

**CITY OF PHOENIX, ARIZONA  
OFFICE OF THE CITY ENGINEER  
DESIGN AND CONSTRUCTION PROCUREMENT**



**PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS**

**WATER SERVICES DEPARTMENT  
VOLUME 1 OF 7**

**LARGE DIAMETER SANITARY SEWER REHABILITATION  
GRADE 5 & 4 MANHOLES - SOUTH**

**PROJECT NO. WS90500273**

**PROCUREPHX PRODUCT CATEGORY CODE 912000000  
RFx 6000001757**

**AGREEMENT \_\_\_\_\_**

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# CALL FOR BIDS

**CITY OF PHOENIX  
LARGE DIAMETER SANITARY SEWER REHABILITATION  
GRADE 5 & 4 MANHOLES – SOUTH  
DESIGN-BID-BUILD**

**PROJECT NO. WS90500273**

**PROCUREPHX PRODUCT CATEGORY CODE 912000000  
RFx 6000001757**

**BIDS WILL BE DUE: TUESDAY, MARCH 25, 2025 AT 2:00 P.M.  
SUBMITTED INTO THE DESIGN AND CONSTRUCTION PROCUREMENT BID BOX  
LOCATED ON THE 1ST FLOOR LOBBY OF THE PHOENIX CITY HALL BUILDING,  
200 W. WASHINGTON STREET, PHOENIX, ARIZONA, 85003**

**BIDS WILL BE READ: TUESDAY, MARCH 25, 2025 AT 2:00 P.M.  
ON 5<sup>TH</sup> FLOOR, ROOM 5 WEST  
PHOENIX CITY HALL  
200 W. WASHINGTON STREET  
PHOENIX, AZ 85003-1611  
\*All times are local Phoenix time**

## **SCOPE OF WORK**

The City of Phoenix is seeking a qualified contractor to provide construction services for the project listed below.

This project includes rehabilitation of 111 active sanitary sewer manholes or structures located at three different sites and identified by the Large Diameter Sanitary Sewer Condition Assessment Report, with a NASSCO Structural Condition Grade 4 or higher. Rehabilitation may include installation of corrosion coating systems, structural inserts and liner repairs in all parts of the existing manholes. There will be bypass pumping for select manholes identified and use of small diameter flow through plugs may need to be utilized to complete the work.

A Small Business Enterprise goal of 2.5% has been established for this project.

## **PRE-BID MEETING**

A pre-bid meeting will be held on Thursday, March 6, 2025, at 2:30 p.m., **via Teams ONLY**. At this meeting, staff will discuss the scope of work, general contract issues and respond to questions from the attendees. As City staff will not be available to respond to individual inquiries regarding the project scope outside of this pre-bid meeting, it is strongly recommended that interested firms send a representative to the pre-bid meeting.

### **Pre-Bid Teams Meeting Information:**

Meeting ID: 229 084 146 84

Passcode: DJ2LP7KY

## **REQUEST FOR BID PACKET**

On Thursday, February 27, 2025, the bid packet may be downloaded from the City of Phoenix's eProcurement site at:

<https://eprocurement.phoenix.gov/irj/portal>

(OR)

the City of Phoenix's "Solicitations" web page as. The web address is:

<https://solicitations.phoenix.gov>

Firms receiving a copy of the bid packet through any other means are strongly encouraged to download the bid packet from the City webpage.

Firms must be registered in eProcurement <https://www.phoenix.gov/finance/vendorsreg> as a vendor.

#### **GENERAL INFORMATION**

The City reserves the right to award the contract to the lowest responsible responsive bidder or all bids will be rejected, as soon as practicable after the date of opening bids.

The City of Phoenix will provide reasonable accommodations for alternate formats of the bid packet by calling Julie B. Smith at (602) 534-2418 or calling TTY 711. Requests will only be honored if made within the first week of the advertising period. Please allow a minimum of seven calendar days for production.

Questions pertaining to process or contract issues should be directed to Julie B. Smith at (602) 534-2418 or [julie.b.smith@phoenix.gov](mailto:julie.b.smith@phoenix.gov). (preferred)

Jeffrey Barton  
City Manager

Eric J. Froberg, PE  
City Engineer

Published: Arizona Business Gazette  
Date: February 27, 2025  
Date: March 6, 2025  
District: Citywide

## SECTION 00100 – INSTRUCTIONS TO BIDDERS

### 1. Defined Terms

1.1. Terms used in these Instructions to Bidders which are defined in the General Conditions of the Construction Contract Section 00700 have the meanings assigned to them in the General Conditions. Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

1.1.1. Owner - the City of Phoenix, Water Services Department.

1.1.2. Bidder - one who submits a proposal directly to Owner, as distinct from a sub-bidder who submits a Proposal directly to a Bidder.

1.1.3. Successful Bidder - the lowest, qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

1.1.4. Bid Documents - the proposed Contract Documents as advertised, and all Addenda issued before Bid opening.

### 2. Copies of Bid Documents

2.1. Project information is available online at:

<https://solicitations.phoenix.gov>

2.2. Complete sets of Bid Documents shall be used in preparing Bids; neither Owner nor Design Professional assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.

2.3. Owner and Design Professional, in making copies of Bid Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or privilege for any other use.

### 3. Qualifications of Bidders

3.1. The Bidder awarded the Contract shall comply with ARS Title 34 and all licensing requirements imposed by Owner and any other Political Subdivision with jurisdiction. Failure to provide this information with the Bidders Questionnaire may be just cause for Owner declaring the Bidder's Bid nonresponsive

3.2. Bidders shall have the necessary equipment therefore and shall possess sufficient capital to properly execute the Work within the time allowed.

3.3. All Bidders wishing to remain in contention for award of the contract must submit completed contract documents listed below. The documents must be submitted to Design and Construction Procurement Section, 5<sup>th</sup> Floor, or can be sent by email to [julie.b.smith@phoenix.gov](mailto:julie.b.smith@phoenix.gov).

### 4. Examination of Bid Documents and Site

4.1. It is the responsibility of each Bidder before submitting a Bid:

4.1.1. To examine thoroughly the Bid Documents and other related data identified in the Bid Documents (including "technical data" referred to below);

4.1.2. To visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishings of the Work;

4.1.3. To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishings of the Work;

4.1.4. To study and carefully correlate Bidder's knowledge and observations with the Bid Documents and such other related data; and

4.1.5. To promptly notify Julie B. Smith, Contracts Specialist II, 200 W. Washington Street, 5<sup>th</sup> Floor, Phoenix, Arizona 85003-1611; Phone 602-534-2418; email [julie.b.smith@phoenix.gov](mailto:julie.b.smith@phoenix.gov) of all

conflicts, errors, ambiguities or discrepancies which the Bidder has discovered in or between the Bid Documents and such other related documents. **All questions regarding the plans and specifications must be received in writing at a minimum seven calendar days prior to bid opening. Questions received after that time may not be given any consideration.**

4.2. Reference is made to the Supplementary Conditions for identification of:

4.2.1. Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Design Professional in preparation of the Bid Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purpose of bidding or construction.

4.2.2. Those drawings of physical conditions in or relating to existing surface and subsurface structures (except underground facilities) which are at or contiguous to the site that have been utilized by Design Professional in preparation of the Bid Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such drawings but not upon other data, interpretations, opinions or information shown or indicated in such drawings or otherwise relating to such structures, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.3. Copies of such reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Bid Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.3. Information and data shown or indicated in the Bid Documents with respect to existing underground facilities at or contiguous to the site is based upon information and data furnished to Owner and Design Professional by owners of such underground facilities or others, and Owner and Design Professional do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

4.4. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and underground facilities, and possible changes in the Bid Documents due to differing or unanticipated conditions appear in Paragraphs 4.02 and 4.03 of the General Conditions.

4.5. Before submitting a Bid each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Bid Documents.

4.6. Reference is made to the General Requirements for the identification of the general nature of Work that is to be performed at the site by Owner or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to be submitted. On request, Owner will provide to each Bidder for examination access to Contract Documents (other than portions thereof related to price) for such Work.

4.7. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with each and every requirement of this Paragraph 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bid Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) shown or indicated or expressly required by the Bid Documents; that Bidder has given Design Professional written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the

Bid Documents and the written resolutions thereof by Design Professional is acceptable to Bidder, and that the Bid Documents are sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

4.8. The provisions of the above Paragraphs 4.1 through 4.8, inclusive, do not apply to Asbestos, Polychlorinated biphenyls (PCBs), Petroleum, Hazardous Waste or Radioactive Material covered by Paragraph 4.08 of the General Conditions.

## **5. Interpretations and Addenda**

5.1. **Acknowledge all addenda; a bid will be deemed non-responsive if all issued addenda for this project are not acknowledged in writing on Page 1 of Section 300 - Bid Form.** The City of Phoenix shall not be responsible for any oral responses or instructions made by any employees or officers of the City of Phoenix in regard to the bidding instructions, plans, drawings, specifications, or contract documents. A verbal reply to an inquiry does not constitute a modification of the Invitation for Bids. Any changes to the plans, drawings and specifications will be in the form of an addendum.

5.2. It shall be the responsibility of the prospective bidder to determine, prior to the submittal of its bid, if any addenda to the project have been issued by The City of Phoenix, Design and Construction Procurement Section. Any changes to the plans and specifications will be in the form of an addendum. All addenda will be posted online within the bid folder at the following website:

<https://solicitations.phoenix.gov>

**Prospective bidders are responsible for ensuring they have all addenda for all projects they are submitting on. Prospective bidders are strongly encouraged to check the Solicitations website in order to ascertain if any addenda have been issued for this project.**

5.3. All technical questions relating to this Work should be directed to the City representative identified in Paragraph 4.1.5.

5.4. For additional information prior to bid submission please contact:

NAME: Julie B. Smith, Contract Specialist II, Design and Construction Procurement  
ADDRESS: 200 W. Washington St., 5<sup>th</sup> Floor, Phoenix Arizona 85003-1611  
PHONE: 602-534-2418 EMAIL: julie.b.smith@phoenix.gov

### SBE Utilization

Equal Opportunity Department: 602-262-6790

## **6. Bid Security**

6.1. No Bid will be read unless accompanied by a proposal guarantee certified check, cashier's check, or surety bond using the form in Section 00310 of the Bid Documents, for an amount not less than ten percent (10%) of the total bid amount included in the proposal as a guarantee that the Bidder will enter into a contract to perform the proposal in accordance with the Bid Documents. Surety bonds submitted for this project shall be provided by a company which has been rated "A- or better for the prior four quarters" by the A.M. Best Company. **A bid will be deemed non-responsive if not accompanied by this guarantee.**

6.2. The surety bond shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1. The surety bond shall not be executed by an individual surety or sureties even if the requirements of Section 7-101 are satisfied. The Owner will return the certified check, cashier's check, or surety bond to Bidders which are not the apparent low Bidder and do not want to remain in contention for the award, and to the Bidder awarded the contract upon execution of the contract.

6.3. Bids without adequate Bid security, including compliance with Paragraph 6.1 above, shall be considered as nonconforming in a material respect with the requirements of the Bid Documents and justifies Owner's refusal to read the Bid.

6.4. The Bid security of the apparent Successful Bidder and the security of any other Bidder remaining in contention for award of contract will be retained by Owner until the end of the period specified in Paragraph 14 below, during which Bids will remain open, or seven (7) days after Owner executes the Agreement, whichever occurs last.

6.5. **When providing a surety bond, failure to provide an “A- or Better for the prior four quarters” bond will result in bid rejection.**

## **7. Construction Time**

7.1. The number of calendar days within which, or the dates by which, the Work is to be Substantially Completed and also Completed and ready for final payment are set forth in the Agreement and may be supplemented as set forth in the agreement.

7.2. If a Bidder believes that any of the Construction Times specified are insufficient or excessive, that Bidder shall advise Owner in accordance with the requirements of Paragraph 5 above.

7.3. Liquidated Damages are specified in the Agreement and may be supplemented as provided in the Agreement.

## **8. Pre-Approved Equal and Or-Equal Items**

8.1. The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications unless Bidder requests consideration of a proposed material and/or equipment as a “pre-approved equal” as defined in General Conditions Paragraph 6.05.B. Design Professional will only consider application for acceptance as a “pre-approved equal” during the bidding phase. Such application must be received by Design Professional at least twelve **(12) calendar days** prior to the established bid date. The Bidder, at his own expense, shall complete the Pre-Approved Equal Application Form labeled as Attachment A at the end of this Section, and provide the additional information requested on the form. The completed form with required attachments shall be submitted to Design and Construction Procurement, Attn: Julie B. Smith, Contracts Specialist II, Phoenix City Hall 5<sup>th</sup> Floor, 200 W. Washington St., Phoenix Arizona 85003 or send via email to [julie.b.smith@phoenix.gov](mailto:julie.b.smith@phoenix.gov). It is the Bidder’s responsibility to provide the necessary data to validate that the physical and operational performance and qualities of the proposed material and/or equipment is equivalent to the material and/or equipment named in the Drawings or Specifications. If, in the opinion of the Design Professional, the proposed material and/or equipment is equivalent, a “pre-approved equal” status will be granted by Design Professional through a written Addendum to the Contract Documents no fewer than seven calendar days prior to the established bid date (A.R.S. 34-104).

If in the opinion of the Design Professional the pre-approved equal application is incomplete and lacks sufficient information to judge the quality and conformance of the proposed pre-approved equal, the Bidder will be notified in writing and the application will be returned without further consideration.

8.2. The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications, without consideration of “or equal” items as defined in General Conditions Paragraph 6.05.A. Whenever it is indicated in the Drawings or specified in the Specifications that an “or equal” item of material or equipment may be furnished or used by Contractor if acceptable to Design Professional, application for such acceptance will be considered by Design Professional only after the Notice to Proceed Date. General Conditions 6.05, describe the procedures for the approval of “or equal” items.

## **9. Subcontractors, Manufacturers, Suppliers, Persons, Firms and Corporations**

9.1. Bidder shall submit to Owner the forms found in Sections 00330, 00331 and 00340 of the Bid Documents, listing all Subcontractors, Manufacturers, Suppliers, persons, firms and corporations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Manufacturer, Supplier, person, firm or corporation if requested by Owner. An Owner or Design Professional who after due investigation has reasonable objection to any proposed Subcontractor, Manufacturer, Supplier, person, firm or



corporation, may before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute, without an increase in Bid price.

9.2. If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next lowest responsive and responsible Bidder that proposes to use acceptable Subcontractors, Manufacturers, Suppliers, persons, firms and corporations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Manufacturer, Supplier, person, firm or corporation listed to whom Owner or Design Professional does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Design Professional subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06.B of the General Conditions.

#### **10. SBE Utilization**

SEE SECTION 350 - SMALL BUSINESS ENTERPRISE GOAL MEMO, CLAUSE AND FORMS

#### **11. Bid Form and Bid Form Attachments**

##### **11.1. The Bid Documents due at time of bid include:**

- Bid Form (Section 00300)
- Acknowledge all addenda (Section 00300, Paragraph 1.3.1)
- Bid Bond (Section 00310), including evidence of Power of Attorney (rated A- or better for the prior four quarters)
- List of Major Subcontractors and Suppliers (Section 00330)
- Statement of Proposed SBE Utilization Form (Section 00350-1) or a fully documented waiver packet
- Letters of Intent to Perform as a Subcontractor/Supplier (Section 351)

##### **The Bid Documents due post-bid include:**

- Completed Bidder's Questionnaire – Section 00320
- Completed List of All Subcontractors and Suppliers Form – Section 00331
- Schedule of Manufacturers and Suppliers – Section 00340
- Completed Bidder's Disclosure Statement – Section 00360
- Affidavit of Identity, If Sole Proprietor – Section 00370

#### **PRIOR TO CONTRACT EXECUTION**

- Verification of Experience Modifications Rate (EMR) – the awarded company will be required to provide an EMR verification letter from the insurance company prior to contract execution – Section 00320

These checklists are included solely to aid the Bidder in submitting a Bid. They shall not be relied on to include all items necessary to ensure a complete Bid. The Bidder is solely responsible for including all items as required by the Bid Documents, including any items required by Addenda, which may not be listed in the checklist.

If the Bid Form or any of the Bid Form Attachments are modified by Addendum, revised forms will be reissued in which case Bids shall be submitted on the latest revision of the form issued.

11.2. All blanks on the Bid Form and Bid Form Attachments must be completed by printing in ink or typewriter.

11.3. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

11.4. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

11.5. Bids by Joint Ventures must be executed in the manner of each individual, partnership and corporation that is a party of the Joint Venture indicated herein.

11.6. All names must be typed or printed in ink below the signature.

11.7. The address and telephone number for communications regarding the Bid must be shown.

11.8. Evidence of authority to conduct business as an out-of-state corporation in Arizona shall be provided in accordance with Paragraph 3 above. State contractor license number must also be shown.

## **12. Submission of Bids**

12.1. Prior to bidding on this Project the Bidder must possess the correct license to perform the Work described in the plans and specifications, as deemed appropriate by the Arizona Registrar of Contractors.

12.2. The properly completed bid documents along with the ten (10) percent bid guarantee shall be submitted in a sealed envelope. The outside of the envelope shall be marked as follows:

Bid of: **[Firm's Name, Address, and Phone Number]**

For: **Large Diameter Sanitary Sewer  
Rehabilitation - Grade 5&4 Manholes -  
South**

City of Phoenix **WS90500273**  
Project Number:

12.3. Sealed bids shall be submitted to the Design and Construction Procurement bid box located on the 1st Floor lobby of the Phoenix City Hall building, 200 W. Washington St., Phoenix Arizona 85003 prior to the time and date specified for the bid opening.

## **13. Withdrawal of Bids**

13.1. No bidder may withdraw or revise a proposal after it has been deposited with the City, except as provided in Phoenix City Code Chapter 2, Section 190.2. Proposals, read or unread, will not be returned to the bidders until after determination of award has been made.

## **14. Protest Procedures**

A bidder wishing to file a protest for the subject project shall comply with Phoenix City Code Chapter 2, Section 188.

## **15. Opening of Bids, Objection to Award**

15.1. Bids will be opened and (unless obviously non-responsive) read aloud publicly. An abstract of the amounts of the Base Bids will be made available to Bidders after the opening of Bids. Any Bid received after the closing time will not be considered. Any uncertainties on whether a Bid was submitted in time will be resolved against that Bidder, in Owner's sole discretion.

15.2. Only Bids submitted with the following forms will be read aloud publicly: Bid Form (Section 00300), Acknowledgment of Addenda (Section 00300, Paragraph 1.3.1), Bid Bond (Section 00310), Statement of Proposed SBE Utilization Form (Section 00350-1) and associated Letters of Intent to Perform as a Subcontractor/Supplier (Section 00351-1) or a fully documented waiver packet, and List of Major Subcontractors and Suppliers (Section 00330).

## **16. Other Bid Items**

### **16.1. List of Major Subcontractors and Suppliers**

**16.1.1. A bid will be deemed non-responsive if not accompanied by a properly completed and signed “List of Major Subcontractors and Suppliers” form.**

16.1.2. To assist in eliminating the practice of bid shopping on City construction projects, the Bidder shall list all Major Subcontractors and Suppliers (including SBE) to whom the Bidder intends to contract with that are equal to or greater than 5% of the base bid. The list of major subcontractors and suppliers shall be provided on the “List of Major Subcontractors and Suppliers” form. **Failure to properly complete and sign this form will result in bid rejection.** This form is due with the bid.

16.1.3. If substantial evidence exists that bid shopping occurred on this Project, the Bidder will be ineligible to bid on City construction projects for a period of one year.

16.1.4. The list of All Subcontractors and Suppliers shall be provided on the “List of All Subcontractors and Suppliers” form. This form is due three calendar days after bid opening by 5:00 p.m. All bidders will be required to submit the List of Major Subcontractors and Suppliers form. The three lowest bidders will be required to submit the List of All Subcontractors and Suppliers form. If the List of All Subcontractors and Suppliers form is not submitted by the post-bid deadline, the Bidder will still be required to submit the document prior to award. If the Bidder fails to submit the required List of All Subcontractors and Suppliers form by the post-bid deadline, the Bidder's bid bond may be placed in jeopardy because the City may make a claim against the Bidder's bid bond for the cost difference between the lowest responsive and responsible Bidder's bid and the next lowest bid (and any additional costs involved in awarding the contract to the next lowest responsive and responsible bidder).

16.1.5. Verification of the Bidders Experience Modifications Rate (EMR) from their respective insurer on the insurance company's letterhead must be submitted.

## **17. Bids to Remain Subject to Acceptance**

17.1. All Bids will remain subject to acceptance for 50 calendar days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

17.2. Extensions of the period during which Bids shall remain open may only be made by agreement between Owner, the apparent Successful Bidder and any other Bidder wishing to remain in contention for the award. Any such agreement shall be based on no increase in the Base Bid of the Bidders involved or any Construction Time stated in days. If the apparent Successful Bidder or any other Bidder wishing to remain in contention for the award fails to agree to any such extension, as conditioned in this paragraph, that Bidder shall be disqualified from further consideration for the award. However, that Bidder's failure to agree to any such extension will not constitute grounds for forfeiting that Bidder's Bid security.

### **17.3. Cancellation of Contract for Conflict of Interest**

17.3.1. All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Phoenix pursuant to the provisions of Section 38-511, Arizona Revised Statute.

## **18. Award of Contract**

18.1. It shall be the Bidder's responsibility, liability and risk to verify and confirm with the Arizona Registrar of Contracts that the Bidder possesses the correct license for this Project. Prior to the submission of a Bid on this Project, the Bidder shall possess the correct license to perform the Work described in the Plans and Specifications. Consistent with Arizona Revised Statute Section 32-1123 (West Supp. 2002), as amended from time to time, and enforced by the Arizona Registrar of Contractors; the license requirement set forth above may not apply if this Project is: (i) funded in whole or in part by the United States Department of Transportation, (ii) a Department of Transportation Project, or (iii) a Project subject to Federal Acquisition Regulations, Title 48 Code of Federal Regulations, including Department of Defense Federal Acquisition Regulations.

Prior to Award of the Contract, the successful Bidder shall provide to the City of Phoenix the successful Bidder's Contractor License Classification and number, City of Phoenix Privilege License Number, and Federal Tax Identification Number.

18.2. Owner reserves the right to reject any and all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criterion established by Owner. Owner also reserves the right to reject any or all Bids, to waive any non-conformance, to readvertise for Bids, to withhold the award for any reason the Owner determines.

18.2.1. The proposal total will be obtained by adding the extension amount or lump sum indicated for the individual pay items. If there is a conflict between words and figures, the words shall apply. If there is a conflict between the unit bid price and the extension for a particular pay item, the unit bid price shall govern. In either case, the Contracting Agency shall correct the discrepancy in accordance with the above procedure and the corrected proposal total will apply.

18.3. In evaluating Bids, Owner will consider the qualification of the Bidders, whether or not the Bids comply with the prescribed requirements, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

18.4. Owner will consider the qualifications and experience of Subcontractors, Manufacturers, Suppliers, persons, firms and corporations proposed for those portions of the Work as to which the identity of Subcontractors, Manufacturers, Suppliers, persons, firms and corporations must be submitted as provided herein. Owner also may consider the operating costs, maintenance requirements, performance data, and guarantees or major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

18.5. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Manufacturers, Suppliers, persons, firms and corporations to perform and furnish the Work in accordance with the Bid Documents to Owner's satisfaction within the prescribed time.

18.6. If the Contract is to be awarded, it will be awarded to a responsive and responsible Bidder based on the low total base bid (Items 1 through 37 on the BID FORM). If unit pricing is required in the proposal, the extensions and additions will be verified to assure correctness. Award will be based on the revised total if any errors are found. Additionally, the Contractor shall meet the minimum SBE subcontracting goal set for this Project or have been granted a full or partial waiver of the goal.

Any bidder that currently contracts with the City must be in good standing for its proposal to be considered responsive. For the purpose of this Invitation to Bid, good standing means compliance with all contractual provisions, including payment of financial obligations.

18.7. If the contract is to be awarded, Owner will give the Successful Bidder a Notice to Proceed within sixty (60) days after the date of the Bid opening.

18.8. The Owner expressly reserves the right to cancel this award without recourse or prejudice to contractor until all parties have executed the agreement in full.

## **19. Contract Security**

19.1. Article 5 of the General Conditions set forth the Owner's requirements as to Performance and Payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required Performance and Payment Bonds issued by surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1. The bonds shall not be executed by an individual surety or sureties even if the requirements of Section 7-101 are satisfied. Failure to comply with these provisions will be cause for rejection of the Bidders Bid.

## **20. Insurance Requirements**

20.1. Article 5 of the General Conditions and set forth the Owner's requirements as to insurance requirements. When the Successful Bidder delivers the executed Agreement to the Owner, it must be accompanied by the Certificate of Insurance on a standard insurance industry ACORD form. The ACORD form shall be issued by an insurance company authorized to transact business in the State of Arizona, or one that is named to the List of Qualified Unauthorized Insurers maintained by the Arizona Department of Insurance.

## **21. Signing Agreement**

21.1. When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds and insurance policy(ies). Within a reasonable time thereafter Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of Drawings with appropriate identification.

21.2. The Agreement is subject to cancellation by the City of Phoenix for prohibited conflicts of interest, if any exist, pursuant to the provisions of ARS Title 38, Section 511.

## **22. Sequence of Work**

22.1. The Work under this Contract must be accomplished while the existing facility is in operation, unless otherwise allowed in the General Requirements. Work must be performed so that operation of the facility will not be jeopardized or reduced in efficiency. Bidders are referred to the General Requirements for requirements concerning sequencing of the Work.

## **23. Compliance with Other Regulations**

### **23.1. ADA and ANSI Access of Premises During Construction**

23.1.1. Contractor shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Contractor shall be responsible for the coordination of all Work to minimize disruption to building occupants and facilities.

### **23.2. Immigration Reform and Control Act**

23.2.1. Compliance with Federal Laws Required. Contractor understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act. Contractor agrees to comply with these Federal Laws in performing under this Agreement and to permit City inspection of personnel records to verify such compliance.

## **24. Confidentiality of Plans and Specifications**

24.1. Any plans generated for this project must include the following statement in the Title Block on every page: "Per City of Phoenix City Code Chapter 2, Article 2-28, these plans are for official use only and may not be shared with others except as required to fulfill the obligations of the Design Professional's contract with the City of Phoenix."

## **25. Leadership in Energy and Environmental Design (LEED)**

25.1. The contractor shall provide an easily accessible area to serve the construction site that is dedicated to the separation, collection and storage of materials for recycling including (at a minimum) paper, glass, plastics, metals and designate an area specifically for construction and demolition waste recycling. The Contractor must provide documentation that the materials have been taken to a Maricopa County approved recycling facility.

## **26. Legal Worker Requirements**

26.1. The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Consultant/Architect/Engineer/Contractor who fails, or whose Subconsultants/subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

26.1.1. 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.

26.1.2. A breach of a warranty under paragraph 1 shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

26.1.3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.

## **27. Contractor and Subcontractor Worker Background Screening**

Contractor agrees that all Contractor's and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense, unless otherwise provided for in the scope of work. Contractor's background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

**Background Screening Risk Level:** The City has established two levels of risk: Standard and Maximum risk. The current risk level and background screening required is **MAXIMUM LEVEL**. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges.

**Terms of This Section Applicable to all Contractor's Contracts and Subcontracts:** Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.

**Materiality of Background Screening Requirements; Indemnity:** The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

**Continuing Duty; Audit:** Contractor's obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's records.

### **BACKGROUND SCREENING – MAXIMUM RISK:**

The current risk level and background screening required is **MAXIMUM RISK**. A maximum risk background screening will be performed every five years when the Contract Worker's work assignment will:

- work directly with vulnerable adults or children, (under age 18); or

- any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
- unescorted access to:
  - City data centers, money rooms, high-value equipment rooms; or
  - unescorted access to private residences; or
  - access to critical infrastructure sites/facilities; or
- direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.

**Requirements:** The background screening for maximum risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire. In addition, Maximum screening levels may require additional checks as included herein, depending on the scope of work, and may be amended if the scope of work changes.

**Contractor Certification; City Approval of Maximum Risk Background Screening:** Unless otherwise provided for in the Scope of Work, Contractor will be responsible for:

- determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- submitting pass/fail results to the City for approval; and,
- reviewing the results of the background check every three to five years, dependent on scope; and,
- to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- Submitting the list of qualified Contract Workers to the contracting department; and,
- If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.
- For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- The City final documented decision will be an "approve" or "deny" for identified Contract Workers.
- The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City's completed review.
- By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City's written acceptance of Contract Worker's maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city's prior written approval.

The background checks will be conducted prior to any employee entering to work and will be based upon information provided to the Police Department including, but not limited to: name, address, date

and place of birth, social security number, INS number if applicable, and a copy of a valid photo identification. The information will be provided to the Water Services Department at least five business days (excluding weekends and holidays) in advance of the need for access. The form will be provided by Water Services Department. A designated Water Services Department representative will conduct the security check.

The City may, at any time, in its sole discretion, refuse to allow an employee access to an area for any of the following reasons, but not limited to:

- Conviction of a felony.
- Conviction of a misdemeanor (not including traffic or parking violation).
- Any outstanding warrants (including traffic and parking violations).
- A person currently on parole or probation.
- A person currently involved in an investigation.

**CONFIDENTIALITY AND DATA SECURITY:** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Agreement is confidential, proprietary information owned by the City, unless otherwise agreed upon within this Agreement. Except as specifically provided in this Agreement, the Contractor shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.

Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements and to notify the City immediately if the scope of work changes or personal identifying information or information subject to Payment Card Industry Standards becomes part of the Agreement.

Contractor agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.

**A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.**

**SECURITY INQUIRIES:** Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

**The City, in its sole discretion, reserves the right, but not the obligation to:**

- require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- act on newly acquired information whether or not such information should have been previously discovered;
- unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and



- object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.

## **28. Business and Operation Licenses, Permits and Certifications Required**

28.1. On or before the submission of a bid for this project, bidder must possess all federal, state, county and City licenses, permits, certifications and any other legal authorizations required by law to transact business and to perform the services set forth in this Agreement (collectively "Business Licenses"). Bidder shall submit a completed Bidder's Disclosure Statement as set forth in Section 00360, and provide the following Business License information with its bid:

- 28.1.1. proper State of Arizona contractors license classification and number;
- 28.1.2. City of Phoenix transaction privilege license number;
- 28.1.3. federal tax identification number; and
- 28.1.4. any special use or other zoning permits required for Bidder's operation and performance of the services under this Agreement.

Unless provided otherwise in this solicitation, **Bidder will be deemed non-responsive and the bid rejected if Bidder fails to possess the proper Business Licenses at the time of bid or fails to submit a substantially completed Bidder's Disclosure Statement** as specified in this paragraph.

## **29. Tax Liabilities; Disclosure of Convictions and Breach(s) of Contract**

On or before the award of the contract for this project, the successful bidder will: (i) file all applicable tax returns and will make payment for all applicable State of Arizona and Maricopa County Transaction Taxes (ARS Sec. 41-1305) and City of Phoenix Privilege License Taxes (Phoenix City Code Sec.14-415); (ii) disclose any civil fines, penalties or any criminal convictions, other than for traffic related offenses, for violation of federal, state, county or city laws, rules or regulations including, but not limited to, environmental, OSHA, or labor compliance laws (collectively "Laws") by Bidder, Bidder's directors, managing members, responsible corporate officers or party who will be responsible for overseeing and administering this project (collectively "Bidder"); and (iii) disclose any material breach(s) of an agreement with the City of Phoenix, any termination for cause or any litigation involving the City of Phoenix occurring within the past three calendar years. Unless provided otherwise in this solicitation, the successful bidder will be deemed non-responsive and the bid rejected for any of the following: (i) Bidder's civil or criminal conviction, other than for traffic related offenses, for a violation of Laws within the past three calendar years; (ii) liability or culpability resulting in payment of fines or penalties in the cumulative total amount of \$100,000 or greater for a violation of "Laws" within the past three calendar years; (iii) material breach of a City of Phoenix agreement, termination for cause or litigation with the City of Phoenix within the past three calendar years; and (iv) Bidder's failure to disclose the information as required by this provision. Further, after award of contract, in addition to any other remedy, Bidder's failure to remit proper taxes to the City of Phoenix may result in the City withholding payment pursuant to Phoenix City Charter Chapter XVIII, Section 14 until all delinquent taxes, interest, and penalties have been paid.

### **State and Local Transaction Privilege Taxes:**

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden is on the person who is conducting business in Arizona and the City of Phoenix. The legal liability to remit the tax is on the person conducting business in Arizona. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes.

It is the responsibility of the Contractor to determine any applicable taxes. The City will review the price or offer submitted and will not deduct, add or alter pricing based on taxes.

If you have questions regarding tax liability, seek advice from a tax professional prior to submitting a bid. Once the bid is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability.

If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City agrees to remit any overpayments back to the City for miscalculations on taxes included in a bid price.

**For purposes of A.R.S. 42-5075(P), this contract is subject to A.R.S. Title 34.**

Tax Indemnification:

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

Tax Responsibility Qualification:

Contractor may be required to establish, to the satisfaction of City, that all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest).

Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes.

Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

**30. Lawful Presence Requirement**

30.1. Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited 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.

**31. City of Phoenix Equal Employment Opportunity Requirement**

1. In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

2. Any Contractor in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and will adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

If the Contractor employs more than thirty-five employees, the following language shall apply as the last paragraph to the clause above:

The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

3. *Documentation.* Contractor may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

4. *Monitoring.* The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

### **32. Fair Treatment of Workers**

32.1. The Contractor shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The contractor shall protect and indemnify the Contracting Agency and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

### **33. Record Drawings**

33.1. The Contractor shall maintain a record set of plans at the job site. These shall be kept legible and current and shall show all changes or work added in a contrasting, reproducible color. When the project is substantially complete, the Contractor shall submit these plans to the Engineer for approval. When landscaping is included, the Contractor shall submit, prior to final inspection, corrected landscape drawings showing the location of all utility services, controller, pipe, valves, and wiring. The Engineer shall be the sole judge as to the acceptability of the record plans and receipt of an acceptable set is a pre-requisite for final payment.

### **34. Compliance with Laws**

34.1 Contractor must comply with all existing and subsequently enacted federal, state and local laws, ordinances and codes, all applicable ADA requirements, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on Contractor, a request for an amendment may be submitted pursuant to this Agreement. Contractor is also required to certify its compliance with all applicable laws and Contractor must pass along these requirements to its Subcontractors. If any of Contractor's certifications is found to be false, the City may terminate this Agreement or impose other remedies due to the false certification.

### **35. HEAT MITIGATION:**

35.1 Per Phoenix City Code G-7241, effective April 25, 2024, any Consultant whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The City may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and

mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

35.1.1 Availability of sanitized cool drink water free of charge at locations that are accessible to all employees and contract workers.

35.1.2 Ability to take regular and necessary breaks as needed and additional breaks for hydration.

35.1.3 Access to shaded areas and/or air conditioning.

35.1.4 Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.

35.1.5 Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.

35.1.6 Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures and how to report heat illness and injury to emergency medical personnel.

35.2 The Consultant further agrees that this clause will be incorporated in all subcontracts with subconsultants, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the Consultant agrees to require all subconsultants, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the Consultant to ensure compliance by its subconsultants.

**Attachment A: Pre-Approved Equal Application Form**

Project Name:

Project Number:

The Bidder, \_\_\_\_\_, requests “pre-approved equal” status be granted to the following material and/or equipment:

This item(s) is proposed as an “equal” to the similar item specified (or named): \_\_\_\_\_ in Section \_\_\_\_\_, Page \_\_\_\_\_, Paragraph/Line \_\_\_\_\_, of the Specifications.

Attach the following documentation to verify compliance with the Contract Documents:

1. Complete product description consisting of detailed dimensioned shop drawings, photographs, performance and test data, model number(s), materials of construction finishes, options, etcetera.
2. A copy of the referenced specification section, and all other applicable specification sections, with each paragraph check marked to indicate material and/or equipment compliance. Check marks (☐) shall denote full compliance with a paragraph as a whole. Deviations from the specifications shall be underlined and shall be listed and identified below.
3. A list of existing installations including the names and phone numbers of references at those installations.

The Bidder will submit dimensioned drawings necessary to prove to Design Professional that the proposed equipment will fit the installation shown on the Drawings without any modification to the building or structure housing the equipment, piping system, and electrical/control system; without modification to or compromising the process the equipment is a part of; and without modification of other associated equipment and components.

If the Bidder knows that modifications are required to the building or structure housing the equipment, the process, or other associated equipment and components, the submittal must list all such modifications required, and the Bidder must submit a signed statement agreeing to pay for the design changes, engineering costs, and drawing changes, which will be made by Design Professional.

The Bidder will identify all deviations from the Contract Documents. If there are differences between proposed substitution and specified item, please list them below.

Specified	Proposed Substitution

What effect does the substitution, or pre-approved equal have on other trades?

---



---



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Does manufacturer’s warranty of proposed substitution, or pre-approved equal, differ from that specified?

Yes ☐ No ☐ If YES, explain:

CITY OF PHOENIX: Water Services Department  
PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation - Grade 5&4 Manholes – South  
PROJECT NUMBER: WS90500273 INSTRUCTIONS

Will substitution, or pre-approved equal, affect progress schedule?

Yes ☐ No ☐ If YES, explain:

Will substitution, or pre-approved equal, require more license fees or royalties than specified product?

Yes ☐ No ☐ If YES, explain:

Will maintenance and service parts be locally available for substitution or pre-approved equal? The Bidder will give the address of the nearest source of factory certified maintenance parts.

Yes ☐ No ☐ If YES, explain:

Submitted By:

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

---

For Design Professional's Use Only:

Pre-approved Equal status is:

- ☐ Granted  
☐ Denied  
☐ Granted with special requirements attached  
☐ Denied because of late submittal  
☐ Not Reviewed because of incomplete submittal

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

Date: \_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

END OF ATTACHMENT "B" TO SECTION 00100

**SECTION 00300 – BID FORM AND BID FORM ATTACHMENTS**

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## SECTION 00300 - BID FORM

PROPOSAL to the City Engineer of the City of Phoenix. In compliance with the Advertisement for Bids, by the City Engineer, the undersigned bidder:

---

(Print or type contractor name)

### 1. Bid Submission

- 1.1 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Bid Documents to perform and furnish all Work as specified or indicated in the Bid Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Bid Documents.
- 1.2 Bidder accepts all of the terms and conditions of the Call for Bids and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 50 calendar days after the day of Bid opening. Bidder will sign and deliver the required number of counterparts of the Agreement with the bonds and other documents required by the Bid Requirements within ten (10) days after the date of Owner's Notice of Award.
- 1.3 In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:

- 1.3.1 Bidder has examined and carefully studied the Bidding Documents and the following Addenda receipt of all which hereby is acknowledged: (List Addenda by Addendum Number)

Addenda #	Date of Addenda	Addenda #	Date of Addenda
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- 1.3.2 Bidder has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work.
- 1.3.3 Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 1.3.4 Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Article 4 of the General Conditions. Bidder accepts the determination set forth in Article 4 of the General Conditions of the extent of the "technical data" contained in such reports and drawings upon which Bidder is entitled to rely. Bidder acknowledges that such reports and drawings are not Bid Documents and may not be complete for Bidder's purposes. Bidder acknowledges that Owner and Design Professional do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bid Documents with respect to Underground Facilities at or contiguous to the site. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction



to be employed by Bidder and safety precautions and programs incident thereto. Bidder does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Bid Documents.

- 1.3.5 Bidder is aware of the general nature of Work to be performed by Owner and others at the site that relates to Work for which this Bid is submitted as indicated in the Bid Documents.
- 1.3.6 Bidder has correlated the information known to Bidder, information and observations obtained from visits to the site, reports and drawings identified in the Bid Documents and all additional examinations, investigations, explorations, tests, studies and data with the Bid Documents.
- 1.3.7 Bidder has given Design Professional written notice of all conflicts, errors, ambiguities or discrepancies that Bidder has discovered in the Bid Documents and the written resolution thereof by Design Professional is acceptable to Bidder, and the Bid Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
- 1.3.8 This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any person, firm or corporation to refrain from bidding; and Bidder has not sought collusion to obtain for itself any advantage over any other Bidder or over Owner.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

#### 1.4 Bid Schedule

1.4.1 Bidder will complete the Work in accordance with the Bid Documents and accept in full payment for the Work items listed below, the following Unit Prices and/or Bid Prices, as applicable:

BUCKEY ROAD & 83RD AVENUE: PACKAGE A (ITEM 1 – 14)					
No.	Description	Unit	Quantity	Unit Price	Extension
1	EPOXY COATING REHABILITATION IN MANHOLE ABOVE CHANNEL	SF	1675		
2	EPOXY COATING REHABILITATION IN MANHOLE CHANNEL	SF	415		
3	FLAT TOP REPLACEMENT WITH PRECAST POLYMER CONCRETE FLAT TOP	EA	5		
4	REMOVAL AND REPLACEMENT OF MANHOLE FRAME, COVER AND CONCRETE COLLAR WITH CAST-IRON FRAME AND COVER	EA	42		
5	STRUCTURAL INSERT BENCH PREPARATION	EA	17		
6	MANHOLE REHABILITATION WITH 54" DIAMETER STRUCTURAL INSERTS ON 60" MANHOLES	VF	133		
7	TRAFFIC CONTROL	EA	37		
8	MOBILIZATION	LS	1		
9	BYPASS PUMPING (SETUP 1): N. 83RD AVE. BETWEEN W. LYNWOOD ST. AND I-10 CANAL	LS	1		
10	BYPASS PUMPING (SETUP 2): N. 67TH AVE. NORTH OF I-10 CANAL SOUTH OF MCDOWELL	LS	1		
11	BYPASS PUMPING (SETUP 3): NORTH SIDE OF I-10 CANAL WEST OF N. 55TH AVE.	LS	1		
12	BYPASS PUMPING (SETUP 4): N. 59TH AVE. BETWEEN W. FILMORE ST. AND W. VAN BUREN ST.	LS	1		
13	BYPASS PUMPING (SETUP 5): N. I-17 BETWEEN W ROOSEVELT ST. AND W. PORTLAND ST.	LS	1		
14	BYPASS PUMPING (SETUP 6): S. 15TH AVE. AND W. MARICOPA ST.	LS	1		
				<b>TOTAL PACKAGE A:</b>	

#### WRITTEN WORDS

BASELINE ROAD & 48TH STREET - PACKAGE B (ITEM 15 – 25)					
15	EPOXY COATING REHABILITATION IN MANHOLE ABOVE CHANNEL	SF	1443		
16	EPOXY COATING REHABILITATION IN MANHOLE CHANNEL	SF	461		
17	REMOVAL AND REPLACEMENT OF MANHOLE FRAME, COVER AND	EA	39		

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	CONCRETE COLLAR WITH CAST-IRON FRAME AND COVER				
18	STRUCTURAL INSERT BENCH PREPARATION	EA	20		
19	MANHOLE REHABILITATION WITH 42" DIAMETER STRUCTURAL INSERTS ON 48" MANHOLES	VF	14		
20	MANHOLE REHABILITATION WITH 54" DIAMETER STRUCTURAL INSERTS ON 60" MANHOLES	VF	390		
21	TRAFFIC CONTROL	EA	32		
22	MOBILIZATION	LS	1		
23	BYPASS PUMPING (SETUP 1): W. SOUTHERN AVE. BETWEEN S. 55TH AVE. AND S. COTTONFIELD DR.	LS	1		
24	BYPASS PUMPING (SETUP 2): S. 48TH ST. AND E. BEVERLY RD.	LS	1		
25	BYPASS PUMPING (SETUP 3): S. 47TH PL. BETWEEN E. UNIVERSITY DR. AND E. HILTON AVE.	LS	1		

**TOTAL PACKAGE B:**

WRITTEN WORDS

**I-10 & CHANDLER BOULEVARD: PACKAGE C (ITEM 16 – 33)**

26	EPOXY COATING REHABILITATION IN MANHOLE ABOVE CHANNEL	SF	1705		
27	EPOXY COATING REHABILITATION IN MANHOLE CHANNEL	SF	530		
28	REMOVAL AND REPLACEMENT OF MANHOLE FRAME, COVER AND CONCRETE COLLAR WITH CAST-IRON FRAME AND COVER	EA	30		
29	STRUCTURAL INSERT BENCH PREPARATION	EA	15		
30	MANHOLE REHABILITATION WITH 54" DIAMETER STRUCTURAL INSERTS ON 60" MANHOLES	VF	217		
31	TRAFFIC CONTROL	EA	24		
32	MOBILIZATION	LS	1		
33	BYPASS PUMPING (SETUP 1): S. LAKEWOOD PKWY FROM S. 34TH WAY TO S 36TH PL	LS	1		

**TOTAL PACKAGE C:**

WORDS

34	UNIFORMED OFF DUTY LAW ENFORCEMENT OFFICER (ALLOWANCE)	AL	1	\$70,000.00	\$70,000.00
35	CONSTRUCTION WATER (ALLOWANCE)	AL	1	\$15,000.00	\$15,000.00
36	FIELD VARIATIONS (ALLOWANCE)	AL	1	\$200,000.00	\$200,000.00
37	OWNER'S CONTINGENCY (ALLOWANCE)	AL	1	\$100,000.00	\$100,000.00

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<b><u>TOTAL ALLOWANCE</u></b>	<b><u>\$385,000.00</u></b>
<b><u>TOTAL OF ALL PACKAGES &amp; ALLOWANCES</u></b>	

**Base Bid** (The sum of the computed totals for Bid Items 1 through 37 only):

\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents  
(Written words)

\$ \_\_\_\_\_  
(Figures)

**THE BIDDER ACKNOWLEDGES AND AGREES THAT DETERMINATION OF THE LOWEST BIDDER SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF PARAGRAPH 17.6 OF THE INSTRUCTIONS TO BIDDERS.**

**THE BASE BID DOLLAR VALUE WILL BE ANNOUNCED AT THE BID OPENING.**

## **2. Time of Completion**

- 2.1 Bidder agrees that the Work will be substantially complete within 990 calendar days after the date when the Construction Times commence to run as provided in Article 2 of the General Conditions and completed and ready for final payment in accordance with Article 14 of the General Conditions within thirty (30) calendar days after the actual date when pursuant to paragraph 14.04 of Section 00700, General Conditions, Substantial Completion of the Work has been achieved.
- 2.2 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.
- 2.3 In addition, Bidder agrees to meet the specified interim Milestones as defined in the General Requirements.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

CITY OF PHOENIX: Water Services Department  
PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation - Grade 5&4 Manholes – South  
PROJECT NUMBER: WS90500273 BID FORM

### **3. Bid Terms**

- 3.1 Terms used in this Bid which are defined in the General Conditions or Instructions to Bidders will have the meanings indicated in the General Conditions or Instructions to Bidders.

Submitted on \_\_\_\_\_, 20\_\_\_\_.

**3.2 If Bidder is an Individual:**

Name of Individual: \_\_\_\_\_

Name & Title of Person  
Authorized to sign: \_\_\_\_\_

Signature: \_\_\_\_\_

Doing business as: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ FAX Number: \_\_\_\_\_

**3.3 If Bidder is a Corporation:**

By: \_\_\_\_\_  
(CORPORATION NAME)

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ FAX Number: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

**3.4 If Bidder is a Joint Venture (Partnership):**

By: _____ (NAME OF PARTNERSHIP)	By: _____ (NAME OF PARTNERSHIP)
Signature: _____	Signature: _____
Name & Title: _____	Name & Title: _____
_____	_____
Business Address: _____	Business Address: _____
_____	_____
Phone Number: _____	Phone Number: _____
FAX Number: _____	FAX Number: _____

**3.5 If Bidder is a Joint Venture (Corporation):**

By: _____ (CORPORATION NAME)	By: _____ (CORPORATION NAME)
Signature: _____	Signature: _____
Name and Title: _____	Name and Title: _____
_____	_____
Attest: _____	Attest: _____
Name and Title: _____	Name and Title: _____
_____	_____
Business Address: _____	Business Address: _____
_____	_____
Phone Number: _____	Phone Number: _____
FAX Number: _____	FAX Number: _____
State of Incorporation: _____	State of Incorporation: _____

**3.6 Phone and Address for receipt of official communications: \_\_\_\_\_**

\_\_\_\_\_

That we, \_\_\_\_\_,  
as Principal, (hereinafter called the Principal) and the \_\_\_\_\_, a corporation duly  
organized under the laws of the State of \_\_\_\_\_, as Surety, (hereinafter called the Surety)  
are held and firmly bound unto the City of Phoenix as Obligee, in the sum of ten (10) percent of the total  
amount of the bid of Principal, submitted by him to the City of Phoenix for the work described below, for the  
payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves,  
our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents  
and in conformance with A.R.S. #34-201.

**WHEREAS**, the said Principal is herewith submitting its proposal for Large Diameter Sanitary Sewer  
Rehabilitation - Grade 5&4 Manholes - South

**NOW, THEREFORE**, if the City of Phoenix shall accept the proposal of the Principal and the Principal shall  
enter into a contract with the City of Phoenix in accordance with the terms of such proposal and give such  
Bonds and Certificates of Insurance as specified in the Standard Specifications with good and sufficient  
Surety for the faithful performance of such contract and for the prompt payment of labor and material  
furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such contract  
and give such Bonds and Certificates of Insurance, if the Principal shall pay to the City of Phoenix the  
difference not to exceed the penalty of the bond between the amount specified in the proposal and such  
larger amount for which the Obligee may in good faith contract with another party to perform the work  
covered by the proposal, then this obligation shall be null and void, otherwise to remain in full force and  
effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2025

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Surety

\_\_\_\_\_  
WITNESS:

\_\_\_\_\_  
**A.M. BEST RATING:**

### SECTION 00320 - BIDDER'S QUESTIONNAIRE

The undersigned Bidder warrants that all statements and answers made to the interrogatories that follow are current, accurate and complete as of the date stated below.

This form is due no later than 5:00pm on the 3<sup>rd</sup> day after the Bid.

#### **1. Organization**

1.1 How many years has your organization been in business under your present name? \_\_\_\_\_

1.2 Date and state of organization/incorporation: \_\_\_\_\_ (IRS) EIN: \_\_\_\_\_

1.3 Title and name of Principals (President, Vice-President, Secretary and Treasurer, if a corporation; partners, if a partnership).

\_\_\_\_\_  
\_\_\_\_\_

1.4 If your organization, any business entity related to or affiliated with your organization, or any present or former executive employee, officer, director, shareholder (owning 20% or more of the outstanding shares), partner, or owner of your organization or of any such related or affiliated entity has ever been convicted of a felony, or has felony charges pending, in any state within the last three years from the date of Bid opening, including but not limited to a felony conviction under ARS Title 34, Section 252, furnish with this Bidder's Questionnaire all materials facts relating to any such felony conviction or any such pending felony charges against (1) your organization, (2) any such business entity related to or affiliated with your organization, or (3) any such present or former executive employee, officer, director, shareholder (owning 20% or more of the outstanding shares), partner, or owner of your organization or of any such related or affiliated entity.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

#### **2. Licensing**

2.1 For each Arizona Contractor's license required to perform the Work identified in the Bid Documents, attach a copy of the "identification card" issued by the Registrar of Contractors. Also attach a copy of any privilege license issued to your organization by the City of Phoenix, the State, and any other Political Subdivision with jurisdiction over the Work. Information concerning the City of Phoenix Privilege License may be obtained from the City of Phoenix Finance Department, Tax and License Division, 251 West Washington Street, 3rd Floor, Phoenix, Arizona, 85003, Attention: License Services, telephone (602) 262-6785, FAX (602) 495-5605.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

2.2 Does your organization hold contractor's licenses covering specialty classification of Work that your organization itself intends to perform and for which a specific specialty license is required under ARS Title 32, by Owner, or any other Political Subdivision with jurisdiction over the Work? \_\_\_\_\_ If so, attach a list with all licenses by number and classification; state the name of the organization holding the license, the renewal date of each license, and whether each license is active. Also, attach a copy of the corresponding identification cards issued by the Registrar of Contractors, the Owner or the particular Political Subdivision with jurisdiction over the Work.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.



### **3. Experience**

3.1 What is the general character of the work performed by your organization? \_\_\_\_\_

3.2 (A) How many years of experience has your organization had as a General Contractor and as a Subcontractor involving work similar in character and scope to the Work described by the Bid Documents? \_\_\_\_\_

(B) How many years of experience has your subcontractors listed in Section 00330 - List of Subcontractors and Suppliers had as a General Contractor and as a Subcontractor involving Work similar in character and scope to the Work described by the Bid Documents? \_\_\_\_\_

3.3 (A) Attach a list of all public contracts and subcontracts that your organization has performed within the last five years over \$0 involving Work similar in character and scope to the Work described by the Bid Documents (using the forms in the "References Attachment" provided with this Questionnaire). If the contract or subcontract referenced is not substantially completed, furnish the percent complete for that contract or subcontract.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

(B) Attach a list of all public contracts and subcontracts that your major subcontractors listed in Section 00330 - List of Subcontractors and Suppliers have performed within the last five years over \$15 million Work similar in character and scope to the Work described by the Bid Documents (using the forms in the "References Attachment" provided with this Questionnaire). If the contract or subcontract referenced is not substantially completed, furnish the percent complete for that contract or subcontract.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

3.4 Within the last five years, has your organization failed to complete a contract or subcontract awarded to it? \_\_\_\_\_ If so, for each contract or subcontract, state when, where and why.

3.5 Within the last five years, has any officer or partner of your organization been an officer or partner of another organization that failed to complete a contract or subcontract awarded to it? \_\_\_\_\_ If so, for each contract or subcontract, state the name of each officer or partner, the name of the organization(s), the name of the owner(s), and the reasons why the contract(s) or subcontract(s) was/were not completed.

3.6 Within the last five years, has any officer or partner of your organization failed to complete a contract or subcontract awarded in that person's own name? \_\_\_\_\_ If so, for each contract or subcontract, state the name of each officer or partner, the name of the owner(s), and the reasons why the contract(s) or subcontract(s) was/were not completed?

- 3.7 Within the last five years, have any claims arising from or relating to a contract or subcontract been made against your organization or any officer or partner of your organization that resulted in litigation or arbitration? \_\_\_\_\_. If so, the Bidder shall attach a description of each claim, the amount of the claim, the parties involved, and the settlement amount or award.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

- 3.8 Within the last five years, has your organization or an officer or partner of your organization made any claims arising from or relating to a contract or subcontract that resulted in litigation or arbitration? \_\_\_\_\_. If so, the Bidder shall attach a description of each claim, the amount of the claim, the parties involved, and the settlement amount or award.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

- 3.9 Bidder shall have an Experience Modifications Rate (EMR) of less than or equal to 1.20 as determined by insurance industry standards. Failure to submit verification of their Experience Modifications Rate (EMR) from their respective insurer on the insurance company's letterhead, within the specified period, justifies the disqualification of the Bidder for consideration for the award.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

#### **4. Additional Eligibility Data Under ARS Section 34-255**

- 4.1 Parts of the Work, besides those disclosed on the List of Subcontractors and Suppliers, Section 00330, that you intend to subcontract: \_\_\_\_\_
- 

- 4.2 If any of those Subcontractors nominated in paragraph 4.1 has ever been convicted of a felony, or has felony charges pending, in any state within the last three years from the date of Bid opening, including but not limited to a felony conviction under ARS Title 34, Section 252, furnish with this Questionnaire all material facts relating to any such felony conviction or any such pending felony charges strictly in accordance with the requirements of paragraph 1.4.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

- 4.3 If any of the Suppliers (having a direct Subagreement with the Bidder or any of the Bidder's Subcontractors) has ever been convicted of a felony charge or has any felony charges pending in any state within the last three years from the date of Bid opening, including but not limited to a felony conviction under ARS Title 34, Section 252, furnish with this Questionnaire all material facts relating to any such felony conviction or any such pending felony charges strictly in accordance with the requirements in paragraph 1.4.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

- 4.4 State the name, address and telephone number of a representative of your organization who personally visited and inspected the site:
- 
-

Also, describe subsurface and physical conditions at or contiguous to the site that your representative investigated and how they were accounted for in the preparation of your organization's Bid.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

- 4.5 Attach a list of construction equipment and machinery your organization intends to use in the execution of the Work, as estimated in the preparation of your organization's Bid.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

- 4.6 Does your organization rent and/or lease equipment and/or facilities from other affiliate organizations? \_\_\_\_\_. If so, state the name of the affiliate organization(s): \_\_\_\_\_
- 4.7 Credit available? \_\_\_\_\_ Amount: \$ \_\_\_\_\_
- 4.8 Will your organization, i.e., the Bidder named in the Authorized Signature Article on the Bid Form, be the only named Principal in the Performance Bond and Payment Bond? \_\_\_\_\_

If not, please identify the organization who will be named as Principal or Co-Principal on the Performance Bond and Payment Bond \_\_\_\_\_.

Also, state how such organization relates to the Bidder \_\_\_\_\_.

**(NOTE: If another organization is identified, the Bidder shall submit to the Owner or Design Professional a separate Questionnaire filled out by that organization as part of the Qualification Submittal required under Paragraph 3 of the Instructions to Bidders.)**

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CITY OF PHOENIX: Water Services Department  
PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation - Grade 5&4 Manholes – South  
PROJECT NUMBER: WS90500273 BIDDER'S QUESTIONNAIRE

**5. References**

5.1 Trade references of work similar in character and scope to the Work described by the Bid Documents. (Minimum of three):

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5.2 Bank references:

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5.3 Insurance:

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**6. Certificate of Submittal**

By: \_\_\_\_\_  
(name of individual, partnership, corporation or joint venture)

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

Name and Title: \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

CITY OF PHOENIX: Water Services Department  
PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation - Grade 5&4 Manholes – South  
PROJECT NUMBER: WS90500273 BIDDER'S QUESTIONNAIRE

**REFERENCES ATTACHMENT TO BIDDER'S QUESTIONNAIRE**

REFERENCE

Public Owner: \_\_\_\_\_

Project/Contract Name: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Project Started: \_\_\_\_\_ Completed: \_\_\_\_\_

Owner's Representative (Name & Phone): \_\_\_\_\_

Bidder's Representative (Name & Phone): \_\_\_\_\_

Scope of Project: \_\_\_\_\_

REFERENCE

Public Owner: \_\_\_\_\_

Project/Contract Name: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Project Started: \_\_\_\_\_ Completed: \_\_\_\_\_

Owner's Representative (Name & Phone): \_\_\_\_\_

Bidder's Representative (Name & Phone): \_\_\_\_\_

Scope of Project: \_\_\_\_\_

REFERENCE

Public Owner: \_\_\_\_\_

Project/Contract Name: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Project Started: \_\_\_\_\_ Completed: \_\_\_\_\_

Owner's Representative (Name & Phone): \_\_\_\_\_

Bidder's Representative (Name & Phone): \_\_\_\_\_

Scope of Project: \_\_\_\_\_

CITY OF PHOENIX: Water Services Department  
PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation - Grade 5&4 Manholes – South  
PROJECT NUMBER: WS90500273 BIDDER'S QUESTIONNAIRE

**REFERENCES ATTACHMENT TO BIDDER'S QUESTIONNAIRE (continued):**

REFERENCE

Public Owner: \_\_\_\_\_

Project/Contract Name: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Project Started: \_\_\_\_\_ Completed: \_\_\_\_\_

Owner's Representative (Name & Phone): \_\_\_\_\_

Bidder's Representative (Name & Phone): \_\_\_\_\_

Scope of Project: \_\_\_\_\_

REFERENCE

Public Owner: \_\_\_\_\_

Project/Contract Name: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Project Started: \_\_\_\_\_ Completed: \_\_\_\_\_

Owner's Representative (Name & Phone): \_\_\_\_\_

Bidder's Representative (Name & Phone): \_\_\_\_\_

Scope of Project: \_\_\_\_\_

REFERENCE

Public Owner: \_\_\_\_\_

Project/Contract Name: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Project Started: \_\_\_\_\_ Completed: \_\_\_\_\_

Owner's Representative (Name & Phone): \_\_\_\_\_

Bidder's Representative (Name & Phone): \_\_\_\_\_

Scope of Project: \_\_\_\_\_

CITY OF PHOENIX: Water Services Department

PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation – Grade 5&4 – Manholes – South

PROJECT NUMBER: WS90500272

SECTION 300 – LIST OF MAJOR SUBCONTRACTORS/SUPPLIERS

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)	SELF-PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/ SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)	CONTACT PERSON	PHONE NUMBER	DOLLAR VALUE OF WORK OR MATERIALS IN BID
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project for an amount **equal to or greater than 5% of the base bid**. These companies shall not be removed or replaced without prior written approval by the City of Phoenix Project Manager. The City requires, as in Paragraph D – List of Major Subcontractors and Suppliers in the Information for Bidders that ALL vendors are listed or you will be disqualified. If you are self-performing the work, you must still list any suppliers for materials, or list any contractors that will assist you in any form.

COMPANY NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

NAME & TITLE \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

CITY OF PHOENIX: Water Services Department

PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation – Grade 5&4 – Manholes – South

PROJECT NUMBER: WS90500272

SECTION 331 – LIST OF ALL SUBCONTRACTORS / SUPPLIERS

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)	SELF- PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/ SUPPLIER COMPANY NAME (IF NOT SELF- PERFORMED)	CONTACT PERSON	PHONE NUMBER	DOLLAR VALUE OF WORK OR MATERIALS IN BID
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project. These companies shall not be removed or replaced on the project without prior written approval by the City of Phoenix Project Manager. The City requires, as in Paragraph D - List of All Subcontractors and Suppliers in the Information for Bidders that ALL vendors are listed or you will be disqualified. If you are self-performing the work, you must still list any suppliers for materials, or list any contractor's that will assist you in any form.

COMPANY NAME \_\_\_\_\_ SIGNATURE \_\_\_\_\_

NAME & TITLE \_\_\_\_\_ PHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_



CITY OF PHOENIX: Water Services Department  
PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation - Grade 5&4 Manholes - South  
PROJECT NUMBER: WS90500273 SECTION 00340 -SCHEDULE OF MANUFACTURERS AND  
SUPPLIERS OF MAJOR EQUIPMENT AND MATERIALS ITEMS

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As provided in the Instructions to Bidders, the Bidder proposes that the items of major equipment or materials named herein will be supplied by the Manufacturers and Suppliers set forth below as written by the Bidder, unless changes are specifically authorized by the Owner. Preliminary acceptance of equipment or materials listed by the Manufacturer's name shall not in any way constitute a waiver of the specifications; final acceptance will be based on full conformity with the specifications covering the equipment and/or materials. Failure to provide this information will be just cause for Owner declaring the Bidder's Bid nonresponsive. **This form is due no later than 5:00pm on the 3<sup>rd</sup> day after the Bid.**

<b><u>LISTING OF MAJOR EQUIPMENT</u></b>		
<b><u>SECTION</u></b>	<b><u>TITLE/DESCRIPTION</u></b>	<b><u>MANUFACTURER</u></b>

<b><u>MATERIAL</u></b>		
<b><u>SECTION</u></b>	<b><u>TITLE/DESCRIPTION</u></b>	<b><u>MANUFACTURER</u></b>

Submitted By: \_\_\_\_\_  
(name of individual, partnership, corporation or joint venture)

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

Name and Title: \_\_\_\_\_



## City of Phoenix

### Small Business Enterprise Program

#### **SBE – DESIGN BID BUILD (DBB) CONTRACT CLAUSE**

**PROJECT #: WS90500273**

**CONTRACT #:**

**PROJECT TITLE: Large Diameter Sanitary Sewer Rehabilitation Grade 5 & 4 Manholes – South – Multi-Area MH Rehab**

The City of Phoenix Small Business Enterprise Program (SBE) is managed and administered by the Equal Opportunity Department, Contract Compliance Division. Phoenix is one of the fastest growing, multicultural cities in the country and has shown a historical commitment to business diversity. The City strives to advance the economic growth of businesses through its Small Business Enterprise (SBE) Program.

Through a coordinated effort among several city departments, the SBE Program provides SBE certification, procurement opportunities, construction subcontracting utilization, small business management and technical assistance and educational services and networking opportunities.

The Small Business Enterprise (SBE) participation goal for this project is as follows:

**SBE Required Goal = 2.5%**

**An annual SBE subcontracting participation goal has been established under this Contract. The Prime Contractor is required to demonstrate good faith efforts to utilize certified SBE firms to achieve this goal during the life of this contract.**

For purposes of determining the Contractor's actual SBE utilization during and at the end of the project, the Contractor shall meet or exceed their **Proposed SBE Goal Percentage (as indicated on the Submitter's received SBE Utilization Form with their bid submittal)** for the contract, for ALL work performed on the project, including any amount paid for contingencies and allowances, and selected alternates. **The Proposed Goal shall meet/or exceed the Required Goal.**

For purposes of calculating the Contractor's "Proposed SBE Goal Percentage" on the Contractor's Statement of Proposed SBE Utilization form, bidders must not propose SBE subcontractors from areas identified on the bid form as contingencies and allowances or proposed alternates. Any SBE participation proposed from these areas will be not counted towards meeting the SBE goal requirement necessary for contract award.

The "Total Bid" shall be defined as the total of all the unit prices, or the lump sum total, including alternates and contingencies and allowances. The "Base Bid" shall be defined as the "Total Bid" minus "all proposed alternates" as determined by the project manager. Any additional dollars paid under this contract, including any selected alternate(s), shall be subject to the **Proposed SBE Goal Percentage** listed on the Contractor's Statement of Proposed SBE Utilization form.



## City of Phoenix

### Small Business Enterprise Program

#### SBE PROGRAM DEFINITIONS

**Broker, Packager, Manufacturers' Representative, or Jobber** means a firm that is not a manufacturer or regular dealer as defined herein.

**Commercially Useful Function (CUF)** means that a SBE firm is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. A SBE must perform at least 75% of the total cost of its contract with its own work force in order to be determined to be performing a CUF on the contract.

**Contract** is a written agreement obligating the seller or business enterprise to furnish goods or services as submitted and the Purchaser or Buyer to pay for such goods or services.

**Contractor** is an individual, partnership, joint venture, corporation or firm that executes a contract with the City to perform services requested by a solicitation or procurement. The Contractor may be direct or through an authorized representative.

**Joint Venture (JV)** is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this contract. The resources, assets and labor of the participants must be combined in an effort to accrue profit.

**Manufacturer** means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract.

**Purchaser** for purposes of this contract means the City.

**Regular Dealer or Supplier** means a business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

**Small Business Enterprise (SBE)** means a small business that has been determined to meet the requirements for SBE certification with the City of Phoenix and whose certification is in force at the time of the award of business by the City. A directory of currently certified SBE firm is located at <https://phoenix.diversitycompliance.com>.

**Subcontract** a contract at any tier below the prime contract, including purchase orders.

**Subcontractor** is an individual, partnership, joint venture, corporation or firm that holds a contract at any tier below the prime contract, including purchase orders.

**Successful Submitter** is a Submitter who has been selected to perform services requested by a solicitation or procurement.



## City of Phoenix

### Small Business Enterprise Program

#### SECTION I. SBE CERTIFIED FIRMS

Only firms certified by the City of Phoenix under Chapter 18, Article VIII of the Phoenix city code are eligible to fulfill the participation goal stated above. A firm's ***certification must be in the trade areas listed on the proposed utilization form and current and in force at the date and time of the bid opening deadline.***

The most current electronic directory of all certified **SBE** firms can be accessed at:

<https://phoenix.diversitycompliance.com>

If you need to verify certification status, please contact the Equal Opportunity Department at (602) 262-6790 and identify yourself as a prime contractor bidding on this project. Prime contractors should verify that the certifications of the SBE firms are current prior to bid opening. ***If a firm's certification expires and is not renewed prior to the bid-opening deadline, that firm will be ineligible to satisfy the goal.***

#### SECTION II. SBE BID PROCEDURES

The bid envelope shall contain all information and documents related to the SBE requirements of this section. ***Failure to properly complete the "Contractor's Statement of Proposed SBE Utilization" and "Letter of Intent to Perform as a Subcontractor/Supplier" forms, or submit a fully documented waiver request as described below, will result in bid rejection.*** The required documentation includes:

1. **A Contractor's Statement of Proposed SBE Utilization** - The form shall document the name of each SBE firm that will be awarded a subcontract; services to be performed by each subcontractor; dollar amount to be paid for those services; and the total dollar amount that is being proposed in SBE participation.
2. **A Letter of Intent to Perform as a SBE Subcontractor/Supplier** (required for each SBE subcontractor/supplier proposed) The form shall be completed by the SBE firm that will be awarded the subcontract. The form documents services to be performed by the subcontractor/supplier and the total dollar amount of the subcontract that will be awarded to the SBE. Only the services performed in the area(s) described by the SBE's certification description can be counted towards the SBE goal requirement.

The bidder's proposed utilization of SBE firms to fulfill the participation goal must be submitted on the "Contractor's Statement of Proposed SBE Utilization" form included in the specification packet. Additionally, each of the **SBE** subcontractors/suppliers the bidder is proposing to use to meet the goal requirement on this contract must complete the "Letter of Intent to Perform as an SBE Subcontractor/Supplier" (LOI) form. Both forms must be completed and submitted as part of the bid packet by the bid-opening deadline.

**Failure to submit a completed "Contractor's Statement of Proposed SBE Utilization" and signed "Letter of Intent to Perform as an SBE Subcontractor/Supplier" form for each of the proposed SBE firms will result in a bidder being declared non-responsive** to the requirements of these specifications and the bid will not be considered. The forms must contain the following:

1. The Certified SBE firm name and the certified trade or services to be performed.
2. The dollar amount of the proposed subcontract to be awarded to each SBE firm.
3. The total dollar amount of all SBE proposed subcontracts.

In instances where an exact dollar amount to be subcontracted with a SBE firm cannot be determined, the bidder shall indicate on Columns 3 and 4 of Part B Section 1 of the "Letter of Intent To Perform as a SBE Subcontractor/Supplier" form the minimum guaranteed hours/units and dollar amount that will be paid to the SBE firm. This situation applies only when a Contractor proposes to utilize a SBE firm that engages in work



## City of Phoenix

### Small Business Enterprise Program

related to a broker, supplier or; a bid that is based on a per hour charge as in hauling/trucking or construction site security. Please note that this exception does not permit the Prime contractor to complete or modify any other part of the LOI document. Both, the SBE and the bidder must sign the LOI document prior to bid submittal. By signing the document, the bidder affirms that it has not altered or modified the document in any way other than, if applicable, entering the Unit/Hours and Total Quote Amount in Part B SECTION 1.

If a bidder proposes to utilize a firm not certified by the City of Phoenix and/or not certified in the proposed scope of work at the time of bid, the proposed utilization amount for that firm will be deducted from the total proposed SBE utilization amount used for determining if the bidder is responsive to the requirements of this section. Bidder shall not include any amount the SBE firm has indicated in the LOI document as work it will sublet or is not covered in their certification description in the Contractor's Statement of Proposed SBE Utilization form. Only amounts associated with the work to be performed by the SBE, and indicated in the SBE's certification description, may be counted towards the SBE participation goal requirement of this section.

If the reduced proposed SBE utilization is insufficient to meet the established participation goal required for this contract, and no waiver documentation has been submitted, the bidder shall be determined to be **non-responsive** to the requirements of this section and the bid will not be considered.

**A certified SBE firm bidding as a Prime Contractor cannot count the work it will self-perform towards meeting the required SBE subcontracting goal.**

A "Letter of Intent to Perform as a Subcontractor/Supplier" will be used in determining compliance with the requirements of this section. **The proposed subcontract dollar amount listed for each SBE firm on the "Contractor's Statement of Proposed SBE Utilization" must match the SBE dollar amount indicated in the boxed areas in Parts C, D or E of the signed "Letter of Intent to Perform as a Subcontractor/Supplier."** Failure to submit a completed LOI document with the SBE's and bidder's signatures shall be determined to be **non-responsive** to the requirements of this section and the bid will not be considered.

### SECTION III. IF THE BIDDER IS UNABLE TO MEET THE GOAL

**A fully documented waiver request** detailing why the bidder has been unable to meet the SBE utilization goal in whole, or in part, and the "good faith" effort of the bidder to obtain SBE participation. In order to be viewed as good faith efforts, a bidder's activities must be consistent with all activities that could reasonably be expected from a bidder who was actively and aggressively seeking to meet the SBE goal. To show proof of having exercised good faith efforts in trying to obtain bids from SBE firms to meet the utilization goals. The following factors are illustrative of those matters that shall be considered when judging whether the bidder made "good faith efforts".

1. A cover letter addressed to the Street Transportation Procurement Section clearly indicating whether a full or partial waiver is being requested, the percentage to be waived, and the reasons the waiver is being sought.
2. If a partial waiver is being requested, a Bidder's Statement of Proposed Utilization listing firms that will satisfy the portion of the goal that will be met must be included with the bid proposal. Additionally, a Letter of Intent to Perform as a Subcontractor/Supplier from each SBE firm that is proposed to be utilized must be included with the bid proposal.
3. Proof of contact with SBE firms, including but not limited to, fax logs, telephone logs, mail receipts, etc, including documentation of the number of times that firms were contacted, the dates of contact, and the name, phone number, fax number, and address of the contact person associated with each SBE firm. Solicitation of SBE subcontractors must be consistent with the solicitation of all subcontractors and must clearly demonstrate that SBE firms had sufficient time to submit an effective response.
4. Copies of the documents submitted to all subcontractors requesting their bid. This should include the scope of work to be bid and performed on the project.



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### Small Business Enterprise Program

5. Copies of bid responses/quotes from all subcontractors who bid to perform work on the project in the areas that SBE firms were also bidding on, including information as to why SBE bids were not considered.
6. Documentation that shows efforts made to provide assistance to SBE firms in the areas of bonding, insurance, or other contracting requirements.
7. Documentation of attendance at the pre-bid conference held for the project.
8. Documentation of contact made with City personnel seeking assistance in identifying eligible SBE firms for contracting opportunities on the project.

#### **SECTION IV. SBE WAIVER PROCEDURES**

Requests for a partial or full waiver of the SBE goal for the project including all Good Faith Documentation shall be submitted as part of the bid packet. The request will be reviewed to ensure compliance with the requirements of this section. If the request is determined to meet the requirements, a waiver hearing will be scheduled and the bidder notified of the date, time, and place of the hearing. All waiver hearings are open to the public. However, only the designated representative for the contractor and City staff may participate in the proceedings.

The contractor requesting the waiver may appear at the hearing to present their request and answer questions from the Waiver Review Committee regarding their submittal. The Committee will consider the information and documentation that was submitted at the time of bid. The bidder may not present additional or new information at the hearing. At the conclusion of the hearing process the Committee will make independent recommendations on the request for waiver. The presiding officer, on behalf of the Committee, will provide a written summary of the Committee's recommendations to the City Manager's designee, the City Engineer. The City Engineer will make the final decision to grant or deny the waiver request. The City Engineer's decisions shall be final. The City will notify the contractor regarding the final decision of the City Engineer.

If a partial or full waiver of the SBE goal is granted to a bidder, the bidder shall be considered to have met the project goals and their bid will be considered responsive to the requirements of this section. If a waiver is denied, the bidder is deemed non-compliant and non-responsive to the requirements of this section and their bid will not be considered.

**Failure to submit the Contractor's Statement of Proposed SBE Utilization form and a LOI from each SBE firm proposed OR a fully documented waiver request at the time of bid will be cause to determine the bidder non-responsive to the requirements of this section.**

#### **SECTION V. LIMITATION OF THE USE OF SUPPLIERS AND BROKERS TO FULFILL THE SBE GOAL**

Proposed expenditures to brokers and suppliers can be used to meet the utilization goal, provided that the combined applicable expenditures do not exceed 25 percent (25%) of the total SBE goal requirement. Contractors may count one hundred percent (100%) of the dollars proposed to be paid to a SBE supplier, and all costs associated with fees and commission to be paid to a SBE broker, up to the 25% limitation.

**Supplier (or Wholesaler)** is defined as firm that does not directly manufacture the product being supplied and has an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.



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### Small Business Enterprise Program

**EXAMPLE:** An SBE goal of 5% has been established on a project where the contractor has submitted a base bid of \$1,000,000. This results in a dollar goal of \$50,000 to be subcontracted to SBE's. The contractor proposes to contract with a SBE supplier for \$100,000. Only \$12,500, or 25 percent (25%), may be counted

towards achievement of the SBE goal for this project. The remaining \$37,500 must be achieved through the use of firms that are not suppliers or brokers.

**Broker** is defined as firm that arranges or expedites services or transactions through the use of individuals not directly employed by the company. Brokers are not regular suppliers. Only costs associated with the fees and commission paid to the certified firm for providing such services may be applied towards the SBE contract goal.

The following defines the expenditures to SBE firms that are NOT subject to the 25% limitation. The following expenditures may be counted in their entirety towards fulfilling 100% of the utilization goal:

1. Expenditures to certified SBE firms that operate and maintain an establishment or factory to produce, on the premises, the materials or supplies purchased for the contract.
2. Expenditures to a certified SBE fabricator that operates and maintains a factory to substantially alter materials or supplies before resale.
3. Expenditures, including fees and commissions, charged to provide bona fide technical and professional personnel recruitment for the contract. The total cost paid that shall be comparable to the industry standards customarily charged for the same or similar services.
4. Expenditures, including fees and commissions, charged for providing bonds and insurance specifically required for the performance of the contract. The total cost shall be comparable to the industry standards charged for the same or similar services.

All SBE firms proposed to participate on this contract opportunity must be SBE certified by the City of Phoenix prior to the date and time of the bid.

Participation on the contract will be calculated based on that portion (dollar value) of the contract that the SBE actually performs with its own forces. This includes the cost of supplies and materials obtained by the SBE for the work on the contract, **except** in cases when; it has been determined by the City *not* to be part of the firm's certification description; the SBE is certified as a "placer", "finisher", or "installer" of those materials only, or when the supplies and/or equipment it uses to perform its work is purchased or leased from the Contractor or its affiliate.

**Special emphasis and care should be taken to ensure that the following types of participation are handled properly when preparing your bid packet, as failure to correctly calculate the allowable** SBE participation in the following areas shall result in your bid being declared non-responsive if the SBE goal requirement is not met:

**Fees & Commissions:** SBE firms that supply a bona fide service for a fee or commission may be counted only to the extent of the fees or commissions charged by the SBE. This includes, but is not limited to, providing professional, technical, consultant, or managerial services, and bonds or insurance specifically required for the performance of a contract. Fees must be reasonable, not excessive, compared to fees customary for similar services.

**EXAMPLE:** A SBE firm that supplies uniformed officers for security or traffic control may count only the amounts charged as a commission. The hourly amount paid to the officers may not be counted. If the "per hour" bid amount to the prime contractor is \$35, and \$25 per hour will be paid to the officers, only \$10 per hour can be counted towards achieving the SBE goal. If the firm or bidder estimates that there will be 200 hours of work bid at a rate of \$35 per hour, only \$2,000 of the total \$7,000 bid could be counted.



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### Small Business Enterprise Program

**Trucking & Hauling:** The amount of a trucking/hauling subcontract that may be counted towards the utilization requirements may be limited. An SBE must itself own and operate at least one fully licensed,

insured, and operational truck that will be used on the contract. In addition, trucks the SBE leases without drivers under a long-term leasing agreement may be considered part of the trucking firm's workforce and

counted in full, provided the leasing agreement(s) is/are for a period of not less than 6 months and; **the leased vehicles have been recorded with the City's Equal Opportunity Department's Certification Office prior to the submittal of the LOI document.**

**EXAMPLE:** A SBE trucking firm uses seven trucks on a job; two are owned by the SBE and five are leased from other firms. If two of the five trucks are leased without drivers and the remaining three are leased with drivers from another firm, then the amount paid to the SBE for the services provided by the trucks it owns and the two it leases without drivers and operates with its own employees can be counted in full towards meeting the SBE requirements. The Contractor may not count any portion of the amount the SBE receives for the two trucks it leases with drivers towards the SBE utilization goal.

#### SECTION VI. POST AWARD SBE COMPLIANCE INFORMATION - DBB

Submittal of a bid to the City of Phoenix shall constitute an agreement by the bidder to comply with the SBE utilization requirements of this section should the bidder be awarded a contract. This includes, but is not limited to, the following compliance activities:

1. The contractor shall contract, or attempt to contract, in good faith with all SBE firms listed on the Bidder's Statement of Proposed SBE Utilization form submitted with their bid. The subcontract shall be for an amount that is equal to, or greater than, the total proposed dollar amount listed on the form, with the exception of instances where the City changes a scope of work in the contract that would reduce the available work in the subcontractor's area of performance.
2. The contractor shall not reduce any of the proposed SBE scopes of work or amounts indicated on the Bidder's Statement of Proposed SBE Utilization form without first submitting a Request for Exemption and receiving approval in writing from the City's Equal Opportunity Department (EOD), Contract Compliance Division.
3. The contractor shall notify the City of Phoenix Equal Opportunity Department immediately if any firm listed on the Bidder's Statement of Proposed SBE Utilization form refuses to enter into a subcontract or fails to perform according to the requirements of the subcontract.
4. Any reduction of retention by the City to the contractor shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work. The contractor has 14 days from the date their retention reduction takes effect to reduce retention to the subcontractors.
5. The contractor shall return all retention monies to subcontractors at such time as the work originally proposed by the subcontractor, and expressed in the original subcontract agreement, is complete and the purchaser (City) has accepted the work and paid the prime for the work performed by the subcontractor. Retention shall be paid no later than 30 days after such payment is made by the City.
6. The contractor shall act in good faith to meet the contract SBE utilization goal and provide all necessary documentation to show proof of those efforts as requested by the City.

If for any reason the SBE firm is decertified prior to the execution of a subcontract agreement, the bidder shall find additional SBE participation in the amount equivalent to or greater than that which was originally proposed for the SBE firm. Bidder shall make every good faith effort possible in finding a SBE replacement in the proposed trade area first, before considering SBE participation in other trade areas.





## City of Phoenix

### Small Business Enterprise Program

#### SECTION VII. Subcontract Assurances

Each contract signed by the Agency and the Successful Bidder and each subcontract signed by the Successful Bidder with a Subcontractor, including Subcontractors with lower tier Subcontractors must include the following assurances verbatim:

**Prompt Payment of Subcontractors** *The Contractor and Subcontractor shall promptly pay its lower tier subcontractors, sub consultants, or suppliers upon receipt of payment from the City of Phoenix (Agency).*

*Progress Payments: In accordance with the Arizona Revised Statutes (ARS), Section 34-221(G), the Contractor(s) shall promptly pay its subcontractors, sub consultants, or suppliers within seven (7) calendar days of receipt of each progress payment from the Agency. Any diversion by the Contractor(s) of payments received for work performed on the contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for a declaration of breach of the contract with the Agency.*

*Retention Payments: If the Agency reduces the Contractor's retention, the Contractor shall correspondingly, within 14 days, reduce the retentions held against the Subcontractors and suppliers that have performed satisfactory work.*

*Release of Retention: The Contractor(s) shall ensure prompt and full payment of retentions to Subcontractors and suppliers when their work is complete, the Agency has accepted the work, and the Agency has paid the Contractor for the work. The Contractor shall pay each Subcontractor's and supplier's retention no later than 30 days after the Agency pays Contractor for the completed scope of work.*

**Changes to Subcontracts and Values** *The City of Phoenix prohibits Contractor(s) from altering the Contractor's Statement of Proposed SBE Utilization form without receiving prior, written consent from the City. The Equal Opportunity Department must be informed, in writing, and in advance of the following:*

- *Reduction to the scope of work performed by subcontractors working on the contract*
- *Changes in any of the subcontract values resulting in a reduced dollar amount*
- *Replacement and/or release of any subcontractor after contract award*

*Contractor(s) and Subcontractor(s) are required to complete a Request for Exemption Form and have the written approval of the Contract Compliance Office prior to taking action on any of the above listed matters related to SBE subcontractors.*

*In the event that any provision of this subcontract varies from the provisions of the contract or subcontract, the provisions for SBE contract compliance as contained in Administrative Regulation 1.89, Section IX, shall provide definitive guidance.*

**Disclaimer:** *Nothing in this section prevents the Contractor or Subcontractor from enforcing its subcontract with a lower tier Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.*



## City of Phoenix

### Small Business Enterprise Program

#### SECTION VIII. RECORDS and REPORTING REQUIREMENTS

##### 1. Records

During performance of the Contract, the Successful Submitter shall keep all records necessary to document the participation of all subcontractors and suppliers. The Successful Submitter shall provide the records to the Agency within 72 hours of the Agency's request and at final completion of the Contract. The Agency will prescribe the form, manner, and content of reports. The required records may include but not limited to:

- a) A complete listing of all Subcontractors and suppliers on the project;
- b) Each Subcontractor's and supplier's scope performed;
- c) The dollar value of all subcontracting work, services, and procurement;
- d) Copies of all executed Subcontracts, purchase orders, and invoices; and
- e) Copies of all payment documentation.

##### 2. Reports

- a. The contractor shall participate in all compliance reviews determined necessary by the City. This includes, but is not limited to participating in on-site reviews, providing monthly utilization reports of SBE activity, providing signed copies of subcontracts and/or purchase orders with each SBE listed on the Bidder's Statement of Proposed SBE Utilization form, and complying with any and all requests for information the City deems appropriate for effectively monitoring this contract for compliance with the SBE Program requirements.
- b. The contractor shall provide regular, monthly report/audit information that will assist us in effectively monitoring your compliance with the SBE Program requirements. This shall include listing all subcontractors working on the contract and reporting payments into the Certification and Compliance System <https://phoenix.diversitycompliance.com>. Reporting audits shall include all payments received from the City and payments you have issued to all subcontractors and suppliers. **Copies of the first 2 pages of the Pay Request submittal are required with each report. All Monthly audit reports are to be completed online by the 15<sup>th</sup> of every month. (<https://phoenix.diversitycompliance.com>).**
  - i. The total of all payments received from the City during the previous month.
  - ii. The first two pages of each payment application submitted for those payments.
  - iii. All payments made to Subcontractors during the previous month.

Before the Agency processes the Successful Submitter's final payment and/or outstanding retention held against the Successful Submitter, the Successful Submitter shall submit to the Agency a final certification of full and final payment to each Subcontractor in the form prescribed by the Agency. The form must be completed and certified by the Successful Submitter's and each Subcontractor's duly authorized agents.

#### SECTION IX. PERFORMANCE OF A COMMERCIALY USEFUL FUNCTION

The prime contractor may count only expenditures to SBE subcontractors that perform a commercially useful function in the work of the contract, as defined in Chapter 18 Article VI of the City Code. A "commercially useful function" constitutes performing real and actual services related to the contract.

SBE subcontractors may enter into second-tier subcontracts consistent with normal industry practices. If an SBE subcontracts greater than twenty-five (25) percent of the work of their contract, the SBE subcontractor shall be presumed not to be performing a commercially useful function. In this event, the prime contractor will not be allowed to claim any expenditure to the SBE subcontractor.



## **City of Phoenix**

### **Small Business Enterprise Program**

#### **SECTION X. FAILURE TO COMPLY WITH THE SBE PROGRAM REQUIREMENTS**

If the Equal Opportunity Department determines that the contractor will fail, or has failed, to meet the SBE subcontracting goals, and/or has failed to act in good faith to ensure compliance with the SBE conditions of its contract; it shall deem the contractor "noncompliant" and not in good standing. A noncompliant status shall result in the rejection of all future contract bids or offers for all projects or other procurements with the City until such time that the contractor has cured its breaches and demonstrates that it has faithfully performed its approved SBE utilization plan and all other provisions of this article required to be deemed in good standing. In addition to this action, the City may also exercise its option to impose any or all of the following remedies:

1. Withholding from the contractor ten percent (10%) of all future payments on the involved eligible project until it is determined that the contractor is in compliance;
2. Withholding from the contractor all future payments on the involved project until it is determined that the contractor is in compliance

Failure to cure a non-compliance status within the time frame provided by the City may result in further action, including but not limited to imposing any or all of the following sanctions:

1. Rejection of all future bids or offers from the contractor for any eligible project with the City or any of its departments or divisions for a period of (1) year after substantial completion of the contract.
2. Cancellation of the contract.



# City of Phoenix

## Small Business Enterprise Program

### CONTRACTOR'S STATEMENT OF PROPOSED SBE UTILIZATION (DBB)

**PROJECT NUMBER/TITLE:** Large Diameter Sanitary Sewer Rehabilitation Grade 5 & 4 Manholes – South – Multi-Area MH Rehab

**SBE Goal:** 2.5%

SBE FIRMS	COMPANY NAME	SERVICES TO BE PROVIDED	SUPPLIER- (YES or NO) May not satisfy more than 25% of the Goal	SBE \$ AMOUNT from LOI Tables - Sections C, D, or E	Countable SBE \$ Amount (towards proposed goal)

(\$ \_\_\_\_\_ ) - (\$ \_\_\_\_\_ ) - (\$ \_\_\_\_\_ ) = (\$ \_\_\_\_\_ )  
**Total Bid**                      -                      **Allowances & Contingencies**                      -                      **Alternates**                      =                      **Base Bid**

(\$ \_\_\_\_\_ ) ÷ \$ \_\_\_\_\_ ) X 100 = \_\_\_\_\_ % (NO ROUNDING)  
**Total Proposed SBE Dollars** ÷                      **Base Bid**                      X 100 =                      **Proposed SBE %**

Proposed SBE Percentage must equal or exceed the Required SBE Goal Percentage.

Do **NOT** propose SBE dollars in scopes related to Alternates, Allowances, or Contingencies as part of meeting the required SBE %.

All additional contract dollars, including selected alternates, contingencies, and allowances paid after award of contract, will be subject to the SBE contract goal %.

**Total Proposed SBE Dollars**  
  
\$ \_\_\_\_\_

*I hereby certify by signing below the foregoing SBE firms shall be contracted to work on the trades identified above and/or supply material/equipment for this project.*

The information shown above is a **true reflection of the proposed subcontracts.**

COMPANY NAME: \_\_\_\_\_ EMAIL: \_\_\_\_\_ PHONE: \_\_\_\_\_

NAME : \_\_\_\_\_ TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_



City of Phoenix

Small Business Enterprise Program

Letter of Intent (LOI) To Perform as an SBE Subcontractor

(THIS FORM **MUST** BE COMPLETED BY THE SBE SUBCONTRACTOR – BOTH SBE SUBCONTRACTOR & PRIME SIGNATURE ARE REQUIRED)

Project Number: WS90500273  
Contract #:

Project Description: Large Diameter Sanitary Sewer  
Rehabilitation Grade 5 & 4 Manholes – South – Multi-Area MH  
Rehab

TO: \_\_\_\_\_ (Insert Name of Prime Contractor)

FROM: \_\_\_\_\_ (Insert Name of SBE Firm)

A. The undersigned declares that the firm bidding to perform the work described herein, has been granted certification by the City of Phoenix (COP) as a Small Business Enterprise (SBE) in the area(s) of:

(COP) Certification Description:

B. The undersigned is bidding to perform the following scope(s) of work on the above referenced project:

**SECTION 1 - COMPLETE THIS PORTION IF THE SCOPE OF WORK IS BEING BID BY UNIT PRICE OR HOURLY RATE  
SUPPLIER, BROKER, TRUCKING, HAULING, UNIFORMED OFFICERS MUST USE THIS SECTION**

Scope of Work	Unit/Hourly Rate	# of Units/Hours	Total Quote Amount
			\$

**SECTION 2 - GENERAL OR SPECIALTY CONSTRUCTION TRADE AREAS MUST USE THIS SECTION**

Scope of Work	Total Quote Amount
	\$

C. Of the Total Quote Amount reflected in Part B-SECTION 2, the following scope(s) of work with the given amount **will not** be performed by the SBE or **is/are not** covered under the SBE's certification description:

Scope(s) of Work \_\_\_\_\_ Amount \$ \_\_\_\_\_

Subtract Amount in Part C above from the Total Quote Amount in Part B-Section 2 = \* \$ \_\_\_\_\_  
**\* Only this amount shall be reflected on the Bidder's Statement of Proposed Utilization.**

D. If trucking services are included in Part B - SECTION 1 above, SBE **MUST** complete the following:

Of the Total Quote Amount noted in part B-Section 1, the SBE affirms that the amount of \* \$ \_\_\_\_\_ shall be performed by drivers the firm employs, and trucks the SBE owns and leases without drivers.  
(The amount referenced above is transferred from Step 9 of the Worksheet (L.O.I.W.-1). \*Only this amount shall be on the Statement of Proposed Utilization)

E. All subcontractors providing Broker or Traffic Control/Security Services indicated in Part B-SECTION 1 above **MUST Complete the Following:**

Rate of the SBE's fees/commissions \_\_\_\_\_%; for a Total Amount in fees/commissions of: \$ \_\_\_\_\_  
The Percentage and Total Amount referenced above is transferred from Steps 2 and 3 of the Worksheet (page L.O.I. W.-1).  
Only the Total Amt in fee/commissions shall be reflected on the Bidders Statement of Proposed Utilization.

Should the prime contractor receiving this form be selected for award of the contract, the undersigned affirms that he/she will enter into an agreement to perform the work bid herein.

\_\_\_\_\_  
(SBE Subcontractor Authorized Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Phone Number)

**By signing this LOI document, the Prime Contractor affirms that it has not altered or modified this document in any way other than, if applicable, entering the Unit/Hours and Total Quote Amount in Part B SECTION 1.**

\_\_\_\_\_  
(Prime Contractor Authorized Signature)

\_\_\_\_\_  
(Date)



**City of Phoenix**  
Small Business Enterprise Program

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR/SUPPLIER  
INSTRUCTIONS AND WORKSHEET - L.O.I. W.-1**

**A Letter of Intent to Perform as a SBE Subcontractor/Supplier** (required for each SBE subcontractor/supplier proposed). The form documents services to be performed by the subcontractor/supplier and the total dollar amount of the subcontract that will be awarded to the SBE. Only the services performed in the area(s) described by the SBE's certification description can be counted towards the SBE goal requirement.

**Part I. Trucking and Hauling:** SBEs should indicate on Part B-Section 1 and Part D, of the LOI form, the information regarding trucks to be used in executing the contract. The City allows the counting of all payments for services provided by trucks which the SBE owns. Trucks which the SBE leases on a long-term basis and are operated with drivers the SBE employs may also be counted in full. The payments for short-term leased trucks, with or without SBE employed drivers cannot be counted.

**Only trucks for which leasing agreements have been submitted and approved by EOD as part of the SBE firm's current certification file shall be considered eligible for counting towards the goal.**

STEP ONE	STEP TWO	STEP THREE
Value of work expected to be performed by trucks owned by the SBE (2 Trucks)	Value of work expected to be performed by trucks leased ( <b>with drivers</b> ) by the SBE on a long-term basis (2 Trucks)	Combined value of work expected to be performed by other trucking firms and/or trucks leased ( <b>without drivers</b> ) by the SBE (3 Trucks)
<b>\$20,000</b>	<b>\$20,000</b>	<b>\$33,000</b>
STEP FOUR	STEP FIVE	STEP SIX
Estimated value for services provided by all trucks the SBE will use on the contract. (Add Steps One, Two, and Three)	Expected value of work performed by trucks not eligible for counting as SBE participation (Value in Step Three)	Total estimated value that can be counted for SBE participation (Subtract Step Five from Step Four) <b>\$73,000 - \$33,000</b>
<b>\$73,000</b>	<b>\$33,000</b>	<b>=\$40,000</b>

**Part II. Fees and Commissions:** Insert the information from below under Step Three-Commission/Fees Percentage and the Countable Amount for SBE Participation into Part E of the LOI form. This part is applicable for the use of uniformed officers to provide traffic control and security and other services provided at an hourly rate by non-employees of the SBE contractor.

**(The following information is provided as a sample only)**

(The following information is provided as a sample only.)

STEP ONE			
Total Number of Hours	Per Hour Bid Amount	Calculation Formula: Total Gross Bid Amount	
200	\$35	200 × \$35 = \$7,000	
STEP TWO			
Per Hour Bid Amount	Officers Hourly Rate	SBE Firm Commission/Fee	Calculation Formula: Fees/Commissions Percentage
\$35	\$25	\$10	(10 / 35) * 100 = 28.57%
STEP THREE			
Gross Bid Amount (from Step One)	Commission/Fee % (from Step Two)	Calculation Formula: Amount Countable for SBE Participation	
\$7,000	28.57%	\$7,000 × .2857 = \$2,000	

**Part III. Construction Trade Areas:** SBE must indicate in the Scope of Work of Part B-Section 2 of the LOI form, **all** scope(s) of work associated with the Total Quote Amount. The SBE must complete Part C of the LOI form by entering the Scope of Work and amount not expected to be performed by the SBE or which is not covered under the SBE's certification description. Subtracting this amount from the Total Quote Amount in Part B-Sect. 2 will result in the portion of work that can be counted as SBE participation.

Authorized Contact for this Disclosure Statement

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
FAX number: \_\_\_\_\_

List any other DBA, trade name, other identity, or EIN used in the last five (5) years, the state or country where filed, and the status (active or inactive):  
(if applicable):

\_\_\_\_\_  
\_\_\_\_\_

**Business Characteristics:**

Business entity type – Please check appropriate box and provide additional information:

<input type="checkbox"/> Corporation	Date of incorporation:	_____
<input type="checkbox"/> Limited Liability Company	Date organized:	_____
<input type="checkbox"/> Limited Liability Partnership	Date of registration:	_____
<input type="checkbox"/> Limited Partnership	Date established:	_____
<input type="checkbox"/> General Partnership	Date established:	_____
<input type="checkbox"/> Sole Proprietor	How many years in business?:	_____
<input type="checkbox"/> Other (explain)	Date established:	_____

Was the business entity formed in the State of Arizona? ☐ Yes ☐ No

If no, indicate jurisdiction where Business Entity was formed: \_\_\_\_\_

Is the Business Entity currently registered to do business in Arizona with the Arizona Corporation Commission? ☐ Yes ☐ No ☐ Not required \_\_\_\_\_  
(if sole proprietor or general partnership)

Does the Business Entity have a City of Phoenix business privilege license? ☐ Yes ☐ N If “no” explain and provide detail such as “not required” or “application in progress” or other reason.

\_\_\_\_\_

Is the Business Entity publicly traded? ☐ Yes ☐ No

Is the responding Business Entity a Joint Venture? ☐ Yes ☐ No Note: If the Submitting Business entity is a Joint Venture, also submit a questionnaire for each Business Entity comprising the Joint Venture.

Is the Business Entity's Principal Place of Business/Executive office in Phoenix? ☐ Yes ☐ No

If "no" does the Business Entity maintain an office in Phoenix? ☐ Yes ☐ No

Provide the address and phone number for the Phoenix office.

\_\_\_\_\_

Is the business certified by Phoenix as a Small Business Enterprise? ☐ Yes ☐ No

Identify Business Entity Officials and principal Owners:

Name(s) \_\_\_\_\_ Title \_\_\_\_\_

Percentage ownership \_\_\_\_%(Enter 0% if not applicable).

Name(s) \_\_\_\_\_ Title \_\_\_\_\_

Percentage ownership \_\_\_\_%(Enter 0% if not applicable).

Name(s) \_\_\_\_\_ Title \_\_\_\_\_

Percentage ownership \_\_\_\_%(Enter 0% if not applicable).

Name(s) \_\_\_\_\_ Title \_\_\_\_\_

Percentage ownership \_\_\_\_%(Enter 0% if not applicable).

### **Affiliates and Joint Venture Relationships**

Does the Business entity have any Affiliates? ☐ Yes ☐ No Attach additional pages if necessary.

Affiliate name: \_\_\_\_\_

Affiliate EIN (if available):\_\_\_\_\_.

Affiliate's primary Business Activity:\_\_\_\_\_

Explain relationship with Affiliate and indicate percent ownership, if applicable. \_\_\_\_\_

Are there any Business Entity Officials or Principal Owners that the Business Entity has uncommon with this Affiliate? ☐ Yes ☐ No

Individual's Name:\_\_\_\_\_

Position/Title with Affiliate:\_\_\_\_\_



Has the Business Entity participated in any joint Ventures within the past three years? ☐ Yes ☐ No

(Attach additional pages if necessary)

Joint Venture Name: \_\_\_\_\_

Joint venture EIN (if applicable): \_\_\_\_\_

Identify parties to the Joint Venture:

\_\_\_\_\_

### **Contract History**

Has the Business Entity held any contracts with the City of Phoenix in the last three (3) years?

☐ Yes ☐ No If “yes” attach a list.

### **Integrity – Contract Bidding**

Within the past three (3) years:

Has the Business Entity or any Affiliate been suspended or debarred from any government contracting process or been disqualified on any government procurement? ☐ Yes ☐ No

Been subject to a denial or revocation of a government prequalification? ☐ Yes ☐ No

Been denied a contract award or had a bid rejected based upon a finding of a non-responsibility by a government entity? ☐ Yes ☐ No

Agreed to a voluntary exclusion from bidding/contracting with a government entity? ☐ Yes ☐ No

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? ☐ Yes ☐ No

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? ☐ Yes ☐ No

For each “Yes” answer above, provide an explanation of the issues.

### **Integrity – Contract Award**

Within the past three (3) years has the Business Entity or any Affiliate been suspended, cancelled, or terminated for cause on any government contract?

☐ Yes ☐ No

Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract? ☐

Yes ☐ No

For each “yes” answer, provide an explanation. (Attach explanation on a separate sheet of paper).

### **Certifications/Licenses**

Within the past three (3) years, has the Business Entity or Affiliate had a revocation, suspension, or disbarment of any business or professional permit and/or license? ☐ Yes ☐ No

If “yes” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues.

### Legal Proceedings

Within the past three (3) years, has the Business Entity of any Affiliate:

Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation? ☐ Yes ☐ No

Been the subject of an indictment, grant of immunity, judgment or conviction, (including entering into a plea bargain for conduct constituting a crime)?  
☐ Yes ☐ No

Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful? ☐ Yes ☐ No

Had a government entity find a willful prevailing wage or supplemental payment violation?  
☐ Yes ☐ No

Been involved in litigation as either a plaintiff or a defendant involving a copyright or patent infringement violation or an anti-trust violation? ☐ Yes ☐ No

Other than previously disclosed, for the past three (3) years:

Been subject to the imposition of a fine or penalty in excess of \$1000 imposed by any government as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination? ☐ Yes ☐ No

Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity? ☐ Yes ☐ No

If “yes” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues.

### Leadership Integrity

If the Business Entity is a joint Venture Entity, answer “N/A – Not Applicable” to questions below:

Within the past three (3) years has any individual previously identified, or any other Business Entity Leader not previously identified, or any individual having the authority to sign, execute, or approve bids, proposals, contracts or supporting documentation with the city of Phoenix been subject to:

A sanction imposed relative to any business or professional permit and/or license? ☐ Yes ☐ No

☐ N/A

An investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct? ☐ Yes ☐ No ☐ N/A

CITY OF PHOENIX: Water Services Department  
PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation - Grade 5&4 Manholes - South  
PROJECT NUMBER: WS90500273



**City of Phoenix**  
**AFFIDAVIT OF IDENTITY**

Your completion of this form is required by Arizona state law. A.R.S. §§ 1-501 and -50 only if you are a sole proprietor.

I, \_\_\_\_\_ (print full name exactly as on document), hereby affirm, upon penalty of perjury, that I presented the document marked below to the City of Phoenix, that I am lawfully present in the United States, and that I am the person stated on the document. (*select one category only*)

- ☐ Arizona driver license issued after 1996.

Print first four numbers/letters from license:

--	--	--	--

- ☐ Arizona non-operating identification license.

Print first four numbers/letters from license:

--	--	--	--

- ☐ Birth certificate or delayed birth certificate issued in any state, territory or possession of the U.S.

Year of birth: \_\_\_\_\_

Place of birth: \_\_\_\_\_

- ☐ United States Certificate of birth abroad

Year of birth: \_\_\_\_\_

Place of birth: \_\_\_\_\_

- ☐ United States Passport

Print first four number/letters on Passport:

--	--	--	--

- ☐ Foreign Passport with United States Visa

Print first four number/letters on Passport:

--	--	--	--

Print first four number/letters on Visa:

--	--	--	--

- ☐ I-94 Form with a photograph

Print first four numbers on I-94

--	--	--	--

- ☐ USCIS Employment Authorization Document (EAD)

Print first four numbers on EAD

--	--	--	--

or Perm. Resident Card (acceptable alternative):

--	--	--	--

- ☐ Refugee Travel Document

Date of issuance: \_\_\_\_\_

Refugee  
Country: \_\_\_\_\_

- ☐ U.S. Certificate of Naturalization

Print first four digits of CIS Reg. No.

--	--	--	--

- ☐ U.S. Certificate of Citizenship

Date of issuance: \_\_\_\_\_

Place of  
issuance: \_\_\_\_\_

- ☐ Tribal Certificate of Indian Blood

Date of issuance: \_\_\_\_\_

Name of Tribe: \_\_\_\_\_

- ☐ Tribal or Bureau of Indian Affairs Affidavit of Birth

Year of birth: \_\_\_\_\_

Place of birth: \_\_\_\_\_

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF PHOENIX: Water Services Department  
PROJECT NAME: Large Diameter Sanitary Sewer Rehabilitation – Grade 5&4 – Manholes – South  
PROJECT NUMBER: WS90500273 AGREEMENT

## **SECTION 00500 - AGREEMENT**

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## **SECTION 00500 - AGREEMENT**

**THIS AGREEMENT** made and entered into as of the date of the Clerk's attestation below by and between the City of Phoenix, Arizona, an Arizona municipal corporation organized and existing under and by virtue of the laws of the State of Arizona (hereinafter called Owner) and «**Company**», «**LegalEntity**» (hereinafter called Contractor). Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **ARTICLE 1 - WORK**

The contractor shall complete all Work as specified or indicated in the Contract Documents. This includes the rehabilitation of 111 active sanitary sewer manholes or structures. Rehabilitation may include installation of corrosion coating systems, structural inserts and or other methods in all parts of the existing manholes. Bypass pumping and flow diversion may be required for select manholes and use of small diameter flow through plugs may need to be utilized to complete the work. The Contractor will be responsible for permits and for all restoration efforts required to complete the rehabilitation efforts.

### **ARTICLE 2 - DESIGN PROFESSIONAL**

The Owner has retained Brown and Caldwell Inc., who is hereinafter called the Design Professional and who is to act as Owner's representative, assume all duties and responsibilities of and have the rights and authority assigned to the Design Professional in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### **ARTICLE 3 - CONTRACT TIMES**

The periods allowed for completion of the Work are as follows:

The entire Work shall be Substantially Complete in accordance with the requirements of the Contract Documents within four hundred and sixty (460) calendar days from the date when the Contract Times commence to run.

All Work shall be complete and ready for final acceptance as specified in the Contract Documents within thirty (30) calendar days from the actual date when pursuant to Section 00700, General Conditions, Substantial Completion of the Work has been achieved.

Liquidated Damages. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner one thousand seven hundred eighty dollars and no cents (\$1,780.00) for each day that expires after the time specified above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified above for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner one thousand seven hundred eighty dollars and no cents (\$1,780.00) for each day that expires after the time specified above for completion and readiness for final payment.

In addition, Contractor agrees to meet any additional Contract Times set forth in Attachment A to this Agreement. Contractor further agrees to pay Owner the liquidated damage amounts as specified in Attachment A to this Agreement, if such work is not completed on time.

All time limits stated in the Contract Documents are of the essence of the Agreement.

#### **ARTICLE 4 - CONTRACT PRICE**

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the amount determined pursuant to below:

for all Work, in accordance with the Bid Form, a Sum of:

\_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS  
(written words)

\$ \_\_\_\_\_  
(figures)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

#### **ARTICLE 5 - PAYMENT PROCEDURES**

Contractor shall submit to Design Professional for review Applications for Payment covering Work performed during the preceding calendar month. Owner and Contractor mutually agree that Owner will make a progress payment based on a duly certified (by Design Professional) and approved (by a duly authorized representative of Owner) estimate of the Work covered by the corresponding Application for Payment, subject to those conditions stipulated below, in the General Conditions and in other parts of the Contract Documents.

Owner may deduct from each progress payment and final payment an amount equal to Owner's estimate of the liquidated damages then due or that would become due based on Owner's estimate of late completion of the Work, provided Contractor fails to submit and implement a written schedule recovery plan describing the cause of schedule slippage or delayed progress and the actions proposed and taken to recover schedule.

#### **ARTICLE 6 - INTEREST**

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest in accordance with ARS #34-221(G).

#### **ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS**

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

Contractor has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions. Contractor accepts the determination set forth in Article 4 of the General Conditions of the extent of the "technical data"

contained in such reports and drawings upon which Contractor is entitled to rely. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that Owner and Design Professional do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing all the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

Contractor is aware of the general nature of Work to be performed by Owner and others at the site that relates to the Work as indicated in the Contract Documents.

Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

Contractor has given Design Professional written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Design Professional is acceptable to Contractor, and the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 8 - CONTRACT DOCUMENTS**

The Contract Documents are complementary, and anything mentioned or shown in a part of the Contract Documents shall be of like effect as if mentioned or shown in all parts of the Contract Documents. In resolving conflicts, the Contract Documents shall be given the priority determined by Design Professional which results in Work consistent with and reasonably inferable from their intent. Except when in contradiction with this priority rule, the Contract Documents shall be given priority by Design Professional in the following order:

- This Agreement (pages 00500-1 to 00500-5, inclusive), fully executed by Owner and Contractor.
- Addenda numbers \_\_\_ to \_\_\_, inclusive.
- Performance Bond (page 00610-1) and Payment Bond (page 00620-1).
- Notice to Proceed.
- Change orders.
- Contractor's Bid Package (Sections 00300 thru 00370).
- Supplementary Conditions (pages 00800-1 to 00800-2, inclusive).
- General Conditions (pages 00700-1 to 00700-53, inclusive).
- Specifications bearing the following general title and consisting of Divisions 1 through 7 and pages listed in table of contents therein:

- Large Diameter Sanitary Sewer Rehabilitation – Grade 5&4 Manholes – South – Buckeye Road & 83<sup>rd</sup> Avenue; Volume 2 of 7;
  - Large Diameter Sanitary Sewer Rehabilitation – Grade 5&4 Manholes – South – Baseline Road & 48<sup>th</sup> Street; Volume 3 of 7;
  - Large Diameter Sanitary Sewer Rehabilitation – Grade 5&4 Manholes – South – I-10 & Chandler Boulevard; Volume 4 of 7.
- Drawings bearing the following general title and consisting of a cover sheet and sheets listed in the Index of Drawings therein.
    - Large Diameter Sanitary Sewer Rehabilitation – Grade 5&4 Manholes – South – Buckeye Road & 83<sup>rd</sup> Avenue; Volume 5 of 7.
    - Large Diameter Sanitary Sewer Rehabilitation – Grade 5&4 Manholes – South – Baseline Road & 48<sup>th</sup> Street; Volume 6 of 7;
    - Large Diameter Sanitary Sewer Rehabilitation – Grade 5&4 Manholes – South – I-10 & Chandler Boulevard; Volume 7 of 7
  - Insurance Policies

The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

- All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.06 of the General Conditions.
- The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.06 of the General Conditions.

## **ARTICLE 9 - MISCELLANEOUS**

Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

Any provision or part of the Contract Documents held to be void or unenforceable under any Law of Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.



***ARTICLE 10 - CITY OF PHOENIX EQUAL EMPLOYMENT OPPORTUNITY  
REQUIREMENT***

1.1 See Section 00100-14 - Instructions to Bidders

***ARTICLE 11 - SBE UTILIZATION GOAL***

See Section 350-1 – Small Business Enterprise Goal Clause and Forms

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties herein named, on the date and year first above written.

The Contractor agrees that this Contract, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), as bid in the Proposal.

**WS90500273**

**PROJECT TITLE: LARGE DIAMETER SANITARY SEWER REHABILITATION  
GRADE 5 & 4 MANHOLES - SOUTH**

**BASE BID**

**\$«BaseBidAmount»**

**TOTAL CONTRACT AMOUNT**

**\$«ContractAmountInFigures»**

**CITY OF PHOENIX,**  
an Arizona municipal corporation  
Jeffrey Barton, City Manager

**FIRM NAME,**  
a/an [enter State] [Enter Business Type]

By: \_\_\_\_\_  
Eric J. Froberg, PE, City Engineer

By: \_\_\_\_\_  
Name of Signatory, Title

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM;  
JULIE M. KRIEGH, City Attorney

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

## SECTION 00600 – BOND FORMS

<u>Subject</u>	<u>Page</u>
Performance Bond	00610-1
Payment Bond	00620-1

BOND NO. \_\_\_\_\_

PREMIUM: \$ \_\_\_\_\_

**STATUTORY PERFORMANCE BOND  
PURSUANT TO TITLE 34, CHAPTER 6  
OF THE ARIZONA REVISED STATUTES**

(Penalty of this bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENT, that, **«Company»**, (hereinafter called the Principal), as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Phoenix in the County of Maricopa, State of Arizona, (hereinafter called the Oblige), in the amount of **CONTRACT AMOUNT IN WORDS DOLLARS, (\$ContractAmountInFigures)**, for the payment thereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has entered into a certain written contract with the Oblige, dated the **«City Clerk Date WSuffix»** day of **«CouncilActionDateMonth»**, **«CouncilActionDateYear»**, for **«ProjectNumber»**, **«ProjectDescription»**, for which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of said Title, Chapter, and Article, to the extent as if it were copied at length herein.

THE prevailing party in a suit on this Bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**«Company»**  
PRINCIPAL

SEAL

AGENT OF RECORD

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

\_\_\_\_\_  
AGENT ADDRESS

\_\_\_\_\_  
SURETY

SEAL  
TELEPHONE NUMBER

A.M. BEST RATING:

By: \_\_\_\_\_  
ATTORNEY-IN-FACT

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

BOND NO. \_\_\_\_\_

PREMIUM: \$ \_\_\_\_\_

**LABOR AND MATERIALS BOND  
STATUTORY PAYMENT BOND PURSUANT TO  
TITLE 34, CHAPTER 6, OF THE ARIZONA REVISED STATUTES  
(Penalty of this Bond must be 100% of the Contract Amount)**

KNOW ALL MEN BY THESE PRESENT, that, **«Company»**, (hereinafter called the Principal), as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Phoenix in the County of Maricopa, State of Arizona, (hereinafter called the Obligee), in the amount of **CONTRACT AMOUNT IN WORDS DOLLARS, (\$ContractAmountInFigures)**, for the payment thereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the **«City Clerk Date WSuffix»** day of **«CouncilActionDateMonth»**, **«CouncilActionDateYear»**, for **«ProjectNumber»**, **«ProjectDescription»**, for which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of said Title, Chapter, and Article, to the extent as if it were copied at length herein.

THE prevailing party in a suit on this Bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**«Company»**  
PRINCIPAL

SEAL

\_\_\_\_\_  
AGENT OF RECORD

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

\_\_\_\_\_  
AGENT ADDRESS

\_\_\_\_\_  
SURETY

SEAL

\_\_\_\_\_  
TELEPHONE NUMBER

A.M. BEST RATING:

By: \_\_\_\_\_  
ATTORNEY-IN-FACT

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

## SECTION 00700 - GENERAL CONDITIONS

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## **ARTICLE 1 - DEFINITIONS AND TERMINOLOGY**

### **1.01 Defined Terms**

1.01.A Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1.01.A.1 Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

1.01.A.2 Agreement - The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

1.01.A.3 Application for Payment - The form acceptable to Design Professional which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.01.A.4 Asbestos - Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.01.A.5 Bid - The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.01.A.6 Bidder - The individual or entity who submits a proposal directly to Owner.

1.01.A.7 Bidding Documents - The Bidding Requirements and the proposed Contract Documents (including all Addenda).

1.01.A.8 Bidding Requirements - The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

1.01.A.9 Bonds - Performance and Payment bonds and other instruments of security.

1.01.A.10 Change Order - A document recommended by Design Professional which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

1.01.A.11 Claim - An assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

1.01.A.12 Contract - The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

1.01.A.13 Contract Documents - Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

1.01.A.14 Contract Price - The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

1.01.A.15 Contract Times - The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Design Professional's written recommendation of final payment.

1.01.A.16 Contractor - The individual or entity with whom Owner has entered into the Agreement.

1.01.A.17 Contractor's Contingency - means a fund to cover cost growth during the Project used at the discretion of the Contractor usually for costs that result from Project circumstances. The amount of the Contractor's Contingency is negotiated as a separate line item in each JOA proposal.

1.01.A.18 Cost of the Work - See Paragraph 11.01 for definition. Cost of the Work does not equal Contract Price or adjusted Contract Price.

1.01.A.19 Design Professional – The individual or entity named as such in the Agreement

1.01.A.20 Design Professional's Consultant - An individual or entity having a contract with Design Professional to furnish services as Design Professional's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

1.01.A.21 Drawings - That part of the Contract Documents prepared or approved by Design Professional which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

1.01.A.22 Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective.

1.01.A.23 Engineer - May be used interchangeably with Design Professional

1.01.A.24 Field Order - A written order issued by Design Professional which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

1.01.A.25 General Conditions Costs – Includes, but not limited to, the following types of costs for the Contractor during the construction phase: payroll costs for project manager or construction manager but not both for Work conducted at the Site, payroll costs for the superintendent and full - time general foremen, payroll costs for management personnel resident and working on the Site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean - up, etc.), costs of offices and temporary facilities including office materials, office supplies, office equipment minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the Contractor or Subcontractors, taxes on the Work and for which the Contractor is liable, fees for permits and licenses. Certain limitations and exclusions related to Changes are described in the General Conditions for the construction phase.

1.01.A.26 General Requirements - Sections of Division 1 of the Specifications.

1.01.A.27 Hazardous Environmental Condition - The presence at the Site of Asbestos,

PCBs, Petroleum, Hazardous Substance, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

1.01.A.28 Hazardous Substance - any material, whether solid, semi - solid, liquid or gas, which, if not stored and/or used properly, may cause harm or injury to persons through inhalation, ingestion, absorption or injection, or which may negatively impact the environment through the use or discharge of the material on the ground, in the water (including groundwater), or to the air.

1.01.A.29 Hazardous Waste - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

1.01.A.30 Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

1.01.A.31 Milestone - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

1.01.A.32 Notice of Award - The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

1.01.A.33 Notice to Proceed - A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

1.01.A.34 Owner - The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

1.01.A.35 Owner's Contingency - means a fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or differing/unforeseen site conditions. Owner's Contingency applies to conditions that are unanticipated and may be referred to as "unknown unknowns". The amount of the Owner's Contingency is set by the City and is in the Contract Price.

1.01.A.36 PCBs - Polychlorinated biphenyls.

1.01.A.37 Petroleum - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

1.01.A.38 Progress Schedule - A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

1.01.A.39 Project - The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

1.01.A.40 Radioactive Material - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

1.01.A.41 Related Entity - An officer, director, partner, employee, agent, consultant, or Subcontractor.

1.01.A.42 Resident Project Representative - The authorized representative of Design Professional who may be assigned to the Site or any part thereof.

1.01.A.43 Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.01.A.44 Schedule of Submittals - A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

1.01.A.45 Schedule of Values - A schedule, prepared and maintained by Contractor, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the Work, or for any portion of the Work having a separate specified Contract Price.

1.01.A.46 Shop Drawings - All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

1.01.A.47 Site - Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights - of - way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

1.01.A.48 Specifications - That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

1.01.A.49 Subcontractor - An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

1.01.A.50 Substantial Completion - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Design Professional, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.01.A.51 Successful Bidder - The Bidder submitting a responsive Bid to whom Owner makes an award.

1.01.A.52 Supplementary Conditions - That part of the Contract Documents which amends or supplements these General Conditions.

1.01.A.53 Supplier - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

1.01.A.54 Total Float - Number of calendar days by which the Work or any part of the Work may be delayed without necessarily extending a pertinent Contract Time.

1.01.A.55 Underground Facilities - All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water,

wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.01.A.56 Unit Price Work - Work to be paid for on the basis of unit prices.

1.01.A.57 Warranty Period – Period for which Contractor is responsible for correction of defective Work as defined in Paragraph 13.07.

1.01.A.58 Work - The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.01.A.59 Work Change Directive - A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Design Professional ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.01.A.60 Written Amendment - A written amendment of the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly construction related aspects of the Contract Documents.

## **1.02 Terminology**

1.02.A The words and terms discussed in Paragraph 1.02B through G are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

1.02.B Intent of Certain Terms or Adjectives:

1.02.B.1 The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by

Design Professional. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Design Professional as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Design Professional any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

1.02.C Day:

1.02.C.1 The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

1.02.D Defective:

1.02.D.1 The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

1.02.D.1.a does not conform to the Contract Documents; or

1.02.D.1.b does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

1.02.D.1.c has been damaged prior to Design Professional's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

1.02.E Furnish, Install, Perform, Provide:

1.02.E.1 The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

1.02.E.2 The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position

said services, materials, or equipment complete and ready for intended use.

1.02.E.3 The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

1.02.E.4 When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

1.02.F Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

1.02.G Shall, Will

1.02.G.1 The words "shall" and "will" are used interchangeably to express what is mandatory.

## **ARTICLE 2 - PRELIMINARY MATTERS**

### **2.01 Delivery of Bonds and Evidence of Insurance**

2.01.A When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

2.01.B Evidence of Insurance: Before any Work at the Site is started, Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance which Contractor is required to purchase and maintain in accordance with Article 5.

### **2.02 Copies of Documents**

2.02.A Owner shall furnish to Contractor one reproducible copy of the Drawings and Specifications. Additional copies will be furnished upon request at the cost of reproduction.

### **2.03 Commencement of Contract Times; Notice to Proceed**

2.03.A The Contract Times will commence to run on the day indicated in the Notice To Proceed. A Notice To Proceed may be given at any time within ninety (90) days after the Effective Date of the Agreement.

### **2.04 Starting the Work**

2.04.A Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

### **2.05 Before Starting Construction**

2.05.A Preconstruction Conference: A conference attended by Contractor, Design Professional, Owner and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in the General Requirements, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

2.05.B Designation of Authorized Representatives: At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

### **2.06 Dust Control and Prevention**

2.06.A To facilitate and encourage strict compliance with the Maricopa County Air Pollution Control Regulations pertaining to fugitive dust control, Contractor shall submit the following documentation to the Project Manager at the pre-construction conference prior to conducting any earth moving or dust generating activities under the Contract.

2.06.A.1 Copy of a valid Maricopa County Earth Moving (Dust Control) Permit applicable to the Work or services under the Contract.

2.06.A.2 Copy of the Dust Control Plan applicable to the Work or services under the Contract.

2.06.A.3 Documentation that all of Contractor's on-site project managers have received the Comprehensive or Basic dust control training as required by Maricopa County Rule 310 based on project disturbed acres.

2.06.B For construction sites where:

2.06.B.1 5-acres or more are disturbed, Contractor shall designate and identify to the City

an individual who has completed the dust control training set forth in Section 2 above as the site Dust Control Coordinator. The Dust Control Coordinator shall be present on-site all times that earth moving or dust generating activities are occurring and until all ground surfaces at the site have been stabilized.

2.06.B.2 less than 1-acre is disturbed, the Contractor shall designate an individual who has completed Basic Training to be on site at all times that earth moving or dust generating activities are occurring.

2.06.C Contractor shall notify the Project manager within twenty-four (24) hours of any inspection, Notice of Violation, or other contact by the Maricopa County Air Quality Department with it or any of its subcontractors regarding the Work or services under the Contract. A copy of any written communications, notices or citations issued to Contractor or any of its subcontractors regarding the work or services under the Contract shall likewise be transmitted to the Project Manager within twenty-four (24) hours.

2.06.D The Contractor shall prevent any dust nuisance due to construction operations in accordance with MAG Specifications, Section 104.1.3, Cleanup and Dust Control. The Contractor shall use a power pick-up broom as part of the dust control effort. No separate measurement or payment will be made for cleanup or dust control, or for providing a power pick-up broom on the job.

2.06.E The Contractor may be instructed by the Design Professional to provide additional pavement cleaning (in parking lots, or other locations) above and beyond the normal expected cleanup and dust control required by MAG Section 104.1.3. If requested by the Design Professional, Contractor shall clean the requested areas with a power pick-up broom.

2.06.F Use of the power pick-up broom in the special requested areas only, shall be measured and paid for on an hourly basis under the bid item, "Power Broom". The number of hours listed in the bid proposal is only an estimate. Actual hours requested for this project may vary.

2.06.G Contractor agrees to indemnify and reimburse Owner for any fine, penalty, fee or monetary sanction imposed on Owner by Maricopa County arising out of or caused by the performance of Work or services under the Contract. Contractor shall remit payment of the reimbursable sum to the City within thirty (30) days of being presented with a demand for Payment from Owner.

### **ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

#### **3.01 Intent**

3.01.A The Contract Documents are complementary; what is required by one is as binding as if required by all.

3.01.B It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for at no additional cost to Owner.

3.01.C Clarifications and interpretations of the Contract Documents shall be issued by Design Professional as provided in Article 9.

#### **3.02 Reference Standards**

3.02.A Standards, Specifications, Codes, Laws, and Regulations

3.02.A.1 Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.02.A.2 No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Design Professional, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Design Professional, or any of their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

#### **3.03 Reporting and Resolving Discrepancies**

3.03.A Reporting Discrepancies

3.03.A.1 Contractor's Review of Contract Documents Before Starting Work: Before

undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Design Professional any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Design Professional before proceeding with any Work affected thereby.

**3.03.A.2 Contractor's Review of Contract Documents During Performance of Work:** If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Design Professional in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.06.

**3.03.A.3** Contractor shall not be liable to Owner or Design Professional for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

### **3.03.B Resolving Discrepancies**

**3.03.B.1** Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

**3.03.B.1.a** the provisions of any standard, specification, manual, or code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

**3.03.B.1.b** the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

**3.04** If the issue of priority involves the Specifications and Drawings, figured dimensions shall govern over scaled dimensions. Work not dimensioned shall be subject to interpretation by Design Professional. Work not expressly shown,

identified, sized or located shall be the same as similar Work shown or specified. Detail drawings shall govern over general Drawings, larger scale Drawings take precedence over smaller scale Drawings and Contract Drawings govern over Shop Drawings. Whenever notes, specifications, dimensions, details or schedules in the Specifications or Drawings, or between the Specifications and Drawings conflict, Contractor shall furnish the higher performance requirement.

**3.05** References made on the Plans and in the Specifications to Maricopa Association of Governments (MAG) Standards Details and Specifications are for information only. Any references made to the MAG General Provisions by these details and specifications are not applicable to this Project. The General Conditions and Supplementary Conditions as described in the Contract Documents are applicable.

### **3.06 Amending and Supplementing Contract Documents**

**3.06.A** The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by:

**3.06.A.1** a formal Written Amendment,

**3.06.A.2** a Change Order, or

**3.06.A.3** a Work Change Directive.

**3.06.B** The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

**3.06.B.1** A Field Order;

**3.06.B.2** Design Professional's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17); or

**3.06.B.3** Design Professional's written interpretation or clarification.

### **3.07 Reuse of Documents**

**3.07.A** Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

**3.07.A.1** have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of

Design Professional or its consultants, including electronic media editions; or

3.07.A.2 reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Design Professional and specific written verification or adaptation by Design Professional.

3.07.B The prohibitions of this Paragraph 3.07 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### **3.08 Electronic Data**

3.08.A Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Design Professional to Contractor or by Contractor to Owner or Design Professional, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

3.08.B Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60 - day acceptance period will be corrected by the transferring party.

3.08.C When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

### **3.09 Data Confidentiality**

3.09.A "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 Contract.

3.09.B 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 Contract is confidential and proprietary information belonging to the City.

3.09.C Except as specifically provided in this Contract, the Contractor or its subcontractors shall not divulge data to any third party without prior written consent of the City. The Contractor or its subcontractors shall not use the data for any purposes except to perform the services required under this Contract. These prohibitions shall not apply to the following data provided the Contractor or its subcontractors have first given the required notice to the City:

3.09.C.1 Data which was known to the Contractor or its subcontractors prior to its performance under this Contract unless such data was acquired in connection with work performed for the City;

3.09.C.2 Data which was acquired by the Contractor or its subcontractors in its performance under this Contract and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractor's 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

3.09.C.3 Data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject.

3.09.D 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 shall first notify the City as set forth in this section of the request or demand for the data. The Contractor or its subcontractors shall 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.



3.09.E The Contractor, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, the Contractor or its subcontractors shall promptly deliver, as set forth in this section, a copy of all data to the City. All data shall continue to be subject to the confidentiality agreements of this Contract.

3.09.F The Contractor or its subcontractors assume all liability for maintaining 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 shall be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Contract without notice.

### **3.10 Personal Identifying Information - Data Security**

3.10.A Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times. At a minimum, Contractor must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

3.10.B 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.

3.10.C In the event that data collected or obtained by Contractor or its subcontractors in connection with this Contract is believed to have been compromised, Contractor or its subcontractors shall immediately notify the Project Manager and City Engineer. 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.

3.10.D Contractor agrees that the requirements of these Paragraphs 3.09 and 3.10 shall be incorporated into all subcontracts entered into by

Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

3.10.E Contractor shall indemnify, defend, save and hold harmless the City and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and cost of claims processing, investigation and litigation) for any loss caused, or alleged to be caused, in whole or in part, by Contractor or any of its owners', officers', directors', agents' or employees' failure to comply with the requirements of this Section. This indemnity includes any claim arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

3.10.F The obligations of Contractor or its subcontractors under these Paragraphs 3.09 and 3.10 shall survive the termination of this Contract.

## **ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### **4.01 Availability of Lands**

4.01.A The Contract Documents indicate the lands upon which the Work is to be performed and those rights - of - way and access easements furnished by Owner. Easements for permanent structures or for permanent changes in existing facilities will be obtained by Owner, unless otherwise stated.

4.01.B Contractor shall obtain, at no increase in Contract Price or Contract Time, any additional lands, rights - of - way and easements that Contractor, in its sole discretion, requires for temporary facilities, ingress and egress, storage, disposal of spoil or waste material or any other purpose. Contractor shall obtain

4.01.B.1 all required permits from the U.S. Government, the State and any Political Subdivision or public utility with jurisdiction, and

4.01.B.2 permission by written agreement if private property. Contractor shall submit copies of all permits and written agreements to Owner.

### **4.02 Subsurface and Physical Conditions**

**4.02.A Reports and Drawings: The Supplementary Conditions identify:**

4.02.A.1 those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

4.02.A.2 those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

**4.02.B Limited Reliance by Contractor on Technical Data Authorized:** Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Design Professional, or any of their Related Entities with respect to:

4.02.B.1 the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

4.02.B.2 other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

4.02.B.3 any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

**4.03 Differing Subsurface or Physical Conditions**

**4.03.A Notice:** If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

4.03.A.1 is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

4.03.A.2 is of such a nature as to require a change in the Contract Documents; or

4.03.A.3 differs materially from that shown or indicated in the Contract Documents; or

4.03.A.4 is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Design Professional in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

**4.03.B Design Professional's Review:** After receipt of written notice as required by Paragraph 4.03.A, Design Professional will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Design Professional's findings and conclusions.

**4.03.C Possible Price and Times Adjustments**

4.03.C.1 In accordance with Articles 11 and 12 of the General Conditions, an adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for performance of, the Work subject, however, to the following:

4.03.C.1.a such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

4.03.C.1.b with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

4.03.C.2 Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

4.03.C.2.a Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

4.03.C.2.b the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous

areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

4.03.C.2.c Contractor failed to give the written notice as required by Paragraph 4.03.A.

4.03.C.3 If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner nor Design Professional, nor and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### **4.04 Archaeological Deposits:**

4.04.A Archaeological monitoring may be required within the limits of the project during construction. The Contractor must coordinate all ground disturbing work with the archaeologist(s) and provide a current work schedule to facilitate the archaeologist's investigation and monitoring of all ground disturbing work within the area(s) of interest. When archaeological materials are discovered, the Contractor must stop work immediately within a 10-meter zone of the discovery, secure the area, and immediately notify the on-site archaeologist(s) who must then contact the City Archaeology Office (602-495-0901) or the Street Transportation Environmental Section at 602-534-3747, who will coordinate with the City Archaeology Office. The Contractor must not recommence work in the area of discovery until directed in writing by the City Archaeology Office.

4.04.B If suspected archaeological materials are discovered during construction without an archaeologist present, the Contractor must stop work immediately within a 10-meter zone of the discovery, secure the area, and immediately notify the City Archaeology Office (602-495-0901). The Contractor must not recommence work in the area of discovery until directed in writing by the City Archaeology Office.

4.04.C In 1990, the Arizona legislature amended two state laws (Arizona Antiquities Act & State Historic Preservation Act) that protect human burials and associated artifacts on both private and

state land. As specified in these laws and rephrased below:

4.04.C.1 A person shall not knowingly excavate in or upon any historic or prehistoric archaeological site, except when acting as a duly authorized agent of an institution or corporation organized for scientific, research or land use planning purposes. [Arizona Revised Statute §41-841(A) - Archaeological Discoveries] Any person, institution or corporation violating any provision of this article is guilty of a class 2 misdemeanor. [A.R.S. §41-846 - Violation].

4.04.C.2 A person who knowingly excavates in violation of A.R.S. §41-841 is guilty of a class 5 felony pursuant to Arizona Criminal Code- Title 13. A second or subsequent violation under this subsection is a class 3 felony. [A.R.S. 17 .OJ - Excavating Certain Sites].

4.04.D A class 5 felony carries potential penalties of up to two years in prison. If a City of Phoenix (City) project may impact historic or pre-historic archaeological resources, the guidelines described above must be adhered to. Therefore, no subsurface disturbance activities related to this without having an archaeological consultant on-site prior to and during this project's ground disturbance activities.

4.04.E The City of Phoenix Office of the City Engineer is requesting that the Project Archaeological Requirements Acknowledgment Form is completed for all City sponsored or managed projects involving ground subsurface disturbance activities in areas that may include archaeological resources, as determined by the City of Phoenix Archaeology Office (CAO). If archaeological monitoring is required on a project, a City Archaeological Monitoring Acknowledgment form will be provided for your review and signature. The guidelines and the provisions in the Terms and Conditions of the Archaeological Monitoring Form must be followed as prescribed on the form and referenced above in this section. Penalties for non-compliance are detailed on the Archaeological Monitoring Form. Failure to comply with the requirements of this acknowledgment form and the City contract may constitute a breach of contract.

4.04.F If Contractor discovers archaeological sites or objects, Contractor may be allowed an adjustment of Contract Time(s) pursuant to Article 12. If Owner, with the advice of Design Professional, concludes that the Contract Documents require changes due to archaeological

features, Owner shall, pursuant to Article 10 of the General Conditions, order any changes in the Work and corresponding adjustments in Contract Price required solely because of the archaeological features encountered.

#### **4.05 Underground Facilities**

4.05.A Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Design Professional by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.05.A.1 Owner and Design Professional shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

4.05.A.2 the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

4.05.A.2.a reviewing and checking all such information and data;

4.05.A.2.b locating all Underground Facilities shown or indicated in the Contract Documents;

4.05.A.2.c coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

4.05.A.2.d the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

4.05.B Not Shown or Indicated:

4.05.B.1 If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Design Professional. Design Professional will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or

location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

4.05.B.2 If Design Professional concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### **4.06 Compliance with A.R.S. 40-360.21**

4.06.A Owner shall comply in all respects with A.R.S. 40 - 360.21 et seq. as amended.

#### **4.07 Reference Points**

4.07.A Owner shall provide engineering surveys to establish reference points for construction which in Design Professional's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Design Professional whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### **4.08 Hazardous Environmental Condition at Site**

4.08.A Reports and Drawings: The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

4.08.B Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the "technical data" contained

in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Design Professional, or any of their Related Entities with respect to:

4.08.B.1 the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

4.08.B.2 other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

4.08.B.3 any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

4.08.C Contractor, Subcontractors, Manufacturers and Suppliers shall use, store, process, transfer, transport, dispose of and otherwise handle Hazardous Substances in accordance with applicable Rules and Regulations.

4.08.D Except as otherwise provided in the Technical Specifications, if Contractor encounters Hazardous Substances on-site (including, but not limited to Asbestos, polychlorinated biphenyls (PCBs), Petroleum products, radioactive products or materials used in the normal course of construction as paint thinners, solvents, gasoline, oil, etc.) which were neither shown in nor inferable from Contract Documents (or otherwise identified as part of the Work) and which may present substantial danger, Contractor shall immediately (a) stop all affected Work, (b) give verbal and written notice to Owner of the conditions, and (c) take appropriate health and safety precautions. Upon receipt of the notice, Owner will investigate the conditions. If the material is a Hazardous Substance which may present substantial danger, Owner shall stop the affected Work in writing. Except as otherwise provided in Paragraph 4.08.F, Owner shall arrange for removal or other appropriate handling of the Hazardous Substance by negotiating a change in the Work with Contractor, by separate contract with other contractors, or as Owner may otherwise deem expedient; in the alternative, Owner may terminate

the Agreement or affected Work with Contractor for Owner's convenience.

4.08.E Once the Hazardous Substance has been removed or rendered harmless in accordance with Paragraph 4.08.D, the affected Work may be resumed as directed by Owner. Pursuant to A.R.S. Section 32.1129.03, and subject to Contractor's compliance with that Section and Paragraph 12.03.A, Contractor may be entitled to damages and time for delay attributable to the discovery of Hazardous Substances which interrupt the Work.

4.08.F Requirements for the Contractor's management of Hazardous Substances (materials) brought onto the construction site by Contractor are addressed in the General Requirements. If contamination occurs on-site due to (a) Contractor's violation(s) of Rules, Regulations or Contract Documents covering the use, storage, processing, transfer, transport, disposal or otherwise handling of any Hazardous Substances, or (b) any other cause within the control attributable to the fault or negligence of the Contractor, such as the spillage of chemicals, Contractor shall be responsible for all costs and time required to clean up the Site and render harmless the Hazardous Substances to the satisfaction of Owner, the State and any political subdivision with jurisdiction. Immediately upon contamination of the Site, Contractor shall notify Owner's representative or designee. If Contractor fails to proceed with due diligence or act appropriately, Owner, in its sole discretion, shall have the right to act, and if it does so, Contractor shall defend, indemnify and hold Owner harmless from and against all claims, as provided in Paragraph 6.20.A arising out of or in any way resulting from Owner's action under this provision. If the Owner is cited and fined by any political subdivision with jurisdiction for the herein described actions of the Contractor, Contractor shall immediately reimburse Owner for the cost of such fines.

#### **4.09 Materials Containing Asbestos**

4.09.A Materials containing asbestos and/or lead in any form are unacceptable to incorporate into the Project unless formally accepted in writing by the Owner. This written approval shall take place prior to the material being incorporated into the project and/or brought to the site.

4.09.B Repair kits or touch-up materials, materials that include asbestos and/or lead introduced into the product at the factory or applied at the assembly plant are all unacceptable. Any and all field-applied

products that are comprised of asbestos and/or lead containing materials are also unacceptable.

4.09.C If asbestos and/or lead are installed without written approval by Owner, Contractor will remove these materials at his expense and dispose of these materials in accordance with all State and Federal laws and pay for the supervision and reporting costs in addition to the cost to properly remove them.

## **ARTICLE 5 – BONDS AND INSURANCE**

5.01 Performance and Payment Bonds: Contractor shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Payment Bond shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws and Regulations or by the Contract Documents. The Performance Bond shall remain in effect as long as Contractor is liable for (a) defective Work appearing after final inspection, (b) failure to comply with the Contract Documents or the terms or any special guaranties specified therein, or (c) Contractor's continuing obligations under the Contract Documents. Failure to comply with these provisions will be cause for rejection of the bidder's proposal.

5.01.A Bonds shall be executed by surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The certificate shall be made payable and acceptable to the City of Phoenix. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official. Personal or individual bonds are not acceptable.

5.01.B All bonds submitted for this project shall be provided by a company which has been rated "A- or better for the prior four quarters" by the A.M. Best Company.

5.02 If the surety on any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in

the State of Arizona or it ceases to meet the requirements of paragraph 5.01, Contractor shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to Owner.

### **5.03 Contractor's Insurance**

5.03.A Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subconsultants. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

5.04 The Owner in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors and Contractor may purchase additional insurance as they determine necessary.

### **5.05 Scope and Limits of Insurance**

5.05.A Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

#### **5.05.A.1 Commercial General Liability -**

General Aggregate	\$2,000,000
Products - Completed	\$1,000,000
Operations Aggregate	
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

5.05.A.1.a The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor, related to this Contract.

5.05.A.1.b Coverage must include XCU coverage.

5.05.A.1.c There shall be no endorsement or modification which limits the scope of coverage or

the policy limits available to the City of Phoenix as an additional insured.

5.05.A.1.d City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.

5.05.A.1.e The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

5.05.A.1.f Contractor's policies must be endorsed to provide an extension of the completed operations coverage for a period of nine years.

**5.05.A.2 Automobile Liability** - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract

Combined Single Limit (CSL)	\$1,000,000
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5.05.A.2.a The policy must be endorsed to include The City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, related to this Contract

5.05.A.2.b City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor

5.05.A.2.c The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

**5.05.A.3 Workers' Compensation and Employers' Liability** -

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

5.05.A.3.a Policy must contain a waiver of subrogation against the City of Phoenix.

5.05.A.3.b This requirement does not apply when a Contractor or Subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

5.05.A.4 Builders' Risk Insurance - Policy must be in an amount equal to the initial Contract Amount plus additional coverage equal to Contract amount for all subsequent Change Orders.

5.05.A.4.a The City of Phoenix, the Contractor and Subcontractors, must be named Insureds on the policy.

5.05.A.4.b Special Causes of Loss coverage must be written on a replacement cost basis and must include coverage for soft costs, flood and earth movement.

5.05.A.4.c Coverage must be written on an all risk,

5.05.A.4.d Policy must be maintained until whichever of the following must first occur: (1) final payment has been made; or, (2) until no person or entity, other than the Owner, has an insurable interest in the property required to be covered.

5.05.A.4.e Policy must be endorsed such that the insurance must not be cancelled or lapse because of any partial use or occupancy by the Owner.

5.05.A.4.f Policy must provide coverage from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

5.05.A.4.g Policy must contain a waiver of subrogation against the Owner.

5.05.A.4.h Contractor is responsible for the payment of all policy deductibles.

#### **5.05.B Notice of Cancellation**

5.05.B.1 For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within five business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be sent directly to the Owner's Project Manager listed in the Supplementary Conditions.

#### **5.05.C Acceptability of Insurers**

5.05.C.1 Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than B+ VI. The Owner in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

#### **5.05.D Verification of Coverage**

5.05.D.1 Contractor must furnish the Owner with certificates of insurance (ACORD form or

equivalent approved by the Owner) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

5.05.D.2 All certificates and any required endorsements are to be received and approved by the Owner before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of the Contract.

5.05.D.3 All certificates required by this Contract must be sent directly to Design and Construction Procurement, 200 W. Washington Street, 5<sup>th</sup> Floor, Phoenix, Arizona 85003. **The Contract Number, Project Number, and Project title must be noted on the certificate of insurance.** The Owner reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE OWNER'S RISK MANAGEMENT DIVISION.**

#### 5.05.E Subcontractors

5.05.E.1 Contractor's certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract's Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

#### 5.05.F Approval

5.05.F.1 Any modification or variation from the insurance requirements and conditions must be documented by an executed contract amendment.

### **ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES**

#### **6.01 Supervision and Superintendence**

6.01.A Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Design Professional in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

6.01.B At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Design Professional except under extraordinary circumstances.

6.01.C All communications given to or received from the contractor's representative, designated pursuant to Paragraph 2.05.B, shall be binding on Contractor.

#### **6.02 Labor; Working Hours**

6.02.A Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

6.02.B Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Design Professional.

6.02.B.1 Regular working hours, unless specifically disallowed by Laws or Regulations, shall be between 6:00 a.m. and 7:00 p.m. from May 1st through September 30th and between 7:00 a.m. and 7:00 p.m. from October 1st through April 30th, not exceeding forty-five (45) hours per week. Contractor shall reimburse Owner for all additional costs resulting from Work performed outside regular working hours, which shall include (a) premium time charges of Design Professional and Owner, and (b) added costs assessed against or



incurred by Owner which Contractor could reasonably foresee.

6.02.C The combined premium time charges of Design Professional and Owner shall be as defined in the Supplementary Conditions.

### **6.03 Services, Materials, and Equipment**

6.03.A Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work.

6.03.B All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Design Professional, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

6.03.C All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

### **6.04 Progress Schedule**

6.04.A Contractor shall adhere to the Progress Schedule developed and maintained by Contractor in accordance with the General Requirements.

6.04.B Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order or Written Amendment.

### **6.05 Substitutes and "Or-Equals"**

6.05.A Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. If the

specification or description contains or is followed by the words "or-equal", other items of material or equipment or other Suppliers may be accepted by the Design Professional under circumstances stated in Paragraph 6.05.A.1 below. Requests for acceptance of "or-equal" items will be received by the Design Professional after Notice to Proceed has been issued.

6.05.A.1 "Or Equal" Items: If in Design Professional's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Design Professional as an "or equal" item, in which case review and approval of the proposed item may, in Design Professional's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

6.05.A.1.a in the exercise of reasonable judgment Design Professional determines that:

6.05.A.1.a.1it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

6.05.A.1.a.2it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

6.05.A.1.a.3it has a proven record of performance and availability of responsive service.

6.05.A.1.b Contractor certifies that, if approved and incorporated into the Work:

6.05.A.1.b.1there will be no increase in cost to the Owner or increase in Contract Times; and

6.05.A.1.b.2it will conform substantially to the detailed requirements of the item named in the Contract Documents.

6.05.B If the specification, description, list of acceptable equipment and/or Suppliers is not followed by the words "or-equal", other equivalent equipment or Suppliers proposed by the Contractor will be reviewed as a "pre-approved equal" by the Design Professional only prior to the Bid date. The Instructions to Bidders describes the time schedule, procedure, and other requirements for application for "pre-approved equal" acceptance. Proposed "pre-approved equal" and "or-equal" items must be

determined by the Design Professional to be equivalent as prescribed in Paragraph 6.05.A.1.

6.05.C If the Contractor proposes to use equipment, Supplier(s) or materials not equivalent to what is specified, Contractor must make an application to the Design Professional for approval of a substitute in accordance with Paragraph 6.05.C.3. Requests by the Contractor to use substitute items must be submitted to the Design Professional after the Notice to Proceed has been issued. Generally, a substitute will not be approved without a cost credit to the Owner. A substitute will be approved only through a Change Order.

6.05.C.1 Substitute Items: If in Design Professional's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

6.05.C.2 Contractor shall submit sufficient information as provided below to allow Design Professional to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Design Professional from anyone other than Contractor.

6.05.C.3 Contractor shall make written application to Design Professional for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

6.05.C.3.a shall certify that the proposed substitute item will:

6.05.C.3.a.1 perform adequately the functions and achieve the results called for by the general design,

6.05.C.3.a.2 be similar in substance to that specified, and

6.05.C.3.a.3 be suited to the same use as that specified;

6.05.C.3.b will state:

6.05.C.3.b.1 the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

6.05.C.3.b.2 whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions

of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

6.05.C.3.b.3 whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

6.05.C.3.c will identify:

6.05.C.3.c.1 all variations of the proposed substitute item from that specified, and

6.05.C.3.c.2 available engineering, sales, maintenance, repair, and replacement services; and

6.05.C.3.d shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

6.05.D Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Design Professional. Contractor shall submit sufficient information to allow Design Professional, in Design Professional's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Design Professional will be similar to those provided in Paragraph 6.05.C.3.

6.05.E Design Professional's Evaluation: Design Professional will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.C. Design Professional may require Contractor to furnish additional data about the proposed substitute item. Design Professional will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Design Professional's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Design Professional will advise Contractor in writing of any negative determination.

6.05.E.1 The Design Professional will not accept any substitute item unless it yields a net savings to Owner and does not extend Contract Time(s), and seventy-five percent (75%) of the savings in Contract Price and reduction in Contract

Time(s) are credited to Owner. The remaining twenty five percent (25%) of the net savings in Contract Price and/or reduction in Contract Time will be credited to Contractor. If, in Design Professional's judgment, acceptance of a substitute item will result in increased future costs to Owner for operation, maintenance, or replacement, the portion of the net savings in Contract Price which is to be credited to Contractor will be reduced by an amount equal to twenty five percent (25%) of the estimated present worth of such increased future costs to Owner.

6.05.F Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

6.05.G Design Professional's Cost Reimbursement: Design Professional will record Design Professional's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A and 6.05.C Whether or not Design Professional approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Design Professional for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Design Professional for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

6.05.H Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or equal" at Contractor's expense.

## **6.06 Concerning Subcontractors, Suppliers, and Others**

6.06.A Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

6.06.B The identity of certain Subcontractors, Manufacturers, Suppliers, individuals or entities (including those who are to furnish the principal items of materials or equipment) are required to be submitted as specified in the Bid Documents for acceptance by Owner, and if Bidder has submitted

a list thereof in accordance with Section 00330 (List of Major Subcontractors and Suppliers), Section 00331 (List of All Subcontractors and Suppliers) and Section 00340 (Schedule of Manufacturers and Suppliers of Major Equipment and Material Items), Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bid Documents or the Contract Documents) of any Subcontractor, Manufacturer, Supplier, individual or entity so identified may be revoked on the basis of reasonable objection after due investigation, in which case Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Design Professional to reject work.

6.06.C Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

6.06.C.1 shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Design Professional and any such Subcontractor, Supplier or other individual or entity, nor

6.06.C.2 shall create any obligation on the part of Owner or Design Professional to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

6.06.D Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

6.06.E Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Design Professional through Contractor.

6.06.F The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.06.G All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Design Professional. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Article 5, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Design Professional, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### **6.07 Payments to Subcontractors and Suppliers**

6.07.A Contractor Payment to Subcontractor or Supplier. Contractor shall pay its Subcontractors or Suppliers within seven (7) calendar days of receipt of each progress payment from the Owner. The Contractor shall pay for the amount of work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the Owner with each progress payment. In addition, any reduction of retention by the Owner to the Contractor shall result in a corresponding reduction to Subcontractors or Suppliers who have performed satisfactory work. Contractor shall pay Subcontractors or Suppliers the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the Contractor. No Contract between Contractor and its Subcontractors and Suppliers

may materially alter the rights of any Subcontractor or Supplier to receive prompt payment and retention reduction as provided herein.

6.07.B **Prompt Payment:** If the Contractor fails to make payments in accordance with these provisions, the Owner may take any one or more of the following actions and Contractor agrees that the Owner may take such actions:

6.07.B.1 to hold the Contractor in default under this Agreement;

6.07.B.2 withhold future payments including retention until proper payment has been made to Subcontractors or Suppliers in accordance with these provisions;

6.07.B.3 reject all future Bids from the Contractor for a period not to exceed one year from Substantial Completion date of this Project; or

6.07.B.4 terminate Agreement.

6.07.C Alternative Dispute Resolution Between Contractor and Subcontractor or Supplier.

6.07.C.1 If Contractor's payment to a Subcontractor or Supplier is in dispute, Contractor and Subcontractor or Supplier agree to submit the dispute to any of one of the following dispute resolution processes within fourteen (14) calendar days from the date of any party gives notice to the others:

6.07.C.1.a binding arbitration;

6.07.C.1.b a form of alternative dispute resolution (ADR) agreeable to all parties or

6.07.C.1.c a City of Phoenix facilitated mediation.

6.07.C.2 When disputed claim is resolved through ADR or otherwise, the Contractor and Subcontractor or Supplier agrees to implement the resolution within seven (7) calendar days from the resolution date.

6.07.D **Inspection and Audit.** Contractor, its subcontractors and suppliers shall comply with A.R.S. 35-214 and the Owner shall have all rights and remedies to inspect and audit the records and files of Contractor, subcontractor or supplier, as afforded the State of Arizona, in accordance with the provisions of A.R.S. Section 35-214.

6.07.D.1 Records of the Contractor's direct personnel payroll, bond expenses, and reimbursable expenses pertaining to this Project and records of accounts between the City and the 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 five years following Final Acceptance of the Project.

6.07.D.2 The City, its authorized representative, and/or any federal agency, reserves the right to audit the Contractor's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate the Contract Documents and any Change Orders.

6.07.D.3 The City reserves the right to decrease the Contract Price and/or payments made on this Agreement and/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.

6.07.D.4 The Contractor shall include a similar provision in all of its contracts with Subcontractors and Suppliers providing services or supplying materials under the Contract Documents to ensure that the City, its authorized representative, and/or the appropriate federal agency has access to the Subcontractors and Suppliers records to verify the accuracy of all cost and pricing data.

6.07.D.5 The City reserves the right to decrease the Contract Price and/or payments made on this Agreement and/or request reimbursement from the Contractor following final contract payment on this Agreement if the above provision is not included in Subcontractors and Suppliers contracts, and one or more Subcontractors or Suppliers refuse to allow the City to audit their records to verify the accuracy and appropriateness of cost and pricing data.

6.07.D.6 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 shall be liable for reimbursement of the reasonable, actual cost of the audit.

6.07.E **Non-Waiver.** Should the Owner fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

6.07.F **Inclusion of Provisions in Subcontracts.** Contractor shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for the Agreement.

6.07.G **No Third Party Benefits or Rights.** Nothing contained in the Agreement is intended to benefit or confer any rights on any person or entity not a party to the Agreement, and no such person or entity, including but not limited to other Contractors, Subcontractors or Suppliers, may assert any claim, cause of action, or remedy against the Owner hereunder.

## 6.08 Patent Fees and Royalties

6.08.A Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Design Professional its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

6.08.B To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Design Professional, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

## 6.09 Permits

6.09.A Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids,

or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

## **6.10 Laws and Regulations**

6.10.A Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Design Professional shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

6.10.B If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

6.10.C Contractor shall (a) comply with all Laws and Regulations governing the use of explosives, (b) obtain and pay for any required permits before their use, and (c) furnish a copy of the permits to Design Professional before using explosives. Contractor shall, under the supervision of competent and suitably trained and qualified personnel, exercise the utmost care not to endanger life or damage property in the transportation, storage, handling, use and disposal of explosives. Contractor shall be responsible for and shall defend, indemnify and hold harmless Owner and Design Professional against all claims for injury, damage and other adverse impacts inside and outside the permit area resulting from the use of explosives, including but not limited to all costs, delay and delay costs.

6.10.D Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such

adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### **6.10.E Fair Treatment of Workers**

6.10.E.1 The Contractor shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to Laws and Regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and Fair Labor Standards Act (FLSA). The Contractor shall protect and indemnify the Contracting Agency and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

### **6.10.F No Israel Boycott**

6.10.F.1 By entering into this contract, the Engineer/Contractor certifies that they are not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel.

### **6.10.G No Forced Labor of Ethnic Uyghurs**

6.10.G.1 If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of 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.

## **6.11 Use of Site and Other Areas**

**6.11.A Limitation on Use of Site and Other Areas**

6.11.A.1 Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and as directed in the General Requirements. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

6.11.A.2 Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by other dispute resolution proceeding or at law.

6.11.A.3 To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Design Professional, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Design Professional, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

**6.11.B Removal of Debris During Performance of the Work:** During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

**6.11.C Cleaning:** Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

**6.11.D Loading Structures:** Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the

structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

**6.12 Record Documents**

6.12.A Contractor shall maintain record documents as indicated in the General Requirements.

**6.13 Safety and Protection**

6.13.A Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.13.A.1 all persons on the Site or who may be affected by the Work;

6.13.A.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

6.13.A.3 other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

6.13.B Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

6.13.C Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

6.13.D Contractor shall inform Owner and Design Professional of the specific requirements of Contractor's safety program with which Owner's

and Design Professional's employees and representatives must comply while at the site.

6.13.E All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Design Professional, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

6.13.F Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Design Professional has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.D that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### **6.14 Safety Representative**

6.14.A Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.14.B The safety representative will also be qualified to manage the hazardous materials management requirements described in the General Requirements.

#### **6.15 Hazard Communication Programs**

6.15.A Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations. This also applies to the hazardous materials management requirements described in the General Requirements.

6.15.B Contractor shall contact the Owner's Environmental Health and Safety (EHS) Specialist at the Site where Work is to be performed to obtain information regarding the EHS policies and

participate in any required training. Contractor shall comply with all EHS policies in effect during the performance of its Work.

#### **6.16 Emergencies**

6.16.A In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Design Professional prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Design Professional determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### **6.17 Shop Drawings and Samples**

6.17.A Unless otherwise indicated in the General Requirements, Contractor shall submit Shop Drawings and Samples to Design Professional, for review and approval. Procedures for submittal, review, approval and resubmittal of Shop Drawings, Samples and other submittals are detailed in the General Requirements.

6.17.B Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Design Professional's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

6.17.B.1 Technical submittal(s) consisting of drawings and specifications involving architecture, professional engineering, land surveying or landscape architecture, as defined in A.R.S. Title 32, shall be prepared by or under the direct supervision of a registrant within the specific category involved.

6.17.B.2 Submittal(s) are not Contract Documents. Technical submittal(s) are intended to demonstrate how Contractor intends to conform with the design concept of the Project and the information given in the Contract Documents.

#### **6.17.C Design Professional's Review**

6.17.C.1 Design Professional's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of



construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

#### **6.18 Continuing the Work**

6.18.A Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

#### **6.19 Contractor's General Warranty and Guarantee**

6.19.A Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Design Professional and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

6.19.B Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

6.19.B.1 abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

6.19.B.2 normal wear and tear under normal usage.

6.19.C Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

6.19.C.1 observations by Design Professional;

6.19.C.2 recommendation by Design Professional or payment by Owner of any progress or final payment;

6.19.C.3 the issuance of a certificate of Substantial Completion by Design Professional or any payment related thereto by Owner;

6.19.C.4 use or occupancy of the Work or any part thereof by Owner;

6.19.C.5 any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Design Professional;

6.19.C.6 any inspection, test, or approval by others; or

6.19.C.7 any correction of defective Work by Owner.

6.19.C.8 expiration of the correction period pursuant to Paragraph 13.07.

#### **6.20 Defense and Indemnification**

6.20.A To the maximum extent allowed by law, including Title 34 A.R.S., Contractor ("Indemnitor") agrees to defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents and employees (and any jurisdiction or agency issuing permits for any work included in the project, and its officers, agents and employees) ("Indemnitee") from any and all claims, actions, liabilities, damages, losses or expenses, (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees, or subcontractors (Indemnitor's Agents") arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state's workers' compensation law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation, or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the City's award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor's

Agents for the City of Phoenix under this Contract. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

**6.20.B Delegation of Professional Design Services**

6.20.C Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

6.20.D If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Design Professional will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Design Professional.

6.20.E Owner and Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Design Professional have specified to Contractor all performance and design criteria that such services must satisfy.

6.20.F Pursuant to this Paragraph 6.21, Design Professional's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Design Professional's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.

6.20.G Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

**6.21 Quality Control**

6.21.A Contractor shall establish a quality control program:

6.21.A.1 to insure sufficient supervision, examination, inspection and testing of all items of Work at appropriate intervals, including those of Subcontractors and Suppliers; and

6.21.A.2 to control conformance to the applicable Specifications and Drawings with respect to identified products, workmanship, construction, maintenance while idle, finish and functional performance. At minimum Contractor's quality control program shall include checking, approval and coordination of submittal and oversight of all specified tests; and it shall specifically assign to responsible Contractor personnel the obligation to verify and inspect when complete all items of Work which cannot be later located or inspected without uncovering Work. Contractor shall accurately annotate data on the thus obtained record documents.

**6.22. Off Duty Police Office Requirements**

6.22.A. Off-duty police officers are required for construction projects as defined in the most recent edition of the City of Phoenix Traffic Barricade Manual and TRACS permit. The Contractor must competitively procure off-duty police with vendors who are Authorized Traffic Coordinators with the City of Phoenix Police Department or Phoenix Police Department off-duty detail. The following requirements must be included in the procurement:

6.22.A.2.a Hourly fees charged

6.22.A.2.b Administrative fees (administrative fees to be charged as a part of the hourly rate, not billed separately)

6.22.A.2.c Pay applications requesting reimbursement for Off Duty Police hours worked will be accompanied with itemized documentation indicating officer name, date worked, hours worked, time of day worked and location.

6.22.A.2.d For audit purposes, contractor's files will contain documentation from the successful off duty vendor that the above items are accounted for in the vendor's price proposal.

**ARTICLE 7 - OTHER WORK AT THE SITE**

**7.01 Related Work at Site**

7.01.A Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have

other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

7.01.A.1 written notice thereof will be given to Contractor prior to starting any such other work; and

7.01.A.2 if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

7.01.B Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' Work with the written consent of Design Professional and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

7.01.C If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Design Professional in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

## **7.02 Coordination**

7.02.A If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

7.02.A.1 the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

7.02.A.2 the specific matters to be covered by such authority and responsibility will be itemized; and

7.02.A.3 the extent of such authority and responsibilities will be provided.

7.02.B Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

## **7.03 Legal Relationships**

7.03.A Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

7.03.B Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

## **7.04 Mutual Duties and Responsibilities**

7.04.A If Contractor causes damage to the Work or property of others, Contractor shall promptly attempt to settle with that party or otherwise resolve the claim. Contractor shall defend, indemnify and hold harmless Owner and Design Professional from and against all claims, as provided in Paragraph 6.20.A, arising out of or resulting from damage by Contractor to the Work or property of others or from Contractor's performance of the Work.

7.04.B If another party causes damage to the Work or property of Contractor, Contractor shall promptly attempt to settle with that party or otherwise resolve the claim. Contractor shall not begin any action against Owner or Design Professional, their consultants, agents or any of their directors, officers, shareholders, agents or employees, or permit any action against them to be maintained in Contractor's name or for Contractor's benefit in any court or tribunal, which action seeks to impose liability or recover damages from Owner or Design Professional for such claim.

7.04.C If Contractor becomes involved in settling or otherwise resolving claims with other persons performing work under the circumstances covered in Paragraphs 7.04.A or 7.04.B, or because of any other similar controversy, including damage to the

Work or other work or a dispute about responsibility for clean-up or any other issue, neither Owner, Design Professional, nor any of their respective consultants, directors, officers, stockholders, employees or agents will be involved in any way in such actions (unless subpoenaed). If Owner incurs costs contrary to the provisions of this Article, Contractor shall reimburse Owner for those costs.

## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

### **8.01 Communications to Contractor**

8.01.A Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Design Professional.

### **8.02 Replacement of Individual or Entity**

8.02.A In case of termination of the employment of Design Professional, Owner shall appoint a design professional to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Design Professional.

8.02.B If Design Professional reasonably objects to any of Contractor's personnel because they are unfit, unskilled, disorderly or counter-productive to the Work, Contractor shall promptly correct the problem and, if required, remove such personnel from the Work. Contractor shall defend, indemnify and hold Owner and Design Professional harmless from and against all claims, losses and expenses (including attorneys' fees and costs of defense and appeal, if any) arising from the enforcement of this clause.

### **8.03 Furnish Data**

8.03.A Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **8.04 Pay When Due**

8.04.A Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.B and 14.07.E.1.

### **8.05 Lands and Easements; Reports and Tests**

8.05.A Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.07. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of

physical conditions relating to existing surface or subsurface structures at the Site.

### **8.06 Change Orders**

8.06.A **Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.**

### **8.07 Inspections, Tests, and Approvals**

8.07.A Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

### **8.08 Limitations on Owner's Responsibilities**

8.08.A The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.08.B Neither (a) Owner's authority to review Contractor's Progress Schedules (as set forth in Article 6), nor (b) Owner's decision to raise or not raise objections about Progress schedule submittal, shall create or impose any duty or responsibility on Owner to exercise any such authority or decision for the benefit of Contractor, any Subcontractor or Supplier or any other person.

8.08.C Neither (a) Owner's authority to review the required certificates and policies of insurance, nor (b) Owner's decision to object or not to object to the certificates or policies, shall create or impose any duty or responsibility on Owner to exercise any such authority or decision for the benefit of Contractor, any Subcontractor or Supplier or any other person.

### **8.09 Undisclosed Hazardous Environmental Condition**

8.09.A Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.08.

### **8.10 Compliance with Safety Program**

8.10.A While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

## **ARTICLE 9 - DESIGN PROFESSIONAL'S STATUS DURING CONSTRUCTION**

### **9.01 Owner's Representative**

9.01.A Design Professional will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Design Professional as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner.

### **9.02 Visits to Site**

9.02.A Design Professional will make visits to the Site at intervals appropriate to the various stages of construction as Design Professional deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Design Professional, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Design Professional will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Design Professional's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Design Professional will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

9.02.B Design Professional's visits and observations are subject to all the limitations on Design Professional's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Design Professional's visits or observations of Contractor's Work, Design Professional will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### **9.03 Project Representative**

9.03.A If Owner and Design Professional agree, Design Professional will furnish a Resident Project Representative to assist Design Professional in

providing more extensive observation of the Work. If Owner designates another representative or agent to represent Owner at the Site who is not Design Professional's consultant, agent or employee, they will be identified, and the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### **9.04 Authorized Variations in Work**

9.04.A Design Professional may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### **9.05 Rejecting Defective Work**

9.05.A Design Professional will have authority to reject Work which Design Professional believes to be defective, or that Design Professional believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Design Professional will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

### **9.06 Shop Drawings, Change Orders and Payments**

9.06.A In connection with Design Professional's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

9.06.B In connection with Design Professional's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

9.06.C In connection with Design Professional's authority as to Change Orders, see Articles 10, 11, and 12.

9.06.D In connection with Design Professional's authority as to Applications for Payment, see Article 14.

#### **9.07 Determinations for Unit Price Work**

9.07.A Design Professional will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Design Professional will review with Contractor the Design Professional's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Design Professional's written decision thereon will be final and binding (except as modified by Design Professional to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

#### **9.08 Decisions on Requirements of Contract Documents and Acceptability of Work**

9.08.A Design Professional will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Design Professional will issue such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as Design Professional may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Design Professional in writing within 30 days of the event giving rise to the question.

9.08.B Design Professional will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Design Professional's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

9.08.C Design Professional's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08.D When functioning as interpreter and judge under this Paragraph 9.08, Design Professional will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

#### **9.09 Limitations on Design Professional's Authority and Responsibilities**

9.09.A Neither Design Professional's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Design Professional in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Design Professional shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Design Professional to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

9.09.B Design Professional will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Design Professional will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.09.C Design Professional will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

9.09.D Design Professional's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.C will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

9.09.E The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

## **9.10 Compliance with Safety Program**

9.10.A While at the Site, Design Professional's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Design Professional has been informed pursuant to Paragraph 6.13.D

## **ARTICLE 10 - CHANGES IN THE WORK; CLAIMS**

### **10.01 Authorized Changes in the Work**

10.01.A Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, a Written Amendment, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.01.A.1 Contractor may propose modifications to the Work for the purpose of reducing the total cost of construction. Such a proposal shall be identified as an Alternatives Evaluation Proposal, and shall be submitted in accordance with Article 6.7 of these General Conditions, "Substitutes and Or-Equal Items."

10.01.A.2 Owner may in its sole discretion accept or reject an Alternatives Evaluation Proposal. The Contract Price is not to be based on the anticipated approval of an Alternatives Evaluation Proposal.

10.01.A.3 If Owner determines that an Alternatives Evaluation Proposal is to be accepted, Contractor will be credited with 25% of the net savings in Contract Price, less certain costs as further defined in Article 6.7 of these General Conditions.

10.01.B If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.01.C No proposal or Claim by Contractor based on changes in the Work, differing site conditions, quantity variations or any other matter shall be allowed if made after final payment.

### **10.02 Unauthorized Changes in the Work**

10.02.A Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

### **10.03 Execution of Change Orders**

10.03.A Owner and Contractor shall execute appropriate Change Orders recommended by Design Professional covering:

10.03.A.1 changes in the Work which are:

10.03.A.1.a ordered by Owner pursuant to Paragraph 10.01.A,

10.03.A.1.b required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or

10.03.A.1.c agreed to by the parties;

10.03.A.2 changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

10.03.A.3 changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Design Professional pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.03.B A Change Order duly signed by Owner and Contractor, without Contractor's reservation of the right to Claim additional adjustments in Contract Price or Contract Time, constitutes an all-inclusive settlement for all related changes and for all related direct, indirect, supplemental, consequential and cumulative costs and delays; Contractor's signature also constitutes a release and waiver of any and all rights to file a Claim based on the changes covered by the Change Order.

10.03.C A Change Order duly signed by Owner and Contractor, with Contractor's reservation of the right

to Claim additional adjustments, shall become final and binding on Contractor, without consideration of the reservation, unless Contractor delivers to Owner written notice of Claim within thirty (30) days after Contractor signs that Change Order.

#### **10.04 Notification to Surety**

10.04.A If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

#### **10.05 Claims**

10.05.A Design Professional's Decision Required: All Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the Design Professional for decision. A decision by Design Professional shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

10.05.B Notice: Written notice stating the general nature of each Claim, shall be delivered by the claimant to Design Professional and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Design Professional and the other party to the Contract within 60 days after the start of such event (unless Design Professional allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Design Professional and the claimant within 30 days after receipt of the claimant's last submittal (unless Design Professional allows additional time).

10.05.C Design Professional's Action: Design Professional will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

10.05.C.1 deny the Claim in whole or in part;

10.05.C.2 approve the Claim; or

10.05.C.3 notify the parties that the Design Professional is unable to resolve the Claim if, in the Design Professional's sole discretion, it would be inappropriate for the Design Professional to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

10.05.D In the event that Design Professional does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

10.05.E Design Professional's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

10.05.F No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

#### **10.06 Owner's Right to Audit**

10.06.A Owner, reserves the right to decrease adjustments made in any Change Order if, upon audit of Contractor's records, the audit discloses Contractor provided false or inaccurate cost and pricing data in negotiating the Change Order. In enforcing this provision, the parties shall follow the procedures provided in Paragraph 10.07.

#### **10.07 Audit Procedure**

10.07.A Unless exempted from this clause by meeting one of the following conditions:

10.07.A.1 the pricing is based on adequate competition;

10.07.A.2 prices are set by law;

10.07.A.3 a commercial item is being acquired;

10.07.A.4 a waiver has been granted;

10.07.B A change in the approved cost for a change order may be required due to inaccuracies in the pricing where the value of the change order, including profit, exceeds \$550,000 and the change



increased the contract value by a significant amount. A reduction in the contract amount shall be issued if one of the following conditions applies:

10.07.B.1 the furnished pricing was incomplete, inaccurate or not current,

10.07.B.2 a subcontractor furnished pricing that was incomplete, inaccurate or not current,

10.07.B.3 any party furnished any data that is not accurate.

10.07.B.4 the contractor did not submit a Certificate of Current Cost or Pricing Data.

10.07.C Any resulting reduction due to data from a subcontractor who was not awarded the work will be in the amount only by which the actual cost was less than the prospective subcontractor.

10.07.D If a reduction is required, the contractor may not raise the following as a defense:

10.07.D.1 the contractor or subcontractor was a sole source supplier or otherwise in a superior bargaining position and thus would not have modified the contract even if accurate pricing had been submitted.

10.07.D.2 the Owner should have known the pricing was inaccurate

10.07.D.3 the contract was based on a total cost and no agreement was made regarding the cost of individual items.

10.07.E The reduction may be offset if

10.07.E.1 the contractor certifies that it is entitled to the offset, and

10.07.E.2 the contractor can prove that the price was available before the date of the change but was not submitted by that date

10.07.F An offset will not be allowed if:

10.07.F.1 the contractor knew the data was incorrect

10.07.F.2 the owner demonstrates that the price would not have increased by the amount to be offset even if data were available.

10.07.G If any reduction is for work already paid to contractor, contractor shall be liable to and shall pay to owner at the time such overpayment is repaid:

10.07.G.1 simple interest on the amount of the repayment computed from the date of the

overpayment to the date of repayment at a rate of the current federal short term rate plus 3%, and

10.07.G.2 A penalty equal to the amount of the overpayment, if the contractor knowingly submitted incorrect data.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **11.01 Cost of the Work**

11.01.A Costs Included: The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

11.01.A.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

11.01.A.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds

with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

11.01.A.3 Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive Bids from Subcontractors acceptable to Owner and Contractor and shall deliver such Bids to Owner, who will then determine, with the advice of Design Professional, which Bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

11.01.A.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

11.01.A.5 Supplemental costs including the following:

11.01.A.5.a The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

11.01.A.5.b Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

11.01.A.5.c Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements, competitive in the local Phoenix metropolitan area, approved by Owner with the advice of Design Professional, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

11.01.A.5.d Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

11.01.A.5.e Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.01.A.5.f Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Article 5), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

11.01.A.5.g The cost of utilities, fuel, and sanitary facilities at the Site.

11.01.A.5.h Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

11.01.A.5.i The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

11.01.B Costs Excluded: The term Cost of the Work shall not include any of the following items:

11.01.B.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be

considered administrative costs covered by the Contractor's fee.

11.01.B.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

11.01.B.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

11.01.B.4 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

11.01.B.5 Acceleration costs to overcome suspension of Work or other delays which warrant extensions in Contract Time but exclude increases in Contract Price; escalation costs for any part of the Work not delayed beyond the late dates in the Progress Schedule; or delay costs not expressly allowed in this Article.

11.01.B.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

11.01.C Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in Paragraph 12.01.C unless otherwise set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

## **11.02 Allowances**

11.02.A It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Design Professional.

### **11.02.B Cash Allowances**

11.02.B.1 Contractor agrees that the allowances include all costs to the Contractor of materials, equipment, taxes, unloading, handling on the Site, labor, installation costs, overhead,

profit, and other expenses required to furnish and install the Work described by the allowances.

### **11.02.C Contingency Allowance**

11.02.C.1 Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

11.02.D Prior to final payment, an appropriate Change Order will be issued as recommended by Design Professional to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### **11.03 Unit Price Work**

11.03.A Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

11.03.B The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Design Professional subject to the provisions of Paragraph 9.07.

11.03.C Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

11.03.D Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

11.03.D.1 the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

11.03.D.2 there is no corresponding adjustment with respect to any other item of Work; and

11.03.D.3 Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to

agree as to the amount of any such increase or decrease.

## **ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

### **12.01 Change of Contract Price**

12.01.A The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Design Professional and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

12.01.B The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

12.01.B.1 where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

12.01.B.2 where the Work is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum, itemized and supported by substantiating data, (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2);

12.01.B.3 where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

12.01.C Contractor's Fee: The Contractor's fee for overhead and profit shall be determined as follows:

12.01.C.1 a mutually acceptable fixed fee; or

12.01.C.2 if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

12.01.C.2.a for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

12.01.C.2.b for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

12.01.C.2.c where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

12.01.C.2.d no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

12.01.C.2.e the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

12.01.C.2.f when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.01.D Contractor will establish and maintain records related to the cost of any change in accordance with generally accepted accounting practices and submit in a form acceptable to Design Professional an itemized cost breakdown together with supporting data.

### **12.02 Change of Contract Times**

12.02.A The Contract Times may only be changed by a Change Order or Written Amendment. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Design Professional and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

12.02.B Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

### **12.03 Delays**

12.03.A Notwithstanding anything to the contrary in the Contract Documents, Contractor assumes all risks of delays, disruptions and hindrances, and Contractor shall not make any Claim for adjustment

in Contract Price or for damages (or any other kind of compensation) for any delays, disruptions or hindrances from any cause whatsoever, including acts and omissions of Owner or Design Professional, except as provided in Paragraphs 12.03.A.1 and 12.03.A.2

12.03.A.1 Owner and Contractor shall negotiate for the recovery of damages related to expenses incurred by Contractor for delay if, but only if, (a) Owner is responsible for the delay; and (b) the delay is unreasonable under the circumstances; and (c) the delay was not within the contemplation of Owner and Contractor; and (d) Contractor gives Owner notice and submits a Claim in the manner and within the times specified in Article 10. Contractor shall make every effort to avoid the consequences and mitigate damages from any delay.

12.03.A.2 No delay resulting from the negotiations or resolution of changes in the Work, differing site conditions or variation in quantities shall be unreasonable under the circumstances unless the delay exceeds two days plus the time required by Contractor to deliver a related proposal. Such delays are contemplated by Contractor and Owner.

12.03.B Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. An extension in Contract Time will not be justified unless Contractor, demonstrates delay in completing all or a specified part of the Work arising from unforeseeable causes beyond the control and without the fault or negligence of Contractor, and the delay is unreasonable under the circumstances. Examples of events which may justify an extension of Contract Time, subject to the requirements of the Contract Documents, include: acts of God, the public enemy, or acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7; acts of the U.S. Government, the State or another Political Subdivision; fires, floods, epidemics, quarantine restrictions; strikes, freight embargoes abnormal weather, including storms, tornados, etc. (abnormal in the sense of expectation, frequency or severity compared with the prior 5 year average); unusually severe shortages of construction materials, considering all feasible sources of supply; newly discovered Underground Utilities;

objection, for Owner's convenience, to a nominated Subcontractor; an emergency; incidents with archaeological features suspension of Work; changes in the Work, differing site conditions or variation in quantities of Unit Price Work. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

12.03.C If Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) for unforeseeable causes beyond the control of both Owner and Contractor, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for the delay. In no event shall Owner be liable to Contractor, any Subcontractor, any Manufacturer, any Supplier, any person, any firm, any corporation, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (a) delays caused by or within the control of Contractor, or (b) delays beyond the control of both parties as specified in Paragraph 12.03.B.

12.03.D No delay in completing the Work, or any specified part of the Work, for which the Owner is responsible, shall be unreasonable under the circumstances or justify an increase in Contract Time or Contract Price, unless, and then only to the extent that, the delay extends completion of the Work, or specified part of the Work, beyond the corresponding Contract Time. Notwithstanding the first sentence of this Paragraph 12.03.D, if the Progress Schedule depicts Total Float whether expressly disclosed or implied by the use of float suppression techniques, the Total Float is owned jointly by Contractor and Owner.

12.03.E Owner, Design Professional and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

## **ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01 Notice of Defects**

13.01.A Prompt notice of all defective Work of which Owner or Design Professional has actual

knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### **13.02 Access to Work**

13.02.A Owner, Design Professional, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### **13.03 Tests and Inspections**

13.03.A Contractor shall give Design Professional timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.03.B Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

13.03.B.1 for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below; or

13.03.B.2 that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

13.03.B.3 as otherwise specifically provided in the Contract Documents.

13.03.C If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Design Professional the required certificates of inspection or approval.

13.03.D Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Design Professional's acceptance of materials or equipment to be

incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Design Professional.

13.03.E If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Design Professional, Contractor shall, if requested by Design Professional uncover such Work for observation.

13.03.F Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Design Professional timely notice of Contractor's intention to cover the same and Design Professional has not acted with reasonable promptness in response to such notice.

### **13.04 Uncovering Work**

13.04.A If any Work is covered contrary to the written request of Design Professional, it must, if requested by Design Professional, be uncovered for Design Professional's observation and replaced at Contractor's expense.

13.04.B If Design Professional considers it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Contractor, at Design Professional's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

13.04.C If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

13.04.D If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase

in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### **13.05 Owner May Stop Work**

13.05.A If Work is defective, or Contractor fails to provide sufficient, skilled workers or suitable materials or equipment, or otherwise fails to perform Work in compliance with the Contract Documents, Owner may order Contractor to stop all or part of the Work until any problem is corrected. Contractor shall (a) remain responsible for recovering schedule, (b) not be entitled to any increase in Contract Time or Contract Price, and reimburse Owner for all direct, indirect or consequential costs incurred by Owner resulting from any such stop Work order. Owner's authority to stop all or part of the Work shall not create or impose any duty or responsibility on Owner to exercise any such authority for the benefit of Contractor or any other person.

### **13.06 Correction or Removal of Defective Work**

13.06.A Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Design Professional, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.06.B When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

### **13.07 Correction Period**

13.07.A If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be

defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

13.07.A.1 repair such defective land or areas; or

13.07.A.2 correct such defective Work; or

13.07.A.3 if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

13.07.A.4 satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

13.07.B If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

13.07.C In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

13.07.D Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

13.07.E The specified warranties and guarantees and Contractor's obligations for correction of Work specified in this Article are in addition to, and not in limitation of, any other specific remedies provided in the Contract Documents or by Law. Nothing contained in this Paragraph or this Article shall be construed as establishing a period of limitations for,

or limiting the obligations of, Contractor under the Contract Documents.

### **13.08 Acceptance of Defective Work**

13.08.A If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Design Professional's recommendation of final payment, Design Professional) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Design Professional as to reasonableness) and the for diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Design Professional's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

### **13.09 Owner May Correct Defective Work**

13.09.A If Contractor fails within a reasonable time after written notice from Design Professional to correct defective Work or to remove and replace rejected Work as required by Design Professional in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

13.09.B In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for

which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Design Professional and Design Professional's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

13.09.C All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

13.09.D Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## **ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**

### **14.01 Schedule of Values**

14.01.A The Schedule of Values established as provided in the General Requirements will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Design Professional. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.01.B Whenever the Bid Schedule on the Bid Form lists an item of Work entitled "Mobilization Pay Item", such mobilization pay item shall be intended to cover, in part at least

14.01.B.1 reasonable costs of establishing those temporary offices specified in the Technical Specifications;

14.01.B.2 reasonable cost of transporting to the site and the unloading and assembly of



construction equipment that arrives on site promptly after the Date of Commencement of the Contract Time;

14.01.B.3 fees for permits required to commence the Work;

14.01.B.4 premiums for Performance Bond, Payment Bond and any other performance Bonds required by the Contract Documents;

14.01.B.5 premiums for policies of insurance purchased by the Contractor to comply with the requirements of the Contract Documents;

14.01.B.6 and reasonable costs of demobilization including vacating and clearing the site.

14.01.C Except when seeking progress payment under the mobilization pay item for payroll or other similar costs, the basis of measurement for payment shall be proof of actual payment. Payment shall be based on the requirements of the Contract Documents governing progress payments, subject to the following:

14.01.C.1 Up to forty percent (40%) of the payment earned under this item may be requested for payment with the Application for Payment following receipt by the Owner of a sufficiently responsive initial Progress Schedule (meaning sufficiently responsive based on the requirements of the Contract Documents and the Technical Specifications).

14.01.C.2 Up to eighty percent (80%) of the payment earned under this item may be requested for payment with the Application for Payment following return to the Contractor of the revision of the initial Progress Schedule Submittal marked "Resubmittal Not Required".

14.01.C.3 The balance of the payment earned under the "Mobilization Pay Item" may be requested for payment with the final Application for Payment. Such payment is intended to cover demobilization costs.

## **14.02 Progress Payments**

### **14.02.A Applications for Payments**

14.02.A.1 At least 21 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Design Professional for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied

by such supporting documentation as is required by the Contract Documents.

14.02.A.2 with each Application for Payment, Contractor shall submit written consent of the Surety for payment of the amount requested in the Application for Payment.

14.02.A.3 Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

### **14.02.A.4 SBE Goal Compliance**

14.02.A.4.a In addition, with each Application for Payment, Contractor shall submit (in a format acceptable to the Owner) the required information demonstrating its compliance with the SBE goals for this Agreement.

### **14.02.A.5 Stored Materials and Equipment**

14.02.A.5.a If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

### **14.02.A.6 Retainage**

14.02.A.6.a The amount of retainage with respect to progress payments will be as stipulated below:

14.02.A.6.b Until the aggregate value of the duly certified and approved Applications for Payment equals fifty percent (50%) of the Contract Price (i.e. 50% completion), Owner will make payments in an amount equal to 90% of Work completed (i.e. Owner will retain 10% of each estimate as additional guarantee for complete performance of the Work), less the aggregate of payments previously made and less such deductions as Design Professional or Owner determines are appropriate to cover claims requiring a greater sum to be retained (as provided in Paragraph 14.02.C and elsewhere in the Contract Documents);

14.02.A.6.c Upon fifty percent (50%) completion, one-half of the amounts retained under the 10% retainage provision shall be paid to Contractor, provided Contractor is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After fifty percent (50%) completion, Owner will retain five percent (5%) providing Contractor is making satisfactory progress, coupled with such deductions as Design Professional or Owner determines are appropriate to cover claims requiring a greater sum to be retained.

14.02.A.6.d Prior to reduction in or partial release of retainage, Contractor shall submit AIA Document G707A (Consent of Surety to Reduction in or Partial Release of Retainage) certifying the Surety agrees that such reduction in or partial release of retainage shall not relieve the Surety of any of its obligations under the Performance and Payment Bonds.

14.02.A.6.e If at any time Owner, with the advice of Design Professional, determines satisfactory progress is not being made, ten percent (10%) retainage shall be reinstated for all subsequent payments, in accordance with ARS, Title 34 Chapter 2.

14.02.A.6.f Except as qualified in Paragraph 14.04.A.6.C, upon final completion and acceptance of the Work on which separate final completion and acceptance and Contract Price are specified and upon compliance with all other terms and conditions of the Contract Documents, payment may be made in full, including retainage withheld, less such deductions as Design Professional may recommend or Owner may withhold to cover claims requiring a greater sum to be retained and liquidated damages.

14.02.A.6.g In lieu of retention, the Contractor may provide as a substitute, an assignment of money market accounts, demand deposit accounts, or time certificates of deposit (CDs) from a bank licensed by Arizona, securities guaranteed by the United States, securities of the United States, the State of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona. These securities are referred to as "Qualified Securities."

14.02.A.6.h Qualified Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the City of Phoenix and be assigned exclusively for the

benefit of the City of Phoenix pursuant to the City's form of escrow and/or deposit agreement.

14.02.A.6.i Escrow Agreement and Deposit Agreement forms may be obtained from the Contracts Specialist assigned to the project.

#### **14.02.B Review of Applications**

14.02.B.1 Design Professional will, within seven (7) days after receipt of each Application for Payment, either certify, approve and present the Application to Owner, or return the Application to Contractor indicating in writing Design Professional's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application. Fourteen (14) days after presentation of the Application for Payment to Owner, the amount recommended will, subject to the provisions of Paragraph 14.02.B.6 of the General Conditions, become due and when due will be paid by Owner to Contractor.

14.02.B.2 All payments will be available to the Contractor at the Finance Department, Accounts Division, Customer Service-Accounts Payable Section, on the fourteenth (14th) day, unless Contractor arranges with the Finance Department to mail payments. Mailed payments shall be deemed paid on the date deposited in the mail as established by the U.S. Postal Service postmark. If payment is not made when due, simple interest, as provided in ARS Title 34 Chapter 2 as amended, shall be paid by Owner to Contractor (excluding any Fee to Contractor)

14.02.B.3 Design Professional's recommendation of any payment requested in an Application for Payment will constitute a representation by Design Professional to Owner, based on Design Professional's observations on the Site of the executed Work as an experienced and qualified design professional and on Design Professional's review of the Application for Payment and the accompanying data and schedules, that to the best of Design Professional's knowledge, information and belief:

14.02.B.3.a the Work has progressed to the point indicated;

14.02.B.3.b the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of

quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

14.02.B.3.c the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Design Professional's responsibility to observe the Work.

14.02.B.3.d the Record Drawings have been redlined by the Contractor to the same limit as the finished Work claimed on the Application for Payment.

14.02.B.4 By recommending any such payment Design Professional will not thereby be deemed to have represented that:

14.02.B.4.a inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Design Professional in the Contract Documents; or

14.02.B.4.b that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

14.02.B.5 Neither Design Professional's review of Contractor's Work for the purposes of recommending payments nor Design Professional's recommendation of any payment, including final payment, will impose responsibility on Design Professional:

14.02.B.5.a to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

14.02.B.5.b to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

14.02.B.6 Design Professional may refuse to recommend the whole or any part of any payment if, in Design Professional's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.1. Design Professional may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Design Professional's opinion to protect Owner from loss because:

14.02.B.6.a the Work is defective, or completed Work has been damaged, requiring correction or replacement;

14.02.B.6.b the Contract Price has been reduced by Written Amendment or Change Order.

14.02.B.6.c Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

14.02.B.6.d Design Professional has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

14.02.B.6.e the Record Drawings have not been redlined by the Contractor to the same limit as the finished Work claimed on the Application for Payment.

#### 14.02.C Reduction in Payment

14.02.C.1 Owner may refuse to make payment of the full amount recommended by Design Professional because:

14.02.C.1.a claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

14.02.C.1.b Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

14.02.C.1.c there are other items entitling Owner to a set off against the amount recommended; or

14.02.C.1.d Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.6.a through 14.02.B.6.c or Paragraph 15.02.A.

14.02.C.1.e Either the Contractor has failed to submit the SBE Utilization Report with any Application for Payment or has failed to meet the SBE utilization goals as established in the Agreement (Section 00500, Article 11).

14.02.C.1.f Owner may deduct from each progress payment and final payment an amount equal to Owner's estimate of the liquidated damages then due or that would become due based on Owner's estimate of late completion of the Work, provided Contractor fails to submit and implement a recovery schedule as detailed in the General Requirements.

14.02.C.2 If Owner refuses to make payment of the full amount recommended by Design Professional, Owner will give Contractor immediate written notice (with a copy to Design Professional)

stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

14.02.C.3 If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

#### **14.03 Contractor's Warranty of Title**

14.03.A Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### **14.04 Substantial Completion**

14.04.A When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Design Professional in writing that the entire Work is substantially complete, in accordance with the General Requirements, (except for items specifically listed by Contractor as incomplete) and request that Design Professional issue a certificate of Substantial Completion.

14.04.B Within a reasonable time thereafter, Owner, Contractor and Design Professional shall make an inspection of the Work to determine the status of completion. If Design Professional does not consider the Work substantially complete, Design Professional will notify Contractor in writing giving the reasons therefor.

14.04.C If Design Professional considers the Work substantially complete, including all applicable ADA requirements, Design Professional will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be, attached to the certificate, a tentative list of items (typically referred to as a "punch list") to be completed or corrected before final payment. The punch list will be prepared and issued by the Design Professional. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Design Professional as to any provisions of the certificate or attached punch list. If, after considering such objections, Design Professional concludes that the Work is not

substantially complete, Design Professional will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Design Professional considers the Work substantially complete, Design Professional will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Design Professional believes justified after consideration of any objections from Owner. The Contractor shall have seven days after receipt of the tentative certificate to prepare and submit to the Design Professional a punch list schedule showing orderly completion of punch list items occurring prior to final acceptance date.

14.04.D At the time of delivery of the tentative certificate of Substantial Completion, Design Professional will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Design Professional in writing prior to Design Professional's issuing the definitive certificate of Substantial Completion, Design Professional's aforesaid recommendation will be binding on Owner and Contractor until final payment.

14.04.E Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.04.F The Owner and Design Professional have thirty (30) days from the date of substantial completion to add incorrect or incomplete items to the punch list. The Contractor is required to complete all of these items prior to final acceptance. After the expiration of the thirty (30) day period, the Owner may continue to add items to the punch list, but the Contractor must only endeavor to complete them by the final acceptance date. Any such items added after the 30-day period that is not completed prior to final acceptance must be completed during the warranty period.

#### **14.05 Partial Utilization**

14.05.A Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Design Professional, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

14.05.A.1 Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Design Professional that such part of the Work is substantially complete and request Design Professional to issue a certificate of Substantial Completion for that part of the Work.

14.05.A.2 Contractor at any time may notify Owner and Design Professional in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Design Professional to issue a certificate of Substantial Completion for that part of the Work.

14.05.A.3 Within a reasonable time after either such request, Owner, Contractor, and Design Professional shall make an inspection of that part of the Work to determine its status of completion. If Design Professional does not consider that part of the Work to be substantially complete, Design Professional will notify Owner and Contractor in writing giving the reasons therefor. If Design Professional considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.05.A.4 No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Article 5 regarding property insurance.

#### **14.06 Final Inspection**

14.06.A Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Design Professional will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in

which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### **14.07 Final Payment**

14.07.A Upon written notice from Contractor that Contractor considers the entire Work, or a specified part of the Work for which final acceptance is specified in the Contract Documents, complete and ready for final payment, Design Professional will make a corresponding final inspection with Owner and Contractor, and will notify Contractor in writing of all instances of incomplete or defective Work revealed by the final inspection. Contractor shall immediately undertake all necessary measures to correct the deficiencies.

14.07.B Contractor may apply for final payment and acceptance

14.07.B.1 after completing correction of the deficiencies to satisfaction of Design Professional and delivering all maintenance and operation instructions, warranties and guarantees, certificates of inspection, revised record documents (reflecting revisions made after Substantial Completion), required Bonds and all other required documents, and

14.07.B.2 after Design Professional has consented to review the Work for final acceptance.

14.07.C The final Application for Payment and acceptance shall enclose

14.07.C.1 evidence of insurance (including, but not limited to completed operations insurance) and an affidavit certifying that the insurance coverage will not be canceled, adversely changed or renewal refused except as provided under Article 5,

14.07.C.2 AIA Document G707 (Consent of Surety to Final Payment) certifying the Surety agrees that final payment shall not relieve the Surety of any of its obligations under the Performance and Payments Bonds,

14.07.C.3 a "Contractor's Affidavit Regarding Settlement of Claims" (available from Owner) and complete and legally effective releases or waivers acceptable to Owner in the full amount of the Contract Price, or if any Subcontractor or Supplier refuses or fails to furnish such release or waiver, a Bond or other security acceptable to Owner to indemnify Owner against any payment claim, and

14.07.C.4 a list of all pending property damage and personal injury or death insurance claims arising out of or resulting from the Work, identifying the claimant and the nature of the claim.

14.07.D If based on Design Professional's observation of the Work, final inspection, and review of the final Application for Payment and acceptance,

14.07.D.1 Design Professional is satisfied that the Work, or a part of the Work for which separate final acceptance is specified in the Contract Documents, has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Design Professional will, within thirty (30) days after receipt of the final Application, furnish to Owner and Contractor the Design Professional's recommendation of final payment and acceptance.

14.07.D.2 If Design Professional is not satisfied, Design Professional will return that final Application for Payment to Contractor, indicating in writing the reasons for not recommending final payment and acceptance, in which case Contractor shall make the necessary corrections and resubmit the Application.

14.07.E Owner's Acceptance of Application:

14.07.E.1 If Owner concurs with Design Professional's recommendation of final payment and acceptance, Owner will, within fifteen (15) days, file a written notice of completion and acceptance of the Work, or separable part of the Work for which final acceptance is specified, and notify Contractor and Design Professional of Owner's acceptance. Within sixty (60) days of receipt of Design Professional's recommendation of final payment, Owner shall pay to Contractor the balance of the Contract Price, subject to any withholdings and those other provisions governing final payment specified in the Agreement.

14.07.E.2 If Owner does not concur with Design Professional's determination, Owner will return the Application to Contractor, through Design Professional, indicating in writing the reasons for refusing final payment and acceptance. Contractor shall promptly make the necessary corrections and resubmit the Application to Design Professional. Owner's written determination shall bind Contractor, unless Contractor delivers to Owner, through Design Professional, written notice of a Claim as provided in Paragraph 10.05, after receipt of that determination.

14.07.E.3 If recommended by Design Professional, Owner may, upon receipt of Contractor's final Application for Payment and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted, if final completion of the Work is significantly delayed through no fault of Contractor. If the balance to be held by Owner for Work not fully completed or corrected is less than the retainage on that Work, the affidavits specified in Paragraph 14.07.C and the release or waiver, or Bonds, shall be furnished as required and submitted by Contractor. Payment of the balance due shall be made under the provisions for final payment, but shall not constitute a waiver of Claims.

14.07.F Owner shall pay with reasonable promptness any amounts deducted from the final payment, upon resolution of the Claims for which the amounts were withheld.

#### **14.08 Waiver of Claims**

14.08.A Final payment does not constitute a waiver by Owner of any rights relating to Contractor's continuing obligations under the Contract Documents, nor does it constitute a waiver of any Claims by Owner against Contractor arising from unaudited payments, defective Work appearing after final inspection or failure by Contractor to comply with the Contract Documents or the terms of any special warranties or guarantees provided by the Contract Documents or by Laws or Regulations.

14.08.B Final payment constitutes a waiver of all Claims by Contractor against Owner other than those Claims previously filed in writing with Owner on a timely basis and still unsettled.

### **ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

#### **15.01 Owner May Suspend Work**

15.01.A At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Design Professional which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed.

15.01.B Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes an approved Claim therefor as provided in Paragraph 10.05, except

that Contractor shall not be entitled to recover profit for suspensions of Work. No adjustment in Contract Price will be made for delays in Work which would have been deferred, stopped, slowed, suspended, interrupted or extended due to any other cause.

#### **15.02 Owner May Terminate for Cause**

15.02.A The occurrence of any one or more of the following events will justify termination for cause:

15.02.A.1 Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);

15.02.A.2 Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

15.02.A.3 Contractor's disregard of the authority of Design Professional;

15.02.A.4 Contractor's violation in any substantial way of any provisions of the Contract Documents;

15.02.A.5 if the Contractor fails to meet the SBE utilization goals as set forth in the Agreement (Section 00500, Article 11).

15.02.B Unless superceded by the termination procedures of the performance bond obtained in accordance with Article 5, if one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

15.02.B.1 exclude Contractor from the Site, and take possession of the Work,

15.02.B.2 incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

15.02.B.3 complete the Work as Owner may deem expedient.

15.02.C If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute

resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Design Professional as to their reasonableness and, when so approved by Design Professional, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

15.02.D Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

15.02.E Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

#### **15.03 Owner May Terminate For Convenience**

15.03.A Upon seven days written notice to Contractor and Design Professional, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

15.03.A.1 completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

15.03.A.2 expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

15.03.A.3 all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

15.03.A.4 reasonable expenses directly attributable to termination.

15.03.A.5 If it is determined, after notice of termination of the services of Contractor for any of the causes listed in Paragraph 15.02 of the General Conditions that Contractor was not in default, the termination shall be deemed to have been for the convenience of Owner. In such event Contractor may recover payment in accordance with Paragraph 15.03 of the General Conditions.

15.03.B Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### **15.04 Contractor May Stop Work or Terminate**

15.04.A If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Design Professional fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Design Professional, and provided Owner or Design Professional do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

15.04.B In lieu of terminating the Contract and without prejudice to any other right or remedy, if Design Professional has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Design Professional, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

### **ARTICLE 16 - DISPUTE RESOLUTION**

#### **16.01 Methods and Procedures**

16.01.A Either Owner or Contractor may request mediation of any Claim submitted to Design Professional for a decision under Paragraph 10.05

before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

16.01.B Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

16.01.C If the Claim is not resolved by mediation, Design Professional's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

16.01.C.1 elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

16.01.C.2 agrees with the other party to submit the Claim to another dispute resolution process, or

16.01.C.3 gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

#### **16.02 Certification of Contractor Claims**

16.02.A For all Contractor claims alleging an increase in Contract Price or Contract Time, Contractor shall submit an affidavit executed by an officer or partner in charge at Contractor's plant or location involved, or by a responsible senior officer or general or managing partner of Contractor, certifying that the claim is made in good faith; the amount claimed accurately reflects the adjustments in Contract Price or Contract Time for which Contractor believes Owner is liable; the claim covers all costs and delays to which Contractor is entitled from the Occurrence of the claimed event; and that supporting cost and pricing data are current, accurate, complete and represent Contractor's best knowledge and belief.

#### **16.03 Venue: Service of Process**

16.03.A Contractor consents and submits to jurisdiction and venue of, and will not commence



any proceeding elsewhere than, the Superior Court of Arizona in and for Maricopa County only, regardless of residence or domicile, for any action at law or suit in equity arising out of or relating to the bidding, award, performance or completion of the Work; payment for Work performed; termination; or any other claim based on the Contract Documents. Contractor consents and submits to service of process at the address specified in the Agreement.

16.03.B Paragraph 16.03.A shall apply to all Subagreements and all agreements between Contractor and Contractor's sureties and insurers, altering that Paragraph only to identify properly the contracting parties.

## **ARTICLE 17 - MISCELLANEOUS**

### **17.01 Giving Notice**

17.01.A Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

17.01.A.1 delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

17.01.A.2 delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### **17.02 Computation of Times**

17.02.A When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### **17.03 Cumulative Remedies**

17.03.A The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### **17.04 Survival of Obligations**

17.04.A All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### **17.05 Controlling Law**

17.05.A This Contract is to be governed by the law of the State of Arizona.

### **17.06 Headings**

17.06.A Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

### **17.07 Professional Fees and Court Costs Included:**

17.07.A Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or other dispute resolution costs.

### **17.08 Project Staffing**

17.08A **Key Personnel:** Before starting work, Contractor must submit detailed résumés of key personnel involved in that work for City's approval (which City will not unreasonably withhold). If Contractor later desires to change key personnel involved in that work, Contractor must submit detailed résumés of the new personnel for City's approval (which City will not unreasonably withhold).

17.08B **Qualified Staff:** Contractor must maintain an adequate and competent staff of qualified persons—as City may determine in its sole discretion—during performance of this Master Agreement. If City in its sole discretion determines that any of Contractor's staff is objectionable, Contractor must take prompt corrective action or replace that staff with new personnel, subject to City's approval.

17.08C **Third-Party Employment Brokers:** Contractor and Subcontractors will not utilize a third-party labor broker for any construction worker under this Agreement. The Contractor and Subcontractors must be the employers of record for its construction staff under this Agreement.

---END OF SECTION 00700---

## SECTION 00800 - SUPPLEMENTARY CONDITIONS

**Add the following new paragraph to the General Conditions:**

SC-1.01.A.19.a. The Design Professional's Consultant is identified as:

Brown and Caldwell, Inc.

**Add the following new paragraphs to the General Conditions identifying the additional insured:**

SC-2.01.B.1. Additional insured to be named in the insurance policies to be provided by the Contractor are identified:

SC-2.01.B.1.a. City of Phoenix

**Add the following new paragraphs to the General Conditions regarding electronic data:**

SC-3.08.A.1. The following electronic data may be relied upon in lieu of hard copies:

SC3.08.A.1.a. \_\_\_\_\_

**The following new Paragraphs supplement Paragraph 4.02.A.1 in the General Conditions which identify the "reports of subsurface conditions" that the Owner has knowledge of pursuant to Paragraph 4.02.A.1.:**

SC-4.02.A.1.a. \_\_\_\_\_

**The following new paragraphs supplement Paragraph 4.02.A.2 in the General Conditions which identify the "drawings of physical conditions" that the Owner has knowledge of pursuant to Paragraph 4.02.A.2.:**

SC-4.02.A.2.a. \_\_\_\_\_

**The following new paragraphs supplement Paragraph 4.02.B. in the General Conditions, which identify the "technical data" that the Contractor may relay on pursuant to Paragraph 4.02.B:**

SC-4.02.B.1.a. \_\_\_\_\_

**Add the following new Paragraphs following Paragraph 4.05.A.2.d in the General Conditions, which concerns information on Underground Facilities and as so amended Paragraphs 4.05.A thru 4.05.A.2.d, remain in effect.**

SC-4.05.A.3. \_\_\_\_\_

**The following new paragraphs supplement Paragraph 4.08. in the General Conditions, which identify the "Hazardous Environmental Condition" that the Contractor may rely on pursuant to Paragraph 4.08.**

SC-4.08.A.1. \_\_\_\_\_

**Add the following new paragraph following Paragraph 5.05.A.4. of the General Conditions:**

SC-5.05.A.5 Contractor shall furnish only those specialty insurance coverages, which are checked below, with limits of liability no less than the amounts stated below:

<input type="checkbox"/>	Contractors Pollution Liability	\$ 1,000,000
<input type="checkbox"/>	Asbestos Abatement Liability	\$ 1,000,000
<input type="checkbox"/>	Lead Abatement Liability	\$ 1,000,000

**Amend the last sentence of Paragraph 5.05.C.1 of the General Conditions to read as follows:**

"Such notice shall be sent directly to the Water Services Department's Project Manager at the address indicated below via certified mail, return receipt requested:

City of Phoenix  
200 W. Washington St, 8<sup>th</sup> Floor  
Phoenix, Arizona 85003

**Amend the last sentence of Paragraph 5.05.E3. of the General Conditions to read as follows:**

"All certificates required by this Contract shall be sent directly to the Water Services Department's Project Manager at the address indicated below:

City of Phoenix  
200 W. Washington St, 8<sup>th</sup> Floor  
Phoenix, Arizona 85003

**Amend Paragraph 6.02.C of the General Conditions to read as follows:**

SC-6.02.C The combined premium time charges of Design Professional and Owner shall be defined as \$150 per hour for each hour exceeding a 10-hour work day or a 50-hour work week.

**Add a new paragraph immediately after Paragraph 6.09.A. of the General Conditions, which is to read as follows:**

SC-6.09.A.1 Owner has secured or will secure the following permits, approvals and licenses and has paid or will pay any associated charges and fees:

SC-6.09.A.1.a. \_\_\_\_\_  
SC-6.09.A.1.b \_\_\_\_\_

**Add a new paragraphs immediately after Paragraph 6.13.C. of the General Conditions, which is to read as follows:**

SC-6.13.C.1 Following are those Owner's safety programs or requirements:

SC-6.13.C.1.a. Confined Space Entry

**Replace Paragraph 7.02.B with the following:**

"Other work being performed at the Site during this Project, consisting of, \_\_\_\_\_ shall be coordinated for the Owner by \_\_\_\_\_"

**Add the following paragraph after Paragraph 7.02.B of the General Conditions:**

SC-7.02.C. Other contracts currently active or which may be active during the performance of the Work on this Project are identified below:

SC-7.02.C.1. \_\_\_\_\_  
SC-7.02.C.2. \_\_\_\_\_

**Add the following new paragraphs immediately after 9.03.A. of the General Conditions:**

SC-9.03.A.1. \_\_\_\_\_ has been designated by the Owner to act as an additional Project representative of the Owner in addition to the Design Professional.

SC-9.03.A.2. Specific duties, in addition to those indicated in the Contract Documents, of the representative indicated in SC-9.03.A.1 are \_\_\_\_\_.

--- END OF SECTION 00800---