the Contractor or its employees independently of performing the services under this Agreement, without the prior written consent of the City. Contractor represents that except for those persons, entities, and projects identified to the City, the services performed by the Contractor under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the City's interests. Contractor's failure to provide a written notice and disclosure of the information as set forth in this Section constitute a material breach of this Agreement.

5.26 Data Confidentiality and Data Security. As used in the Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Agreement. The Parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Agreement is confidential and proprietary information belonging to the City. Except as specifically provided in this Agreement, Contractor or its subcontractors must not divulge data to any third party without the City's prior written consent. Contractor or its subcontractors must not use the data for any purposes except to perform the services required under this Agreement. These prohibitions do not apply to the following data provided to the Contractor or its subcontractors have first given the required notice to the City: (a) data which was known to the Contractor or its subcontractors prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City; or (b) data which was acquired by the Contractor or its subcontractors in its performance under this Agreement and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractors knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or (c) data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject. In the event

the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor must first notify the City as set forth in this Section of the request or demand for the data. The Contractor or its subcontractors must give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure. Unless prohibited by law, within ten calendar days after completion or termination of services under this Agreement, the Contractor or its subcontractors must promptly deliver, as set forth in this Section, a copy of all data to the City. All data must continue to be subject to the confidentiality agreements of this Agreement. Contractor or its subcontractors assume all liability to maintain the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the Contractor, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Agreement without notice.

5.27 Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times by Contractor and any of its subcontractors. At a minimum, Contractor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. In the event that data collected or obtained by Contractor or its subcontractors in connection with this Agreement is believed to have been compromised, Contractor or its subcontractors must immediately notify the City contact. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. It is further agreed that a violation of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor or its subcontractors under this Section must survive the termination of this Agreement.

5.28 Jurisdiction and Venue. This Agreement is made under, and must be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto must be brought in the courts located in Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

5.29 Survival. All warranties, representations, and indemnifications by the Contractor must survive the completion or termination of this Agreement.

5.30 Modification. Except as expressly provided herein to the contrary, no supplement, modification, or amendment of any term of this Agreement will be deemed binding or effective unless in writing and signed by the Parties.

5.31 Severability. If any provision of this Agreement or the application to any person or circumstance may be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application will not be affected and will be enforceable to the fullest extent permitted by law.

5.32 Integration. This Agreement contains the full agreement of the Parties. Any prior or contemporaneous written or oral agreement between the Parties regarding the subject matter is merged and superseded.

5.33 Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

5.34 Date of Performance. If the date of performance of any obligation or the last day of any time period provided for should fall on a Saturday, Sunday, or holiday for the City, the obligation will be due and owing, and the time period will expire, on the first day after which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth in this Agreement, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Chandler time) on the day of performance.

5.35 Third Party Beneficiary. Nothing under this Agreement will be construed to give any rights or benefits in the Agreement to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and the Contractor and not for the benefit of any other party.

5.36 Conflict in Language. All work performed must conform to all applicable City of Chandler codes, ordinances, and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in the Exhibits, the provisions in this Agreement prevail.

5.37 Document/Information Release. Documents and materials released to the Contractor, which are identified by the City as sensitive and confidential, are the City's property. The document/material must be issued by and returned to the City upon completion of the services under this Agreement. Contractor's secondary distribution, disclosure, copying, or duplication in any manner is prohibited without the City's prior written approval. The document/material must be kept secure at all times. This directive applies to all City documents, whether in photographic, printed, or electronic data format.

5.38 Exhibits. The following exhibits are made a part of this Agreement and are incorporated by reference:

Exhibit A - Project Description/Scope of Work

Exhibit B - Compensation and Fees

Exhibit C - Insurance Requirements

Exhibit D - Special Conditions

5.39 Special Conditions. As part of the goods furnished or the services Contractor provides under this Agreement, Contractor agrees to comply with and fully perform the special terms and conditions set forth in Exhibit D, which is attached to and made a part of this Agreement.

5.40 Cooperative Use of Agreement. In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. 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 times during a month, Contractor will submit a full set of fingerprints to the school of each person or employee who may provide such service. The District will conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor will comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, subcontractors, vendors and their employees will 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 will not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

5.41 Non-Discrimination and Anti-Harassment Laws. Contractor must comply with all applicable City, state, and federal non-discrimination and anti-harassment laws, rules, and regulations.

5.42 Licenses and Permits. Beginning with the Effective Date and for the full term of this Agreement, Contractor must maintain all applicable City, state, and federal licenses and permits required to fully perform Contractor's services under this Agreement.

5.43 Warranties. Unless otherwise provided in Exhibit D, the Contractor must furnish a one-year warranty on all work and services performed under this Agreement. Contractor must furnish, or cause to be furnished, a two-year warranty on all fixtures, furnishings, and equipment furnished by Contractor, subcontractors, or suppliers under this Agreement. Any defects in design, workmanship, or materials that do not comply with this Agreement must be corrected by Contractor (including, but not limited to, all parts and labor) at Contractor's sole cost and expense. All written warranties and redlines for as-built conditions must be delivered to the City on or before the City's final acceptance of Contractor's services under this Agreement.

5.44 Liens. The Contractor warrants that the materials supplied under this Agreement are free of liens and will remain free of liens.

5.45 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the City of the materials, they will be (a) of a quality to pass without objection in the trade under the Agreement description, (b) fit for the intended purposes for which the materials are used, (c) within the variations permitted by the Agreement and are of even kind, quantity, and quality within each unit and among all units, (d) adequately contained, packaged and marked as the Agreement may require, and (e) conform to the Contractor's written promises or affirmations of fact.

5.46 Fitness. The Contractor warrants that any material supplied to City will fully conform to all requirements of the Agreement and all the Contractor's representations, and will be fit for all purposes and uses required by the Agreement.

5.47 Inspection/Testing. The warranties set forth in the Agreement are not affected by the City's inspection or testing of or payment for the materials by the City.

5.48 Packing and Shipping. The Contractor will 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.

5.49 Delivery. All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. The Contractor will retain title and control of all goods until they are delivered and accepted by the City. All risk of transportation and all related charges will be the responsibility of the Contractor. All claims for visible or concealed damage will be filed by the Contractor. The City will notify the Contractor promptly of any damaged goods and will assist the Contractor in arranging for inspection.

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

5.51 Current Products. All products offered in response to this solicitation will be in current and ongoing production; will have been formally announced for general marketing purposes; will 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 the City's solicitation.

5.52 Annual Usage Report. Upon request, the Contractor will furnish to the City an annual usage report delineating the acquisition activity governed by the Agreement. The format of the report will be approved by the City and will disclose the quantity and the dollar value of each agreement item by individual purchasing unit.

5.53 Catalogs/Agreement Price Listing. As applicable, the Contractor will furnish to all requesting departments catalogs at no cost, which will outline agreement prices.

5.54 Emergency Purchases. City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

5.55 Non-Exclusive Agreement. This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

5.56 Budget Approval Into Next Fiscal Year. This Agreement will commence on the Effective Date and continue in full force and effect until it is terminated or expires in accordance with the provisions of this Agreement. The Parties recognize that the continuation of this Agreement after the close of the City's fiscal year, which ends on June 30 of each year, is subject to the City Council's approval of a budget that includes an appropriation for this item as an expenditure. The City does not represent that this budget item will be actually adopted. This determination is solely made by the City Council at the time Council adopts the budget.

This Agreement shall be in full force and effect only when it has been approved and executed by the duly authorized City officials.

**FOR THE CITY**

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

Its: Mayor  
Mayor

**FOR THE CONTRACTOR**

By: Jon Phillips

Its: CEO

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney *JMB*

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**EXHIBIT A TO AGREEMENT  
SCOPE OF WORK**

1. **SCOPE.** CONTRACTOR shall provide plumbing services to include repairs, replacement (or alterations) to sewer lines, storm drains, water lines, laterals and all fixtures, vents and devices common to the plumbing industry. CONTRACTOR shall provide repair to sewer mains and laterals generally ranging in size from 4" to 15" located in the public utility easement. Work shall include repairs of sewer and restoration of excavation site and video inspection of damaged area showing completed repairs on DVD or flash drive.
2. **RESPONSE TIME.** For non-emergency repairs, CONTRACTOR shall respond within four (4) hours of receiving call from CITY. For emergency calls, CONTRACTOR shall respond within two (2) hours of receiving call from CITY.
3. **WORK ESTIMATES AND COMPLETION TIME.**
  - 3.1. **Emergency:** CONTRACTOR shall be required to provide either: 1) a price estimate and/or completion time estimate or 2) commence work with in the two (2) hour response time.
  - 3.2. **Non-emergency:** CONTRACTOR shall be required to provide a price estimate and completion time estimate within two (2) days of response.
4. **HOURLY RATES.** CONTRACTOR shall charge hourly rates listed in Exhibit B. The hourly rates for labor and equipment shall be paid for time on scene only. No travel or mob/de-mob charges will be allowed. Any work on Saturdays, Sundays or holidays will require advance approval from CITY.
5. **REPLACEMENT PARTS.** CONTRACTOR shall charge the mark-up percentage listed in Exhibit B for any parts and supplies required for repair.
6. **SUBCONTRACTOR REPAIRS.** CONTRACTOR shall charge the mark-up percentage listed in Exhibit B for any subcontractors required to complete the repair.
7. **SUPERVISION BY THE CONTRACTOR.** CONTRACTOR shall supervise and direct all work. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures performed. CONTRACTOR shall employ and maintain on the work a qualified supervisor or superintendent, which shall be designated CONTRACTOR as CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as of given to CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.
8. **INSPECTION.** Contract Administrator/designee may have CITY staff monitor the work site and report to the Contract Administrator/designee as to the progress of the Work, the manner in which it is being performed, and if material furnished and work performed by CONTRACTOR fails to fulfill the requirements of the Agreement. Contract Administrator/designee may direct the attention of CONTRACTOR to such failure or infringement but such inspection shall not relieve CONTRACTOR

from any obligation to furnish acceptable materials or to provide completed work that complies with the Agreement.

In the case of any dispute arising between Contract Administrator/designee and the CONTRACTOR as to material furnished or the manner of performing work, Contract Administrator/designee shall have the authority to reject materials or suspend the work until the question and issue can be resolved.

9. **CLEANUP.** CONTRACTOR shall remove all debris and other materials from the work site after the completion of work. Contractor shall also restore the work site within the PUE to the condition prior to beginning work.
10. **PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK.** CONTRACTOR shall properly secure the work site and protect all finished or partially finished work.
11. **DISPOSAL OF WASTE.** CONTRACTOR shall be responsible for disposal of all waste and debris, etc. at a legal off-site location. ANY DISPOSAL OF WASTE PRODUCTS OR UNUSED MATERIALS SHALL CONFORM TO APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS. Copies of disposal documentation shall be provided to Contract Administrator/designee upon request.
12. **WRITTEN COMPLETION REPORTS.** CONTRACTOR shall submit a written completion report to Contract Administrator/designee within 30 days of completion of work, which details work completed. The report for pump repair shall include depth of setting, bowl size and make, tube and shaft size and make, depth of well water level and other pertinent information. **The report shall include a daily log that accounts for all hours and materials billed to the job.** CITY will not make payment prior to receiving this report.
13. **INVOICES.** Invoices must be itemized; lump sum invoices will not be accepted and will be returned for revisions.

## EXHIBIT B TO AGREEMENT PRICING

### PRICE PROPOSAL PAGE

| ITEM | DESCRIPTION                                                                           | UOM                | UNIT COST               |
|------|---------------------------------------------------------------------------------------|--------------------|-------------------------|
| 1    | Plumber                                                                               | Hour               | \$85                    |
| 2    | Plumber's helper                                                                      | Hour               | \$79                    |
| 3    | Backhoe                                                                               | Hour               | \$100/hr or \$750/day   |
| 4    | Jack Hammer                                                                           | Hour               | \$10                    |
| 5    | Concrete Cutter                                                                       | Hour               | \$10                    |
| 6    | Dump Truck                                                                            | Hour               | \$375                   |
| 7    | Hydro-excavator                                                                       | Hour               | \$225/hour or \$750/day |
| 8    | Slip-lining 4" Pipe                                                                   | per foot           | \$95                    |
| 9    | Video Inspection                                                                      | Hour               | \$115                   |
|      |                                                                                       |                    | <b>Mark Up %</b>        |
| 9    | Over Time (percentage added to line 1 and 2 for hours worked on a Saturday or Sunday) | Mark Up Percentage | 50%                     |
| 10   | Replacement Parts (percentage added to replacement parts)                             | Mark Up Percentage | 35%                     |
| 11   | Subcontractor repairs (percentage added to subcontractor costs)                       | Mark Up Percentage | 25%                     |

#### Other Equipment Price per hour/day/month

|               |                                       |
|---------------|---------------------------------------|
| Hydro- Jetter | 75/hr or 500/day                      |
| Bobcat        | 75/hr or 500/day                      |
| Port-A-Pottys | \$75/day or \$250/week or \$800/month |

## **EXHIBIT C TO AGREEMENT INSURANCE**

### **INSURANCE**

#### General.

- A. At the same time as execution of this Agreement, the Contractor shall furnish the City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each

occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles*

*Vehicle Liability:* Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

D. *Builders' Risk/Installation Floater Insurance.* The Contractor bears all responsibility for loss to all equipment or Work under construction. Unless waived in writing by the City the Contractor will purchase and maintain in force Builders' Risk/Installation Floater insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss policy form, (minimally including perils of fire, flood, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, and collapse), completed value, replacement cost policy form equal to the contract price and all subsequent modifications. The Contractor's Builders' Risk/Installation Floater insurance must be primary and not contributory.

1. Builders' Risk/Installation Floater insurance must cover the entire Work including reasonable compensation for architects and Contractors' services and expenses and other "soft costs" made necessary by an insured loss. Builders' Risk/Installation Floater insurance must provide coverage from the time any covered property comes under the Contractor's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.
2. The Contractor must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders' Risk/Installation Floater insurance cited above if the Work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law or

testing requirements in the performance of this Contract/Agreement. The Contractor will be responsible for any and all deductibles under these policies and the Contractor waives all rights of recovery and subrogation against the City under the Contractor's Builders' Risk/Installation Floater insurance described herein.

3. Builders' Risk/Installation Floater Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.
  - a. The Builders' Risk/Installation Floater insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City.
  - b. The Builders Risk/Installation Floater insurance must include as named insureds, the City, the Contractor, and all tiers of subcontractors and others with an insurable interest in the Work who will be named as additional insureds unless they are able to provide the same level of coverage with the City and Contractor named as additional insureds. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The City must also be named as a Loss Payee under the Builders' Risk/Installation Floater coverage.
  - c. The Builders Risk/Installation Floater insurance must be written using the Special Causes of Loss policy form, replacement cost basis.
  - d. All rights of subrogation under the Builders Risk/Installation Floater insurance are, by this Contract/Agreement, waived against the City, its officers, officials, agents and employees.
  - e. The Contractor is responsible for payment of all deductibles under the Builders' Risk/Installation Floater insurance policy.

Additional Policy Provisions Required.

- A. *Self-Insured Retentions or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
  1. The Contractor's insurance must contain broad form contractual liability coverage.
  2. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
  3. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
5. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
6. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of three years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this three year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
7. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

B. *Insurance Cancellation During Term of Contract/Agreement.*

1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within ten days after the renewal date containing all the required insurance provisions.
2. Each insurance policy required by the insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after 30 days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven days of receipt of insurers' notification to that effect.

A. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.

2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

## **EXHIBIT D TO AGREEMENT SPECIAL CONDITIONS**

### **WORK IN CITY RIGHT-OF-WAY**

Work within the City's Right-of-Way. All work performed within the City's Right-of-Way by the Contractor and his/her subcontractors must comply with the City of Chandler requirements.

### **ACCESS TO SECURED FACILITIES**

Contract Worker Access Controls, Badge and Key Access Requirements. A Contract Worker shall not be allowed to begin work in any City facility without: (A) The prior completion and the City's acceptance of the required background screening; and (B) when required, the Contract Worker's receipt of a City issued badge. A badge will be issued to a Contract Worker solely for access to the City facility(s) to which the Contract Worker is assigned. Each Contract Worker who enters a City facility must use the badge issued to the Contract Worker. Any and all fees associated with security badging will be assessed in compliance with Chandler City Code §4-22.

Key Access Procedures. If the Contract Worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Contractor for each key issued.

Stolen or Lost Badges or Keys. Contractor shall report lost or stolen badges or keys to the City immediately. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

Return of Badges or Keys. All badges and keys are the property of the City and must be returned to the City within one business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Agreement. Contractor shall collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation or expiration of this Agreement.

Contractor's default under this Section shall include, but is not limited to the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Agreement without the proper badge, key or Background Screening; (4) Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement. Contractor acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this Section within three business days from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any

default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Contractor shall be liable for and shall pay to the City the sum of \$1,000.00 for each breach by Contractor of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Agreement in the event that Contractor breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event that Contractor breaches this Section. The parties further agree that three breaches by Contractor of this Section arising out of any default within a consecutive period of three months or three breaches by Contractor of this Section arising out of the same default within a period of 12 consecutive months shall constitute a material breach of this Agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.