

**REQUEST FOR  
STATEMENTS OF QUALIFICATIONS**

City of Avondale  
11465 West Civic Center Drive  
Avondale, Arizona 85323

**SOLICITATION INFORMATION AND SELECTION SCHEDULE**

Solicitation Number:	<b>EN19-186</b>
Solicitation Title:	<b>Historic Avondale Phase 1 Improvements Design/Build</b>
CIP Project Number:	<b>ST1500, WA1501, SW1502</b>
Release Date:	<b>June 05, 2019</b>
<b>NON-MANDATORY</b> Pre-Submittal Conference:	<b>June 13, 2019</b> <b>09:00 a.m.</b> (local time, Phoenix, Arizona) Avondale Civic Center Mojave Conference Room 11465 West Civic Center Drive Avondale, Arizona 85323
Final Date for Inquiries:	<b>June 17, 2019</b>
SOQ Due Date and Time:	<b>June 26, 2019</b> <b>5:00 p.m.</b> (local time, Phoenix, Arizona)
Letters to Final Listed Firms:	<b>July 10, 2019</b> (anticipated)
Oral Interviews (if necessary):	<b>July 16, 2019</b> (morning)
Target City Council Award Date:	<b>August 12, 2019</b>
Anticipated Agreement Start Date:	<b>August 19, 2019</b>
RFQ Administrator:	<b>Tiffany Copp</b> <a href="mailto:tcopp@avondaleaz.gov">tcopp@avondaleaz.gov</a> 623-333-4213

\* If a Vendor cannot be selected based solely on SOQ submitted, oral interviews may be conducted at the City's sole discretion.

\*\* The City of Avondale reserves the right to amend the solicitation schedule as necessary.

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PART I. RFQ PROCESS; AWARD OF AGREEMENT

1.1 Purpose; Scope of Work. The City of Avondale (the “City”) is issuing this Request For Qualifications (this “RFQ”) seeking statements of qualifications (“SOQ”) from qualified, licensed firms (“Vendors”) interested in providing professional design/build services for the Historic Avondale Phase 1 Improvements Project (the “Services”), as more particularly described in the attached Scope of Work. In accordance with the City’s Procurement Code, the City will accept sealed SOQ for the Services specified in the Scope of Work, attached hereto as Exhibit A.

1.2 Preparation/Submission of SOQ. Vendors are invited to participate in the competitive selection process for the Services outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

A. Irregular or Non-responsive SOQ. The City may consider as “irregular” or “non-responsive” and reject any SOQ not prepared and submitted in accordance with this RFQ, or any SOQ lacking sufficient information to enable the City to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions may be cause for rejection. An SOQ may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the City, any of the following are true:

- (1) Vendor does not meet the minimum required skill, experience or requirements to perform or provide the Service.
- (2) Vendor has a past record of failing to fully perform or fulfill contractual obligations.
- (3) Vendor cannot demonstrate financial stability.
- (4) Vendor’s SOQ contains false, inaccurate or misleading statements that, in the opinion of the City Manager or authorized designee, are intended to mislead the City in its evaluation of the SOQ.

B. Submittal Quantities. Interested Vendors must submit **one hardcopy original** and **one PDF copy** of the SOQ on a CD-ROM or similar electronic storage device. The PDF file must be one file. Failure to adhere to the submittal quantity criteria shall result in the Proposal being determined non-responsive.

C. Required Submittal. The SOQ shall be a maximum of **12** pages to address the SOQ criteria (excluding cover letter, resumes and the Vendor Information Form, but including the materials necessary to address Project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2” x 11”) with criteria information shall be counted. However, one page may be substituted with an 11” x 17” sheet of paper, folded to 8 1/2” x 11”, showing a proposed Project schedule or organizational chart and only having information on one side. Cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include additional project-specific information or SOQ criteria responses. Vendors are encouraged to utilized recyclable materials and endeavor to be

considerate of the environment in preparation of the SOQ. The minimum allowable font for the SOQ is **11 pt, Arial or Times New Roman**. Failure to adhere to the page limit, size and font criteria and shall result in the SOQ being determined non-responsive. Each SOQ shall be submitted with the following documents:

- (1) Cover letter with an **original ink signature** by a person authorized to bind the Vendor. Proposals submitted without a cover letter with an **original ink signature** by a person authorized to bind the Vendor may be determined non-responsive.
- (2) Vendor Information Form, with **original ink signature**.
- (3) References.
- (4) Project Schedule.
- (5) Resumes, Licenses and Certifications (if any).
- (6) Acknowledgment page, with an **original ink signature**, for any Addendum received.

D. Vendor Responsibilities. All Vendors shall (1) examine the entire RFQ, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting an SOQ and (4) submit the entire SOQ by the official SOQ Due Date and Time. A late SOQ will not be accepted. A Vendor submitting a late SOQ shall be so notified. Negligence in preparing an SOQ shall not be good cause for withdrawal after the SOQ Due Date and Time.

E. Sealed Submittals. All SOQ shall be sealed and clearly marked with the SOQ number and abbreviated title, **(EN 19-186) Historic Avondale Phase 1**, on the lower left-hand corner of the mailing envelope. A return address must also appear on the outside of the sealed SOQ. The City is not responsible for the pre-opening of, post-opening of, or the failure to open, any SOQ not properly addressed or identified.

F. Address. All SOQ shall be directed to the following address: Tiffany Copp c/o City Clerk, 11465 West Civic Center Drive, Suite 200, Avondale, Arizona 85323. Proposals must be received in the City Clerk's office by the SOQ Due Date and Time indicated on the cover page of this RFQ. Telegraphic (facsimile), electronic (e-mail) or mailgram SOQ will not be considered.

G. Amendment/Withdrawal of SOQ. At any time prior to the specified SOQ Due Date and Time, a Vendor (or designated representative) may amend or withdraw its SOQ. Any erasures, interlineations, or other modifications in the SOQ shall be initialed in **original ink** by the authorized person signing the SOQ. Facsimile, electronic (e-mail) or mailgram SOQ amendments or withdrawals will not be considered. No SOQ shall be altered, amended or withdrawn after the specified SOQ Due Date and Time.

1.3 Cost of SOQ Preparation. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. A SOQ submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Vendor is responsible for all costs incurred in responding to this RFQ. All materials and documents submitted in response to this RFQ become the property of the City and will not be returned.

1.4 Inquiries.

A. Written/Verbal Inquiries. Any question related to the RFQ shall be directed to the RFQ Administrator whose name appears on the cover page of this RFQ. Questions shall be submitted in writing, via e-mail or hard copy, by the close of business on the Final Date for Inquiries indicated on the cover page of this RFQ. Any inquiries related to this RFQ shall refer to the title and number, page and paragraph. However, the Respondent should not place the RFQ number and title on the outside of any envelope containing questions, because such an envelope may be identified as a Submittal and may not be opened until after the RFQ Deadline. Any Vendor found to be communicating with any member of City staff about this solicitation shall be prohibited from submitting a SOQ, or if a SOQ is received, such SOQ shall be deemed non-responsive.

B. Inquiries Answered. All inquiries must be directed to the RFQ Administrator. Verbal telephone inquiries **will not be answered** and Vendors attempting to do so will be directed to submit written inquiries. The RFQ Administrator shall provide a compilation of all questions received in writing with official answers that will be made available on the City's website at <https://www.avondaleaz.gov/procurement>. The RFQ Administrator shall endeavor to post the compilation not later than five days after the inquiry deadline.

C. Pre-Submittal Conference. A Pre-Submittal Conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this RFQ. If the Pre-Submittal Conference is designated as mandatory, failure to attend shall render that Vendor's SOQ non-responsive. Vendors are strongly encouraged to attend the Pre-Submittal Conference, even if designated as non-mandatory. The purpose of this conference will be to clarify the contents of this RFQ in order to prevent any misunderstanding of the City's requirements. Any doubt as to the requirements of this RFQ or any apparent omission or discrepancy should be presented to the City at this conference. The City may issue a written amendment or addendum to this RFQ. Oral statements or instructions are provided for informational purposes only and do not become a part of this RFQ. Any change to the RFQ shall be made in the form of an addendum.

1.5 Addenda. Any addendum issued as a result of any change in this RFQ shall become part of the RFQ and must be acknowledged in the SOQ submittal. Failure to indicate receipt of the addendum may result in the SOQ being rejected as non-responsive. It shall be the Vendor's responsibility to check for addenda issued to this RFQ. Any addendum issued by the City with respect to this RFQ will be available on the City of Avondale procurement website at:

[www.avondaleaz.gov/procurement](http://www.avondaleaz.gov/procurement)

1.6 Public Record. All SOQ shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code.

1.7 Confidential Information. If a Vendor believes that a SOQ or protest contains information that should be withheld from the public record, a statement advising the RFQ Administrator of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the Vendor as confidential shall not be disclosed until the City Manager, or authorized designee, makes a written determination. The City Manager or authorized designee shall review the statement and information with the City Attorney and shall determine in writing whether the information shall be withheld. If the City Attorney determines that it is proper to disclose the information, the RFQ Administrator shall inform the Vendor in writing of such determination.

1.8 Vendor Licensing and Registration. Prior to the award of the Agreement, the successful Vendor shall (A) be registered with the Arizona Corporation Commission and authorized to do business in Arizona and (B) have a completed Vendor Registration Packet on file with the City Finance and Budget Department. The Vendor shall provide licensure information with the SOQ. Corporations and limited liability companies shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

1.9 Certification. By submitting an SOQ, the Vendor certifies:

A. No Collusion. The submission of the SOQ did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

C. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a City employee, officer or agent in connection with the submitted SOQ. It (including the Vendor's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the City Manager, Assistant City Managers, Department Heads, and other City staff. All inquiries must be addressed to the City's RFQ Administrator. Any attempt to influence the selection process by any means shall void the submitted SOQ and any resulting Agreement.

D. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Agreement.

E. No Signature/False or Misleading Statement. The signature on the cover letter of the SOQ and the Vendor Information Form is genuine, and the person signing has the authority to bind the Vendor. Failure to sign the cover letter and the Vendor Information Form, or signing either with a false or misleading statement, shall void the submitted SOQ and any resulting Agreement.

F. Design-Build Agreement. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached sample Design-Build Agreement and agrees to be bound by its terms.

1.10 Award of Agreement.

A. Evaluation; Selection. A Selection Committee composed of representatives from the City will conduct the selection process according to the schedule on the cover page of this RFQ. The Selection Committee will create a final ranking of the Vendors based upon its evaluation of (1) the SOQ, (2) information provided by references and (3) criteria outlined in this RFQ. The Selection Committee may select up to three finalists that will be invited for oral interviews with the Selection Committee. The City will conduct the oral interviews with the selected Vendors and upon completion of the final tabulation of points for scored components, will create a final list, in order of preference, of the three most qualified Vendors. The RFQ Administrator will enter negotiations with the highest scoring Vendor from the final list.

B. Form of Agreement. The selected Vendor will be required to execute the City's standard Design-Build Agreement in a form acceptable to the City Attorney. A sample of the Design-Build Agreement is included with this RFQ. If the City is unsuccessful in negotiating an Agreement with the highest-scoring Vendor, the City may then negotiate with the second, then third, highest-scoring Vendor until an Agreement is executed. City Council approval may be required. The City reserves the right to terminate the selection process at any time.

C. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFQ, the City expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all SOQ or portions thereof and (3) cancel or reissue an RFQ.

D. Protests. Any Vendor may protest this RFQ, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the City Procurement Code.

1.11 Offer. An SOQ submittal is an offer to contract with the City based upon the terms, conditions and specifications contained in this RFQ and the Vendor's responsive SOQ, unless any of the terms, conditions, or specifications are modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the Vendor has signed, and the City has approved, a Design-Build Agreement between the City and the Vendor in the form acceptable to the City Attorney. A sample Design-Build Agreement is included herein.

**PART II. STATEMENT OF QUALIFICATIONS FORMAT; SCORING**

2.1 Evaluation Process. Each submittal will be reviewed for compliance with the submittal requirements and scored by the Selection Committee. The Selection Committee shall determine if the selection can be made on the basis of the written materials only, or if oral interviews are necessary with up to three of the highest ranked Vendors based upon the SOQ submittal scoring.

2.2 Proposal Format and Scoring. The SOQ shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements shall result in a determination that the SOQ is non-responsive. Additionally, the Selection Committee will evaluate and award points to each SOQ based upon the evaluation criteria as outlined in this document. Points listed below are the maximum number of points possible for each criterion and not the minimum number that the Selection Committee may award.

A. General Information - 10 pts.

(1) One-page cover letter as described in Subsection 1.2(C) (Required Submittal).

(2) Provide Vendor identification information. Explain the Vendor's legal organization including the legal name, address, identification number and legal form of the Vendor (e.g., partnership, corporation, joint venture, limited liability company, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If a limited liability company, provide the name of the member or members authorized to act on the company's behalf. If the Vendor is a wholly owned subsidiary of another company, identify the parent company. If the corporation is a nonprofit corporation, provide nonprofit documentation. Provide the name, address and telephone number of the person to contact concerning the SOQ.

(3) Identify the location of the Vendor's principal office and the local work office, if different from the principal office. Include any documentation that supports the Vendor's authority to provide services in Arizona.

(4) Provide a general description of the Vendor that is proposing to provide the Services, including years in business.

(5) Identify any contract or subcontract held by the Vendor or officers of the Vendor that has been terminated within the last five years. Briefly describe the circumstances and the outcome.



**SECTION A**

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(6) Identify any claims arising from a contract that resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcome.

(7) Provide the Arizona professional and contractor license numbers held by the Vendor and the key personnel who will be assigned to this Project; indicating if the individual or the firm holds the license.

(8) Vendor Information Form, with an **original ink signature** (may be attached as separate appendix).

(9) Vendors selected as finalists for this Project will be required to provide a statement from a surety company licensed to do business in Arizona with an A.M. Best rating of not less than A- to verify the Vendor's bonding capacity.

**B. Experience and Qualifications - 20 pts.**

(1) Vendor must demonstrate successful completion of at least three similar design/build projects. For the purpose of this Solicitation, "successful completion" means completion of a project within the established schedule and budget and "similar projects" resemble this project in size, nature and scope. Provide a list of at least three organizations for which you successfully completed a similar project. This list shall include, at a minimum, the following information:

- (a) Project description,
- (b) Name of company or organization.
- (b) Contact name, address, phone number and email for the project owner.
- (c) The roles of each team member on the project.
- (d) The project's contracted and final construction cost.
- (e) The project's original anticipated completion date and actual completion date.

*These references will be checked,* and it is Vendor's responsibility to ensure that all information is accurate and current. Vendor authorizes the City's representative to verify all information from these references and releases all those concerned from any liability in connection with the information they provide. Inability of the City to verify references may result in the SOQ being considered non-responsive.

(2) List all Arizona projects, whether completed, ongoing, or selected but not yet under contract, where the Vendor/team provided services in a design/build project, construction manager at risk, or general construction services in the last three years.

(3) The City's representative may conduct any investigation deemed necessary to determine the Vendor's ability to perform the project. Vendors may be

requested to submit additional documentation within 72 hours (or as specified) to assist the City in its evaluation.

C. Key Design Positions - 20 pts.

(1) Provide an organizational chart identifying each key personnel member that will render services to the City including title and relevant experience required, including the proposed project manager and project staff.

(2) Identify the home office location of key personnel, length of time with the firm, and the percent of work to be completed locally,

(3) If a subcontractor will be used for all work of a certain type, include information on this subcontractor. A detailed plan for providing supervision must be included.

(4) Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this Project. Résumés should be attached together as a single appendix at the end of the SOQ and will not count toward the SOQ page limit. However, each resume shall not exceed two pages in length.

D. Project Approach - 40 pts.

(1) Discuss your understanding of the project, identify any major issues and how to address those, and describe the Vendor's approach to performing the required Services in the Scope of Work described in the Scope of Work, including the following processes:

- (a) Designing,
- (b) Planning.
- (c) Estimating.
- (d) Scheduling.
- (e) Cost controls.
- (f) Project management and team organization.
- (g) Bid package management.
- (h) Management of overhead costs.
- (i) Management of subcontractors.
- (j) Quality control.
- (k) Safety.
- (l) Dispute resolution.

(2) Submit a subcontractor selection plan which meets the requirements of A.R.S. § 34-601 *et sequ.* requirements and discuss the benefits that your selection provides to the Project.

E. Project Schedule - 10 pts.

Provide a project schedule showing key project milestones and deliverables. The schedule shall demonstrate Vendor's ability to meet the designated milestones as listed below. Assumptions used in developing the schedule shall be identified and at a minimum the proposed schedule shall include the following dates:

- (1) Anticipated Contract Award Date: August 12, 2019
- (2) Design Notice to Proceed Date: August 19, 2019
- (3) Proposed Kick-Off Meeting:
- (4) Design at 30%, 60%, 90% and Final:
- (5) Construction Coordination:
- (6) Proposed Design Completion:
- (7) Construction Notice to Proceed
- (8) Proposed Construction Completion:

<b>Total Possible Points for SOQ Submittal:</b>	<b>100</b>
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### PART III. ORAL INTERVIEWS; SCORING

In the event that a Vendor cannot be selected based solely on the SOQ submitted, up to three Vendors may be selected for oral interviews. The selected Vendors will be invited to participate in discussions with the Selection Committee on the date indicated on the cover page of this RFQ and awarded points based upon the criteria as outlined below. Vendors may be given additional information for these oral interviews.

#### **Oral Interview**

- |            |   |
|------------|---|
| 10         | Experience and Qualifications of the Vendor     |
| 40         | Key Positions                                   |
| <u>50</u>  | Project Approach                                |
| <b>100</b> | <b>Total Possible Points for Oral Interview</b> |

<b>Total Points Possible for this RFQ (if interviews conducted):</b>	<b>200</b>
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**CITY OF AVONDALE**  
**DEVELOPMENT AND ENGINEERING SERVICES DEAPRTMENT**  
**EN19-186**

**SECTION A**

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**PART IV. VENDOR INFORMATION FORM**

By submitting a Statement of Qualifications, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Design-Build Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

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\_\_\_\_\_  
VENDOR SUBMITTING SOQ

\_\_\_\_\_  
FEDERAL TAX ID NUMBER

\_\_\_\_\_  
PRINTED NAME AND TITLE

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TELEPHONE

\_\_\_\_\_  
FAX #

\_\_\_\_\_  
CITY            STATE            ZIP

\_\_\_\_\_  
DATE

WEB SITE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

ARIZONA CORPORATION COMMISSION FILE NO. \_\_\_\_\_

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SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

- \_\_\_\_\_ Small Business Enterprise (SBE)
- \_\_\_\_\_ Minority Business Enterprise (MBE)
- \_\_\_\_\_ Disadvantaged Business Enterprise (DBE)
- \_\_\_\_\_ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise?

If yes, please provide details and documentation of the certification.

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EXHIBIT A  
TO  
REQUEST FOR STATEMENTS OF QUALIFICATIONS  
FOR  
HISTORIC AVONDALE PHASE 1 IMPROVEMENTS DESIGN/BUILD

[Scope of Work]

See following pages.

## SCOPE OF WORK

### Historic Avondale Phase I Improvements EN19-186

1. Introduction. Consultant will work with the City Staff to design and construct infrastructure improvements within the Historic Avondale Phase I project area, located along South 3<sup>rd</sup> Avenue between Western Avenue and its southerly terminus, and along West Holly Lane, West Aragon Lane, West Ely Lane and West Rhodes Avenue between South 3<sup>rd</sup> Avenue and Central Avenue in Avondale Arizona.
2. Background This project is the first in a 6-phase, multi-year program intended to address the reconstruction of roads and upgrades to water and sewer facilities in the following neighborhoods: Historic Avondale, Cashion and Las Ligas. Each of these neighborhood projects will include the removal and replacement of asphalt pavement, the installation of sidewalk, ramp and driveway improvements as necessary to conform to ADA guidelines, the relocation of existing utility poles in conflict with sidewalk and the upgrade of water and sewer facilities.
3. Scope of Work. The project scope shall include the design, preconstruction services, general conditions, construction and construction administration services related to the following:
  - 3.1 Right of Way Improvements.
    - A. Design and construction of waterline, roadway and streetlight improvements within the project area.
    - B. The preparation of a drainage report/ memorandum, legal descriptions and exhibits for right-of-way acquisition (if needed), final construction documents and construction administration services.
    - C. Consultant will obtain new topographic mapping and conduct geotechnical analysis to support the preparation of the construction documents.
    - D. The design will include new waterlines, roadway, relocation of utilities (as needed), streetlighting (as needed) and right-of-way.
    - E. Consultant will coordinate with the City and other stakeholders, including utility companies and property owners.
  - 3.2 Project Management and Coordination.
    - A. Lead project coordination meetings, stakeholder meetings, public meetings, presentations to the City Council, and participate in a Value Analysis session.
    - B. Attend and prepare meeting minutes.

- C. Prepare schedule for design tasks, including due dates for submittals (plans and reports).
- D. Include a summary of tasks performed on monthly invoices
- E. Provide support for permits and applications, as needed including, APS design and relocation, and other utility conflicts.

3.3 Survey.

- A. Prepare a ground control survey.
- B. Conduct a field survey to obtain topography.
- C. Locate and plot existing utilities based on field survey and record information.
- D. Review title reports and record information and prepare a base map with record right-of-way and parcel lines tied to the ground control survey.
- E. Prepare proposed right-of-way line work, exhibits, maps and legal description for right-of-way acquisition including fee, permanent easements, and temporary construction easements.

3.4 Geotechnical.

- A. Conduct field testing within the project limits.
- B. Perform analysis of test samples.
- C. Prepare a draft and final report of test results.
- D. Recommend design parameters for design of structures, pavement, erosion control and other required elements.

3.5 Right-of-Way Documents.

- A. Review title reports and record information.
- B. Prepare rights-of-entry documents for testing and survey locations.
- C. Prepare exhibits illustrating project improvements and right-of-way (permanent and temporary) requirements based on construction design.
- D. Prepare maps and legal descriptions for acquisition of right-of-way (if necessary).

3.6 Environmental. Provide reports (if needed):

- A. Phase I Environmental Report for new right-of-way areas (if needed).

3.7 Utility Coordination.

- A. Coordinate with each utility company.

- B. Identify conflicts and resolutions
- C. Obtain Clearance letters

3.8 Construction Documents.

- A. Plans shall include:
  - 1. General construction notes and details.
  - 2. Geometric control.
  - 3. Bid quantities itemized by sheet.
  - 4. Typical sections and special details.
  - 5. Plan and profile.
  - 6. Grading and drainage.
  - 7. Intersection grading design.
  - 8. Storm water Pollution Prevention Plans (SWPPP).
  - 9. Traffic control (major detours).
  - 10. Water, sewer and other utility relocations by contractor or by others.
  - 11. Review comments for each milestone shall be resolved and incorporated into the subsequent submittal.
- B. Provide project specifications and Guaranteed Maximum Price:
  - 1. Bid tabulation.
  - 2. Supplementary general conditions and special provision coordinated with the site plans.
  - 3. Provide Guaranteed Maximum Price of construction.

3.9 Post-Design Construction Administration Services.

- A. Prior to construction, obtain all required permits.
- B. During construction, attend construction site meeting as requested by the construction manager and/or the City.
- C. Provide quality assurance field surveys.
- D. Provide geotechnical services for materials testing.
- E. Prepare revised sheets for changes in design due to field conditions or owner request.
- F. Prepare as-built plans.



- G. Provide direction and design regarding phasing of the project to keep the project within budget.

END SCOPE OF WORK.

EXHIBIT B  
TO  
REQUEST FOR STATEMENTS OF QUALIFICATIONS  
FOR  
HISTORIC AVONDALE PHASE 1 IMPROVEMENTS DESIGN/BUILD

[Design-Build Agreement]

See following pages.

**DESIGN – BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND**

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THIS DESIGN - BUILD AGREEMENT (this “Agreement”) is made \_\_\_\_\_, 2019, by and between the City of Avondale, an Arizona municipal corporation (the “City”), and \_\_\_\_\_, a/n \_\_\_\_\_ (the “Contractor”), for complete design and construction services related to \_\_\_\_\_, located at \_\_\_\_\_ and other items as deemed necessary by the City (the “Project”). The City and the Contractor are referred to herein individually as a “Party” and collectively as the “Parties.”

**ARTICLE 1  
GENERAL**

1.1 Project Summary. The Contractor shall perform all pre-construction services set forth in Article 2 below (the “Pre-Construction Services”) and, subject to Section 1.2 below, management and construction services set forth in Article 4 below (the “Construction Services”) (the Pre-Construction Services and the Construction Services are collectively referred to as the “Services”), including providing all material, equipment, tools and labor necessary to complete the Work (as defined below) described herein and reasonably inferable from the Contract Documents (as defined below), including the upgrades and improvements to be encompassed in the Project. The Contractor will also take the necessary steps to ensure that the Project design is constructible within the established budget.

1.2 Phased Agreement. The Services contemplated by this Agreement shall be carried out in several distinct phases. The initial Services shall be to provide Pre-Construction Services including (A) such environmental investigation services as applicable pursuant to Section 2.1 below, (B) creating all design documents including the Construction Documents pursuant to Section 2.2 below, (C) the Pre-Construction Phase General Services, pursuant to Section 2.3 below (the “Pre-Construction Phase General Services”), and (D) the Post-Construction General Services. The Contractor shall be compensated on an hourly basis, at the agreed-upon hourly rates and a stipulated not-to-exceed total fee, for the Pre-Construction Services as set forth in Section 7.1 below, provided that such services may extend through the construction phase for various components of the Project. At the point in the Pre-Construction Services as determined by the City, the City may, in its sole discretion, request that the Contractor submit a proposal for a guaranteed maximum price (“GMP”) for construction of the Project, which may be submitted as a single GMP or as multiple GMPs at the City’s sole discretion. The Contractor shall prepare and submit the GMP Proposals pursuant to Article 3 below. If the City and the Contractor agree upon the respective GMP Proposals, the Contractor shall furnish, with respect to each GMP Proposal (A) such environmental investigation services as applicable pursuant to Section 2.1 below and (B) the Construction Services set forth in Article 4 below. If the City and the Contractor cannot, after good faith efforts, agree on the GMP, the City may, in its sole discretion, terminate this Agreement (subject to the terms and conditions set forth in Section 12.2 below).

### 1.3 Definitions.

A. “Additional Services” means services not initially included as part of the Work, but which are later identified as necessary or desirable by the City, as more fully described in Section 4.17 below.

B. “Applicable Law” means any law, rule, code, regulation, requirement, action, determination, guideline, or order of, or any legal entitlement issued by, any governmental body having jurisdiction, applicable or relating to the design, permitting, construction, equipping, financing, ownership, possession, or any other transaction or matter contemplated hereby relating to the design and construction of the Project.

C. “Change Directive” means a written order prepared and signed by the City and the Contractor, approving a change in the Work that does not require an adjustment in the Contract Price or the Contract Time.

D. “Change Order” means a contract amendment issued after execution of this Agreement or future GMP Amendments signed by the City, Contractor and other parties, as may be required or appropriate, agreeing to an addition, deletion or revision in the scope of Work, an adjustment to the Contract Price, an adjustment to the Contract Time or other modifications to Contract terms.

E. “City’s Contingency” means a fund used at the discretion of the City, usually for costs that result from City-directed changes.

F. “Construction Documents” means the plans, Specifications and drawings prepared by the Contractor after correcting for permit review requirements, and as approved by the City Manager or authorized designee. The Construction Documents, once approved by the City as 100% complete, shall be attached hereto as Exhibit A and incorporated herein by reference.

G. “Construction Fee” means the portion of Contractor’s compensation not related to Direct Construction Costs, as set forth in Subsection 3.4 below.

H. “Contract Documents” means all of the following:

1. Change Orders and written amendments to this Agreement, including the amendments, if any, relating to the respective GMPs (the “GMP Amendments”), signed by both the City and the Contractor, attached hereto as Exhibit B and incorporated herein by reference.

2. This Agreement.

3. The Construction Documents.

4. The Contractor’s Guaranteed Maximum Price Proposals (the “GMP Proposals”), attached hereto as Exhibit C and incorporated herein by reference, including but not limited to:

a. The Contractor's proposed scope of services and fee breakdown for each GMP Proposal (the "Scope").

b. The Master Schedule relating to the applicable Scope developed in accordance with Subsection 2.3(C) below and updated as set forth in this Agreement, attached hereto as Exhibit D and incorporated herein by reference.

5. The City's Request for Qualifications (the "RFQ") attached hereto as Exhibit E and incorporated herein by reference.

6. The Contractor's response to the City's RFQ attached hereto as Exhibit F and incorporated herein by reference.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above.

I. "Contract Price" means the total compensation to be paid to the Contractor, as more fully described in Article 7 below.

J. "Contract Time" means the Days, as set forth in Article 6, indicating the period of time, including authorized adjustments, allotted in the Contract Documents to achieve Substantial Completion of the Work.

K. "Cost Model" means the detailed cost information for the Project as described in Subsection 2.3(D) below.

L. "Cost of the Work" means the portion of Direct Construction Costs necessarily incurred by the Contractor in the proper performance of the Work as more specifically set forth in Section 3.3(B) below.

M. "Critical Path" means the sequence of activities from the start of the Work to Substantial Completion of the Project for which any delay in the completion of these activities will delay achieving Substantial Completion.

N. "Day(s)" means calendar day(s) unless otherwise specifically noted in the Contract Documents.

O. "Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized in the area of the Site as inherent in the Work.

P. "Direct Construction Costs" means General Conditions Costs and Cost of the Work as set forth in Section 3.3 below.

Q. "Environmental Conditions" means collectively, Hazardous Materials and Underground Storage Tanks.

R. “Environmental Damages” means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney’s fees, that are incurred at any time as a result of the existence of Environmental Conditions upon, about or beneath the Project Site or migrating or threatening to migrate to or from the Site, and including, without limitation:

1. Damages for personal injury, or injury to property or to natural resources occurring upon or off the Site.

2. Fees incurred for the services of attorneys, consultants, the Contractor, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Environmental Conditions or violation of Environmental Requirements.

3. Liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in Subsections 1.3(R)(1) and (2) above.

S. “Environmental Requirements” means all applicable laws, statutes, regulations, rules, ordinances, common law codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentalities of the United States, the State of Arizona, Maricopa County and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

1. (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601, *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended from time to time, and regulations promulgated thereunder; (b) defined as a “regulated substance” within the meaning of Subtitle I of the Resource Conservation and Recovery Act (“RCRA”) (42 U.S.C. § 6691 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (c) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321), as amended from time to time, and the regulations promulgated thereunder, or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), as amended from time to time, and the regulations promulgated thereunder; (d) the Clean Air Act (42 U.S.C. § 7401 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (e) regulated under the Toxic Substances Control Act (15 U.S.C. § 2601, *et seq.*); (f) Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*); (g) the Solid Waste Disposal Act (42 U.S.C. § 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; or (h) defined as “hazardous”, “toxic”, or otherwise regulated, under any Environmental Requirements adopted by the state in which the Site is located, or its agencies or political subdivisions.

2. Asbestos or asbestos-containing materials.

3. All requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges,

releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

4. All requirements pertaining to the protection of the health and safety of employees or the public.

T. “Final Completion” means completion of the Project, including Punch List items, by the Contractor in accordance with the Contract Documents, certified to the City by the Contractor.

U. “Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

V. “General Conditions Costs” means a portion of the costs incurred by Contractor during the construction phase, as set forth in Section 3.3(A) below.

W. “Hazardous Materials” means any substance as defined under Environmental Requirements including:

1. The presence of which requires notification, investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law.

2. Which is or becomes defined as a “hazardous waste”, “hazardous substance”, pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto.

3. Which is petroleum, petroleum products, including crude oil or any fraction thereof not otherwise designated as a “hazardous substance” under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; and, ethanol, methyl tertiary butyl ether or derivatives or constituents of or vapors from any of the foregoing.

4. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or the State of Arizona.

5. The presence of which on the Site causes or threatens to cause a nuisance upon the Project Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site.

6. The presence of which on adjacent properties could constitute a trespass by the Contractor or the City.

X. “Master Schedule” is defined as set forth in subsection 2.3(C) below.

Y. “Project Record Document(s)” means the document(s) created pursuant to Section 4.12.

Z. “Punch List” means that list of items provided by City to the Contractor at the time of Substantial Completion indicating items to be completed or corrected, including the time for completion or correction by the Contractor after Substantial Completion.

AA. “Shop Drawings” means drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

AB. “Site” means the land or premises on which the Project is located.

AC. “Specifications” means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

AD. “Subcontractor” means a person or entity employed or engaged by the Contractor or any person or entity directly or indirectly in privity with the Contractor to perform any portion of the Work. The term Subcontractor does not include any separate contractor employed by the City.

AE. “Substantial Completion” means construction has been completed in accordance with the Contract Documents to the extent that the City can use or occupy the entire Project, or the designated portion of the Project, for the use intended without any outstanding, concurrent construction at the Site, except as may be required to complete or correct Punch List items.

AF. “Underground Storage Tank” shall have the definition assigned to that term by § 9001 of RCRA, 42 U.S.C. § 6991, as amended, and also shall include: (1) any tank of 1,100 gallons or less capacity used for storing motor fuel; (2) any tank used for storing heating oil for consumption on the premises where stored; (3) any tank used for storing waste oil; (4) any septic tank; and (5) any pipes with oil dispensers connected to items listed in clauses 1.3(AA)(1) and 1.3(AA)(2) above.

AG. The “Work” means, collectively, the (1) environmental investigation set forth in Section 2.1 below, (2) Creating all design documents, including the Construction Documents and design remedies set forth in Section 2.2 below, (3) Pre-construction Phase General Services set forth in Section 2.3 below, (4) Construction Services provided in accordance with Article 4 below, if applicable, (5) Post-Construction Services, (6) Additional Services that may be provided pursuant to an approved Change Directive or Change Order in accordance with Article 8 below and (7) other services that are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.



1.4 Cooperative Relationship. The City and the Contractor agree to proceed with the Project on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, but without sacrificing quality. The City and the Contractor agree to consider design modifications and alternative materials or equipment if necessary to permit the Project to be constructed by the dates of Substantial Completion and Final Completion, as established by the mutually-agreed-upon Master Schedule attached hereto.

1.5 City Representations.

A. City's Project Manager. City has either designated a City staff member to act as City's Project Manager and/or has contracted separately with a person, firm or corporation to act as City's Project Manager. The City's Project Manager has no design responsibilities of any nature. None of the activities of City's Project Manager supplant or conflict with the design, budget, or any other services and responsibilities furnished by the Contractor. All instructions by the City relating to this Agreement will be issued or made through the City's Project Manager. All communications and submittals of Contractor to the City shall be issued or made through the City's Project Manager unless the City or the City's Project Manager shall otherwise direct. The City's Project Manager shall not unreasonably withhold approval for the Contractor to communicate directly with other City officials. Throughout the term of this Agreement the City's Project Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Contractor and to call periodic conferences to be attended by the Contractor and the Contractor's Subcontractors.

B. Limited Project Management. None of the City's project management activities are intended to supplant or conflict with the design, budget, or any other services and responsibilities customarily furnished by the Contractor or its Subcontractors, except as otherwise specifically modified by this Agreement.

C. No Third Party Relationships. The Contractor assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any level of Subcontractor, including but not limited to any third-party beneficiary rights. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the City or the Contractor.

D. Requests for Information. The City shall examine requests for information/direction submitted by the Contractor and shall render decisions thereto promptly. The City shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work (1) in cooperation with the Contractor, (2) consistent with this Agreement and (3) in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the City.

E. Notice to Contractor of Defect. If the City observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the City shall give written notice thereof to the Contractor.

F. Approvals. The City shall secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the Project.

G. Communication. The City, its representatives and consultants shall communicate with the Subcontractors only through the Contractor unless otherwise directed or permitted by the Contractor.

H. Notices. The City shall send to the Contractor copies of all notices and communications sent to or received by the City relating to the Contractor's Services with respect to the Project.

#### 1.6 Contractor Representations.

A. Standards. The Contractor shall provide the design, professional management, construction and post-construction services for the Project in accordance with the terms and conditions of this Agreement. The Contractor covenants with the City to furnish its skill and judgment with due care and in accordance with the highest standards of its profession and with Applicable Law in effect on the date of this Agreement or as subsequently amended.

B. Subcontractor Selection Program. In conjunction with its response to the City's RFQ, the Contractor submitted to the City a written procedure in conformance with ARIZ. REV. STAT. § 34-601 *et seq.*, as amended, for qualifications-based selection of Subcontractors to be utilized in completion of the Project (the "Subcontractor Selection Program"), which is attached hereto as Exhibit G and incorporated herein by reference. The Contractor shall conduct a telephone and correspondence campaign to attempt to create interest among Subcontractors. The Contractor shall develop and coordinate procedures to provide answers to Subcontractors' questions. The Contractor shall use best efforts to utilize minority business enterprises, woman business enterprises and local contractors or suppliers. The Contractor shall ensure that each Subcontractor has secured the required business licenses, permits, insurance and bonds. The Contractor shall be solely responsible for ensuring (1) the Subcontractor Selection Program is in conformance with Applicable Law and (2) all Subcontractors are selected in accordance with the Subcontractor Selection Program. The Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees for, from and against all claims, damages, losses and expenses (including, but not limited to, attorney fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the Contractor's failure to appropriately select its Subcontractors. Additionally, as part of the Contractor's submittal of any GMP Proposal under this Agreement, the Contractor shall utilize the Subcontractor Selection Program to meet its requirements under Section 3.7 below.

C. Key Personnel. The Contractor shall provide to the City a list of the proposed key project personnel of the Contractor and its Subcontractors to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the City. Such key personnel and consultants shall be satisfactory to the City and shall not be changed except with the consent of the City. The Contractor will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the Services described in this

Agreement. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel with qualifications acceptable to the City. Additionally, the City shall have the right to request that the Contractor personnel be removed from the Project if, in the City's sole discretion, such personnel are detrimental to the Project delivery process. Upon receipt of such request, the Contractor shall remove such personnel unless the Contractor can provide the City with sufficient documentation to prove it is commercially impractical to replace the personnel with similarly qualified personnel. The City's approval of substituted personnel shall not be unreasonably withheld.

D. Project Designers. The Contractor shall provide or procure architecture, landscape and engineering services as necessary to complete the services. Architecture, landscape and engineering services shall be (i) procured from licensed, independent design professionals retained by the Contractor or (ii) furnished by licensed employees of the Contractor and such services shall be provided as required or as permitted by the laws of the state of Arizona. The persons or entities providing architecture, landscape and engineering services shall be referred to as the "Project Designers." If the Project Designers are independent design professionals, the architectural and engineering services shall be procured pursuant to a separate agreement between the Contractor and the Project Designers.

E. Site Conditions. The Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work related to the Project, and that it has investigated and satisfied itself as to the general and local conditions and constraints that are applicable to the Work such as (1) conditions bearing on transportation, disposal, handling and storage of materials, (2) the availability of labor, water, power and roads, (3) normal weather conditions, (4) observable physical conditions at the Site, (5) the surface conditions of the ground and (6) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Contractor encounters subsurface or concealed conditions that differ materially from those which could reasonably have been determined from a Site surface investigation by the Contractor on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then the Contractor shall give notice to the City promptly before conditions are disturbed and in no event later than seven Days after the first observance of the conditions if a Change Order is contemplated by the Contractor due to such conditions. Such materially different conditions, if discovered after a GMP is approved, may entitle the Contractor to an equitable adjustment in the applicable GMP or schedule pursuant to the Change Order provisions set forth in Article 8 below.

1.7 City and Subcontractors. The City will require the Contractor to contract directly with such Subcontractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with (A) the applicable provisions of this Agreement and (B) Applicable Law, including, but not limited to, the requirements of ARIZ. REV. STAT. § 34-603 relating to inclusion of the Project's physical location in all subcontracts.

## 1.8 Data Confidentiality.

A. Data Defined. As used in this Agreement, “data” means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Contractor in the performance of this Agreement.

B. Confidentiality. The Parties agree, subject to Arizona public records law, that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor in connection with the Contractor’s performance of this Agreement is confidential and proprietary information belonging to the City.

C. Use of Data. The Contractor will not divulge data to any third party without prior, written consent of the City. The Contractor will not use the data for any purposes except to perform the Services required under this Agreement. These prohibitions will not apply to any of the following data, provided the Contractor has first given the required notice to the City:

1. Data that was known to the Contractor prior to its performance under this Agreement, unless such data was acquired in connection with work performed for the City.

2. Data that was acquired by the Contractor in its performance under this Agreement, and which was disclosed to the Contractor by a third party, who to the best of the Contractor’s knowledge and belief, had the legal right to make such disclosure and the Contractor is not otherwise required to hold such data in confidence.

3. Data that is required to be disclosed by the Contractor by virtue of law, regulation, or court order.

D. Disclosure Notice. In the event the Contractor is required or requested to disclose data to a third party, or any other information to which the Contractor became privy as a result of any other contract with the City, the Contractor will first notify the City as set forth in this section of the request or demand for the data. The Contractor will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

E. Return After Completion. The Contractor, unless prohibited by law, within 10 Days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this Section, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Agreement.

F. Contractor Responsible. The Contractor assumes 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. For the purposes of seeking injunctive relief, it is agreed that a breach of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court.

## **ARTICLE 2**

### **PRE-CONSTRUCTION SERVICES**

#### **2.1 Environmental Investigation.**

A. Discovery. Upon written notice from the City or upon the Contractor's discovery of Environmental Conditions on the Site, the Contractor shall recommend, for execution by the City, one or more contracts ("Environmental Contracts") with suitably qualified consultants and/or engineers ("Environmental Engineers"), each of which Environmental Engineer and which form of Environmental Contract shall be subject to the approval of the City, for purposes of performing an investigation and analysis of the Site prior to demolition and excavation activities, to determine the presence of any Environmental Conditions on, in or under the Site. The Environmental Contracts shall provide for a commercially reasonable scope of investigation and costs approved by the City, and may provide for conducting the investigation and testing in phases acceptable to the City. The Environmental Contracts shall also provide that the Environmental Engineers shall begin their tests and inspections at the Site as soon as the City is able to arrange access to the Site, or any portions thereof, for such purposes. The Environmental Contracts shall provide that the Contractor, acting as agent of the City, shall coordinate the activities of the Environmental Engineers with the Work.

B. Assessment; Remediation Analysis. The Environmental Contracts shall provide that the Environmental Engineers shall prepare such reports, feasibility studies and remedial plans in accordance with applicable local, state, and federal rules, regulations, and laws, including the federal "all appropriate inquiry" Standard and American Society for Testing and Materials, ASTM E1527-13 ("Environmental Assessments") as may be reasonably necessary in order to identify and explain the quantity, scope and nature of the Environmental Conditions found to exist at the Site. The Environmental Assessments shall contain a detailed analysis of the Environmental Conditions discovered, and the actions ("Remedial Actions") required for the response, removal, cleanup or remediation of such Environmental Conditions (1) that are required by Environmental Requirements, or (2) that are reasonably necessary to mitigate Environmental Damages.

C. Impact on Master Schedule. The Environmental Contracts shall provide that the Environmental Engineers shall promptly provide the City and the Contractor with a copy of each Environmental Assessment, together with any other reports and test results generated pursuant to the Environmental Contracts. The Contractor shall, promptly after receipt of the foregoing matters from the Environmental Engineers, prepare and submit to the City a written report setting forth the Contractor's understanding of whether and to what extent any recommended Remedial Actions may result in an amendment to the Master Schedule and the progress of the Work.

D. Notice; Permitting. The Environmental Contracts shall require the Environmental Engineers to (1) give notice to the City of the presence of Environmental Conditions, (2) only upon the written consent of the City, give any necessary notice to the Federal

government and the State of Arizona or other agencies of the presence of any Environmental Conditions, (3) assist the City in negotiations with Federal and Arizona agencies concerning preparation and approval of a plan for clean-up to the extent required and (3) obtain all necessary permits to perform any Remedial Actions.

E. Remediation Contractors. If so instructed by the City, based upon the results of the Environmental Assessments, the Contractor shall assist the City with obtaining bids from remediation contractors (“Remediation Contractors”) suitably qualified and approved by the City to perform the Remedial Actions selected by the City. If the City elects to go forward with all or any portion of the Remedial Actions covered by the bids submitted, the City will so advise the Contractor in a written notice on or before the date that is 60 Days after receipt of the foregoing matters from the Contractor. Thereafter, the City shall execute contracts with the selected Remediation Contractors (“Remediation Contracts”).

F. Coordination. Unless otherwise instructed, the Contractor, as agent for the City, shall be responsible for coordinating the work and services performed by the Remediation Contractors with the Work.

G. Payment for Remediation. The City will make all payments due under the Environmental Contracts and the Remediation Contracts directly to the Environmental Engineers and the Remediation Contractors. Such payments will be based on requisitions, which requisitions shall be approved by the Contractor prior to submission to the City. All payments due under the Environmental Contracts, the Remediation Contracts and for Environmental Damages, shall not be a part of the applicable GMP, and shall be the sole responsibility of the City, except as expressly provided otherwise.

H. Additional Discovery. If, in the course of performance of the Work, the Contractor encounters on the Site any Environmental Conditions not previously disclosed and remediated by the Environmental Engineers or the Remediation Contractors, the Contractor shall immediately suspend the Work in the area affected and promptly thereafter report the condition to the City.

I. Contractor Responsibility. Except as set forth in Subsection 2.1(L) below, it is understood and agreed that with respect to any Environmental Conditions existing on the Site, the Contractor is not, and shall not be deemed to be, a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions. It is understood and agreed that the Contractor shall have no right to direct the means or methods of performance of any Environmental Engineer or Remediation Contractor.

J. City Indemnity. To the extent that the Contractor or the Subcontractors are not in violation of Subsection 2.1(L) below and to the extent sufficient appropriations are made pursuant to Section 14.18 below, the City shall indemnify, defend and hold harmless the Contractor, the Subcontractors, and the directors, officers, agents and employees of each (the “Contractor Indemnitees”), for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any of the Contractor Indemnities being deemed or determined to be a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions.

K. Delay for Remedial Actions. The City acknowledges and agrees that the Contractor shall not commence or continue any demolition or construction activities on any portion of the Site on or in which Remedial Actions are to be performed until such Remedial Actions are to the point where construction activities will not interfere with such Remedial Actions, as evidenced by appropriate certification by the applicable Environmental Engineer and/or Remediation Contractor and any required approvals of any applicable government agencies. The Contractor agrees to use good faith efforts to adjust and reschedule its activities at the Site so as to minimize, to the extent reasonably practical, the adverse effect on the progress of the Work resulting from any Remedial Actions.

L. Hazardous Materials Prohibited. The Contractor shall not bring Hazardous Materials to the Site, and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. The Contractor shall comply, and shall cause the Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

M. Contractor Indemnity. The Contractor shall indemnify, defend and hold harmless the City, its agents, representatives, officers and employees for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any violation by the Contractor or the Subcontractors of any Environmental Requirements arising out of Subsection 2.1(L) above.

## 2.2 Construction Documents; Design Remedies.

A. Program Evaluation. The Contractor will provide to the City a written evaluation of the City's proposed Project and Project budget, with recommendations as to the appropriateness of each, and an analysis as to how each contribute to successfully achieving the City's goal for the Project.

### B. Project Design Standards.

1. The Contractor will provide, through the Project Designers, engineering and other design professional services for the preparation of the required drawings, specifications and other design submittals to permit the Contractor to complete the Work. The Contractor's design professionals shall seal with an Arizona registered professional seal all Contract Documents prepared by them for this Agreement.

2. The Contractor shall provide a schedule of the design activities within seven days after the Notice to Proceed. The schedule shall provide 21 days to be used by the City or its designee for reviews and approvals for any interim design submissions.

3. Design activities shall commence immediately after the Contractor has provided the schedule of design activities. The Contractor shall monitor design efforts to ensure they are in accordance with the Master Schedule and shall provide adequate time for the City's review and permitting processes along with construction activities.

4. The Contractor shall be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or compiled under its obligation for this Project and shall correct, at its expense, all willful or negligent errors and omissions and that are discovered. Correction of willful or negligent errors and omissions relating to engineering plans and specifications shall be the responsibility of the Contractor. The cost of the design necessary to correct those errors attributable to the Contractor or anyone for whom the Contractor is responsible shall not be reimbursable costs to the Contractor. Any damage incurred by the City as a result of additional construction cost caused by negligent, reckless, or intentional wrongful conduct shall not be reimbursed to the Contractor to the extent that the negligent, reckless, or intentional wrongful conduct falls below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the City has accepted or approved the Contractor's product shall in no way relieve the Contractor of any of its responsibilities.

5. Within seven days after a scheduled submission, the Contractor and the City will meet and confer about the submission, with the Contractor identifying during these meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents or previously submitted design submissions.

6. The Contractor shall submit and distribute 4 hard copy sets of plans and specifications and one set of plans in a format compatible with the City's Computer Aided Drafting and Design (CADD) technology.

C. Design Submittals. The City shall review and approve the interim design submissions in a time that is consistent with the turnaround times stated in the Master Schedule. The Contractor shall not cause the design to proceed beyond interim design until the City approves the interim design submissions as provided in this Section. If the Contractor allows the design to proceed without City approval, the cost of any resultant redesign is not a reimbursable cost. The City's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Project. Neither the City's review nor approval of any interim design submissions and Construction Documents shall be considered to transfer any design liability to the City.

1. The Project design must meet all applicable (i) Maricopa Association of Government (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; (ii) the City of Avondale Supplements (latest revision) to the MAG Uniform Standard Technical Specifications, Details and Drawings; (iii) all City building standards, and shall include all special provisions provided by the City. Variances from the standards and guidelines must be identified in writing by the Contractor and approved by the City. Approval of variances or resolution of conflicts shall not be considered to transfer any design liability to the City.



2. The Contractor shall not specify any construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative of them unless specifically approved in writing by the City.

3. The Contractor shall coordinate with private, public and City utilities regarding standard utility issues and incorporate pertinent information in the plans.

4. The Contractor shall be responsible for scheduling, submitting, obtaining approval and retrieving all required Construction Documents from the various required reviewing agencies.

5. Following approval by the City of the interim design documents, Contractor shall refine the Construction Documents and submit same to the City for review at such intervals as the Parties determine. The Contractor shall submit to the City Construction Documents stating in detail drawings and specifications describing the requirements for construction.

a. The Construction Documents shall be consistent with the latest set of interim design submissions; as these submissions may have been modified in a design review meeting.

b. The Contractor shall provide the drawings in a format compatible with the City's CADD technology using City layering standards.

c. The drawing format shall be a 24" x 36" sheet size unless otherwise authorized in writing by the City.

d. The Parties shall have a design review meeting to discuss, and the City shall review and approve, the Construction Documents in accordance with the procedures stated in this Article.

e. Before commencement of construction, the Contractor shall submit to the City the following:

- i. Construction Drawings in the proper electronic format on electronic media (CD-ROM or other storage device);
- ii. Four print sets of approved Construction Drawings and three half-size sets; and
- iii. Four sets of specifications.

D. Design Document Review. The Contractor shall assist the City in reviewing the Construction Documents for clarity, consistency, constructability and coordination among the various contractors. The Contractor's first review of the Construction Documents shall occur not later than the 30% stage of the design by Project Designer for each component of the Project as designated by the City and shall be ongoing until 100% plans are final and complete for all phases of the Project. If the Contractor recognizes that portions of the Construction Documents are (1) in

violation of Applicable Law or (2) in any way inadequate to achieve the intended result of the Project, the Contractor shall immediately notify the City in writing, describing the apparent violation or inadequacy.

1. The Contractor will periodically evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design, and other factors that may impact the Cost Model, GMP Proposals and/or the Master Schedule.

2. The Contractor will identify those additional surface and subsurface investigations that are required to provide the necessary information for the Contractor to construct the Project. After completion of pre-construction services, the Contractor may provide additional investigations to improve the adequacy and completeness of the Site condition information and data made available with the Construction Documents. The Contractor will be responsible for the time and cost required to obtain such additional investigations, except as otherwise provided by specific Additional Services.

3. The Contractor will meet with the Project team as required to review designs during their development. The Contractor will thoroughly familiarize itself with the evolving documents through conceptual design, preliminary design, and development of the Construction Documents (detailed design). The Contractor will proactively advise the Project team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The Contractor will also advise the Project team on proposed Site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Construction Documents. The Contractor will recommend cost effective alternatives.

C. Constructability and Bidability Reviews. The Contractor will conduct constructability and bidability reviews of the Construction Documents. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency, and coordination of Work of Subcontractors and suppliers. The Contractor shall provide the City with a written report containing, at a minimum, (i) a summary of the research and analysis conducted, (ii) a detailed description of any constructability issues or challenges and (iii) recommendations for correcting any constructability issues or challenges.

1. Constructability Review. The Contractor will evaluate whether (a) the Construction Documents are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Construction Documents, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Construction Documents are practicable, and (g) the design has taken into consideration, efficiency issues concerning access and entrance to the Site, laydown and storage of materials, staging of Site facilities, construction parking, and other similar pertinent issues.

2. Bidability Review. The Contractor will check cross-references and complementary Project drawings and sections within the Construction Documents and evaluate whether (a) the plans and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) the design provides as-built data, (d) Specifications include alternatives in the event a requirement cannot be met in the field, (e) and the Project is likely to be subject to Differing Site Conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the Work.

3. Reports. The results of the reviews will be provided to the City in written reports clearly identifying all discovered discrepancies and inconsistencies in the Project, plans and Specifications with notations and recommendations made on the plans, Specifications and other Construction Documents. If requested by the City, the Contractor will meet with the City's Project Manager and Project Designers to discuss any findings and to review reports.

D. Notification of Variance or Deficiency. Contractor is responsible for assisting the Project Designers in ascertaining that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the Contractor recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations it will promptly notify the Project Designers and City in writing, describing the apparent variance or deficiency.

E. Value Analysis. The Contractor shall make recommendations to the City and the Project Designers with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project into contracts for various categories of the Work. Contractor shall evaluate all design options to provide value analysis services and cost savings recommendations to the City. The Contractor shall consider options most effective in first costs as well as long term operational costs and life cycle costs when evaluating each design option. The Contractor shall submit to the City and Project Designers (1) written cost studies, (2) cost-benefit evaluations of each cost studies, (3) a formal report to the design team, (4) a final written analysis study document and (5) a tracking report for the increases or decreases in Project cost due to value engineering or scope changes. The City will decide which alternatives will be incorporated into the Project. The Contractor will have full responsibility for the incorporation of the alternatives into the Contract Documents. The Contractor will include the cost of the alternatives into the Cost Model and any GMP Proposals.

F. Certification. At the completion of its review of the Construction Documents for each phase of the Project, the Contractor shall certify that the Construction Documents are sufficient and complete to build the respective portion of the Project within (1) the time available before the respective Substantial Completion date and (2) the Project budget. Nothing in this Subsection shall relieve the Project Designers of their respective responsibility for the Construction Documents.

## 2.3 Pre-Construction Phase General Services.

A. Personnel; Project Meetings; Project Analysis. The Contractor will meet with the City, the Project Designers and all the other Project stakeholders to fully understand the program, the Construction Documents and all other aspects of the Project. The Contractor shall attend the regularly scheduled meetings with the City and the Project Designers to advise the City on matters of Site use, improvements, selection of materials, building methods, construction details, building systems, equipment, phasing and sequencing.

1. The Contractor will provide pre-construction services, described herein, in a proactive manner and consistent with the intent of the most current Construction Documents. The Contractor will promptly notify the City in writing whenever the Contractor determines that any Construction Documents are inappropriate for the Project and or cause changes in the scope of Work requiring an adjustment in the Cost Model, Master Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

2. The Contractor, when requested by the City or at its own initiative, if sanctioned by the City, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings, germane to the Project. The Contractor will assist the Project Designers in the preparation of drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such public agency meetings.

### B. Construction Management Plan.

1. Preparing Plan. The Contractor will prepare a construction management plan (the "Management Plan"), that will detail, but not necessarily be limited to, the Contractor's determinations concerning: (a) Project milestone dates and the Master Schedule, including the broad sequencing of the design and construction of the Project; (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities; (c) alternate strategies for fast-tracking and/or phasing the construction; (d) separate bidding documents/packages and strategies for the early procurement of long-lead equipment and/or materials; (e) the number of separate subcontracts to be awarded to Subcontractors and suppliers for the Project construction; (f) permitting strategy; (g) safety and training programs; (h) construction quality control; (i) the Project Cost Model and basis of the model; (j) a matrix summarizing each Project team member's responsibilities and roles related to the Services; and (k) construction security.

2. Maintaining Plan. The Contract Manager shall keep the Management Plan current throughout the pre-construction services phase so that the Management Plan is ready for implementation at the start of the construction phase. The update/revisions will take into account: (a) revisions in Construction Documents; (b) the Contractor's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface

facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Project Designers or the Contractor; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and rights-of-way; (d) the fast-tracking (if any) of the construction, or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment and/or materials; and (g) funding issues identified by the City.

C. Schedule Development. In accordance with the Management Plan, the Contractor shall prepare a master schedule for the Project (the “Master Schedule”). In preparing the Master Schedule, the Contractor shall establish: (i) detailed Critical Path Method (“CPM”) schedules for the pre-construction/design phase and the construction phase of the Project with concurrence of the City and the Project Designers, (ii) monitor the Project schedules during the pre-construction phase and ensure that the Master Schedule is updated as necessary and advise the City of any schedule deficiencies. The Contractor shall utilize Microsoft Project scheduling software to prepare, provide and maintain the detailed CPM schedules unless the City requests use of a different scheduling product.

1. Each Project team member is responsible for its compliance with the Master Schedule requirements. The Contractor will update and maintain the Master Schedule on behalf of and to be used by the Project team based on input from other team members. The Master Schedule will be consistent with the most recent revised/updated Management Plan. The Master Schedule will be presented in graphical and tabular reports as agreed upon by the Project team. The Master Schedule will include all tasks and deliverables required by each member of the Project team to identify long lead items, real property transactions, utility relocation activity, permitting requirements, etc. If Project phasing as described below is required, the Master Schedule will indicate milestone dates for the phases. The Master Schedule’s activities will directly correlate with the Schedule of Values (as defined in Subsection 2.3(D)(4) below). The Master Schedule shall include resource loading for manpower and cash flow. The manpower loading shall include the daily manpower required to complete the task as shown on the Master Schedule.

2. The Contractor will include and integrate in the Master Schedule the services and activities required of the City’s Project Manager, Project Designers and Contractor, including all construction phase activities. The Master Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design, schematic design, and development of the Construction Documents (detailed design), (b) separate long-lead procurements, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and suppliers, (f) major stages of construction, (g) start-up, and (h) occupancy of the completed Work by the City. The Master Schedule will include, by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project team, preparation and processing of Shop Drawings and samples, delivery of materials or equipment requiring long-lead time procurement, milestone dates for various construction phases, total Float for all activities, relationships between the activities, City’s occupancy requirements

showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

3. The Master Schedule will be updated and maintained by the Contractor with assistance from the Project team throughout the pre-construction services phase such that it will not require major changes at the start of the construction phase to incorporate Contractor's plan for the performance of the construction phase Work. The Contractor will provide updates and/or revisions to the Master Schedule for use by the Project team, whenever required, but no less often than monthly; provided, however, that no such changes shall alter the date of Substantial Completion without the City's prior, written approval. The Contractor will include with such submittals a narrative describing its analysis of the progress achieved versus that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

4. Prior to transmitting Contract Documents to Subcontractors, the Contractor shall prepare a pre-proposal construction schedule for each part of the Project and make the schedule available to the Subcontractors. The Contractor shall provide a copy of the Master Schedule to the Subcontractors. As part of the notice of award by the Contractor to each Subcontractor, the Contractor shall inform each Subcontractor of the requirements for the preparation of the Master Schedule. Each Subcontractor shall prepare its own Subcontractor construction schedule in accordance with the requirements of the Contract Documents.

D. Cost Models; Cost Estimates and Schedule of Values. The Contractor shall provide the City with detailed cost information for all aspects of the Project. Each cost model will contain a detailed estimate of the direct cost (including materials, labor and equipment) pertaining to each aspect of the Project along with the cost of the contract bonds, the cost of the Project's required insurance, the cost of all applicable taxes, Contractor's general conditions, Contractor's fee and the amount of Contractor's Contingency and shall be consistent with such requirements as determined by the City or the Project Designers. The individual aspect cost models shall be collectively referred to as the "Cost Model."

1. As soon as practical during the conceptual design phase, the Contractor will review all available information regarding the design and scope of the Project, and based on the Contractor's experience in performing similar work, develop a Cost Model for review and approval by the City. Once approved by the City, the Cost Model will be continually updated and kept current as the design progresses throughout the pre-construction phase until a final GMP for the entire Project is established. The Cost Model will be the Contractor's best representation of the complete functional Project's construction costs. The Contractor will communicate to the Project team any assumptions made in preparing the Cost Model. The Cost Model will support the Contractor's construction cost estimates and may be broken down initially as dictated by the available information. The Cost Model will also include allowances as agreed to by the Project team, including but not limited: (a) allowances for potential additional quantities and/or additional Work that the City may require, and (b) any costs related to investigations described in Subsection 2.1.

2. After receipt of the Project Designers' most current documents from certain specified design milestones, the Contractor will provide a detailed written report to the Project team regarding the impact of and changes to the Cost Model based on the Contractor's review of Construction Documents made available at the specified design milestone. The City's Project Manager, Project Designers and the Contractor will reconcile any disagreements on the estimate to arrive at an agreed upon estimate for the construction costs based on the scope of the Project through that specified design milestone. The design milestones applicable to this paragraph are: conceptual design completion, schematic design completion, and detailed design completion at 30%, 60%, 90% and 100%. If no consensus is reached, the City will make the final determination. If the Project team requires additional updates of the Cost Model beyond that specified in this Subsection, the Contractor will provide the requested information in a timely manner.

3. If, at any point, the estimate submitted to the City exceeds previously-accepted estimates or other key aspects of the Cost Model or the City's Project budget, the Contractor will make appropriate recommendations to the City's Project Manager and Project Designers on means/methods, materials, and/or other design elements that it believes will reduce the estimated construction costs, (without altering the City's basic program) such that it is equal to or less than the established Project budget.

4. Near completion of the 60% detailed design review and included with the associated report, the Contractor will also submit to the City for review and approval a "Schedule of Values" which complies with the following requirements. The Schedule of Values will highlight significant variances from any previously submitted preliminary Schedule of Values. The Schedule of Values will be directly related to the breakdowns reflected in the Management Plan and the Contractor's Cost Model. In addition, the Schedule of Values will: (a) detail unit prices and quantity take-offs, (b) segregate Work covered by any changes to construction phase Work already in progress, (c) reconcile used and remaining Contractor's Contingency (as defined in Subsection 3.3(D)(1) below) allowance, (d) detail all other allowances and unit price Work shown and specified in the detailed Construction Documents and (e) material and equipment costs, labor costs, General Conditions costs, hourly labor rates, payment for pre-construction services and total cost. Labor costs in the Schedule of Values will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion of the Work to be performed by Subcontractors will include Subcontractor overhead and profit.

5. The Contractor will submit to the City a final Schedule of Values based on the 100% detailed design set of Construction Documents for the entire Project or any portion thereof, which final Schedule of Values will also be included in any proposed GMP(s).

6. Upon request by the City, the Contractor will submit to the City a cash flow projection for the Project based on the current updated/revised Master Schedule and the anticipated level of payments for the Contractor during the pre-construction and construction phases. In addition, if requested by the City and based on information provided by the City, the Contractor will prepare a cash flow projection for the entire

Project based on historical records for similar types of projects to assist the City in the financing process.

E. Traffic Control/Sequencing Plans. The Contractor shall provide the City with (1) a detailed traffic control plan, in accordance with Subsection 4.5(R) below and (2) construction sequencing plans. Upon approval by the City, the traffic control plan and the construction sequencing plan shall be attached hereto as Exhibit H, and incorporated herein by reference.

F. Phasing; Long Lead Procurement. The Contractor shall review the Construction Documents and make recommendations to the City with respect to the phase issuance of the Construction Documents to facilitate phased construction of the Work, if appropriate. The Contractor will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost. The Contractor may also recommend to the City and to the Project Designers a list and a schedule for purchasing items necessary for the Project which may require substantial lead time for procurement (the “Long Lead Items”), which may be separately procured by the City or included as a separate GMP in this Agreement, at the discretion of the City. The Contractor shall make such adjustments to the Master Schedule as necessary to accommodate the procurement process for the Long Lead Items. Upon purchase, the Contractor shall safeguard the Long Lead Items until installed as part of the Project.

G. Other Deliverables; Pre-Construction Progress Payments. The Contractor shall provide the City with written plans for the pre-qualification of Subcontractors (according to the Subcontractor Selection Program), subcontract bid packages, project safety, quality control, owner training and commissioning. The Contractor will prepare and submit monthly pay applications to the City for work performed during the specific payment period for the pre-construction phase of the Project.

### **ARTICLE 3**

### **GUARANTEED MAXIMUM PRICE PROPOSAL**

3.1 GMP Submittal Process. At the stage of the pre-construction phase services as determined by the City, the Contractor shall, if requested by the City, submit a GMP Proposal, which shall be the sum of the estimated Cost of the Work relating to completion of the Scope for the Project and the Construction Fee relating to the Project based upon the most-current version of the Cost Model. Each GMP Proposal shall include, in the Cost of the Work, those taxes that are applicable at the time the GMP is established. Each GMP is the total cost of the applicable portion of the Project including the cost of labor, equipment, supplies, materials, services and allowances to complete the applicable portion of the Project. The cost data is directly correlated to the specific Construction Documents in existence at the time each GMP Proposal is prepared. The assumptions used in the preparation of the GMP Proposal shall be identified by the Contractor as part of the GMP Proposal. In submitting this proposal, Contractor represents that:

A. Document Review. Contractor has examined and carefully studied the Contract Documents for the construction phase, including all addenda.



B. Site Visit. 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 and furnishing of the Work.

C. Laws and Regulations. Contractor is familiar with and is satisfied as to all Applicable Laws that may affect cost, progress, performance and furnishing of the Work, including, but not limited to, ARIZ. REV. STAT. § 42-5075(P), which applies to the Project contemplated within this Agreement.

D. Reports; Subsurface Conditions. 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 which have been identified in the Contract Documents for the construction phase. Contractor acknowledges that such new reports may not be complete for Contractor's purposes. Contractor acknowledges that City does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents for the construction phase 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 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 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 determination of this GMP Proposal for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents for the construction phase.

E. Work by Others. Contractor is aware of the general nature of Work to be performed by City and others at the Site that relates to Work for which the GMP Proposal is submitted as indicated in the Contract Documents for the construction phase.

F. Conditions and Plans Correlated. 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 for the construction phase and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents for the construction phase.

G. Inconsistencies Resolved. Contractor has given Project Designers written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents for the construction phase and the written resolution thereof by Project Designers is acceptable to Contractor, and the Contract Documents for the construction phase are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which the GMP Proposal is submitted.

H. No Improper Actions. The proposal 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; Contractor has not directly or indirectly induced or solicited any person, firm or corporation to refrain from proposing; and Contractor has not sought collusion to obtain for itself any advantage over any other contractor or over the City.

3.2 Acknowledged Construction Documents. The Contractor, in preparing any GMP Proposal, will obtain from the Project Designers three sets of signed, sealed, and dated Construction Documents (including all addenda). The Contractor will prepare its GMP Proposal in accordance with the City's requirements and the most-current completed Construction Documents at that time. The Contractor will mark the face of each document of each set upon which its GMP Proposal is based. The Contractor will send one set of those documents to the City's Project Manager, keep one set and return the third set to the Project Designers.

3.3 Direct Construction Costs. Direct Construction Costs means the sum of the amounts that the Contractor actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Direct Construction Costs include only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

A. General Conditions Costs. Contractor is entitled to receive reimbursement for the actual cost of the allowable General Conditions items incurred between issuance of the applicable Notice to Proceed and 30 days after the date scheduled for Substantial Completion. Contractor is entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed, or after Substantial Completion, only with prior written approval of the City. "Allowable General Conditions Cost Line Items" are identified below and in Exhibit I, attached hereto and incorporated herein by reference. These items shall be included in the General Conditions Cost amount shown as a line item in the applicable GMP Proposal and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit I will not be allowed as a General Condition Costs.

1. Personnel costs, which include wages paid for Contractor's hourly employees and salaries of Contractor's salaried personnel when (a) stationed at the field office located at the Site and working on matters directly related to the Project, in whatever capacity employed; (b) engaged on the road expediting the production or transportation of material and equipment; and (c) performing functions directly related to the Work from the principal or branch office. The project manager's salary may be included in the General Conditions Costs only when the project manager is directly managing the Project. Personnel costs also include the cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor's standard personnel policy. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Contractor for services performed for the Project.

2. Reasonable transportation, travel and hotel expenses of the Contractor's personnel incurred in connection with the Work.

3. Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Contractor's jobsite office if incurred at the Site and directly and solely in support of the Work.

4. Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Contractor, if such items are fully consumed in the construction of the Work and are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its recoverable cost under this Contract shall be based on the original cost of the item less its fair market salvage value.

5. Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Contractor, provided they are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I and the City has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the Contractor, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the City and shall be in accordance with either the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, or the most-recent rates provided by Equipmentwatch.com, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

6. The aggregate rental cost of any item charged to the City shall not exceed 75% of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds 75% of the purchase and maintenance price, Contractor shall purchase the equipment and turn it over to the City upon final completion of the Work or, at the City's option, credit the City with the fair market resale value of the item.

7. Permit and inspection fees paid by Contractor where the City is exempt will not be reimbursed by the City.

8. Cost of premiums for normal and customary Contractor's Subcontractor default insurance at the rate of 1.25% of the cost of subcontracts and Subcontractor's liability, workman's compensation and builders risk insurance as required pursuant to Article 10 below, which shall be identified as separate line items within the applicable GMP. If the Contractor intends to utilize Subcontractor Liability Wrap-up Coverage (Z-25), it will be reimbursed at the rate of 1.5% of the Subcontract amount, and credited from the Subcontractor bids. Commercial General Liability Insurance shall be

reimbursed at the rate of 1.1% of the applicable GMP amount; Builders Risk Insurance shall be reimbursed at the rate of 0.47% of the applicable GMP amount; Performance and Payment Bonds shall be reimbursed at 0.76% of the applicable GMP amount. All amounts shall be identified as separate line items within the applicable GMP.

9. Cost of bond premiums to the extent directly attributable to the Project.

10. Governmental transaction privilege sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption, in the form and at the rates legally enacted on the date of the first GMP, whether such taxes are effective or scheduled to go into effect. Such taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by the City as Direct Construction Costs.

B. Cost of the Work. Contractor is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of the City's written Notice to Proceed with the Construction Phase Work through Final Completion of the Project. Contractor is not entitled to reimbursement for Cost of the Work costs incurred before receipt of the City's written Notice to Proceed. Cost of the Work includes the following:

1. Costs of materials, supplies and equipment purchased directly by the Contractor and incorporated into or consumed in the performance of the Work, including transportation charges, to the extent such costs of materials, supplies and equipment are not included in the General Conditions Costs.

2. Costs of removal and disposal in accordance with all applicable laws and regulations of Site debris, non-hazardous substances and waste materials, if not otherwise included in General Conditions.

3. Payments made by Contractor to Subcontractors and their vendors or suppliers for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

4. Payments earned by Contractor for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Contract and approved by the City.

5. Fees and expenses for design services procured by the Contractor related to necessary modifications to the Construction Documents.

6. Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

7. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office at the Site.

8. All water, power and fuel costs necessary for the Work.

9. Costs incurred due to an emergency affecting the safety of persons and/or property, excluding such costs related to the negligence or willful acts of the Contractor or any person or entity for whom the Contractor is responsible.

10. All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contract Price as set forth in Article 7 below, which are reasonably inferable from the Contract Documents as necessary to produce the intended results, subject to the maximum price limitation established by the respective GMP.

11. Costs related to the Contractor's safety program related to the Project.

C. Exclusions from General Conditions Costs and Cost of the Work. The General Conditions Costs and Cost of the Work shall not include the following:

1. Any professional fees paid by the City to consultants retained directly by the City.

2. Any costs paid directly by the City to Subcontractors or suppliers retained directly by the City and outside the scope of all GMPs.

3. Any additional service costs as defined herein.

4. Any other costs not within the control of the Contractor or identified as being not within any GMP.

5. Any fees paid to the Contractor except those fees that may be paid to Contractor for Pre-construction Phase Services above.

D. Contractor's Contingency.

1. The GMP Proposal may include an amount (the "Contractor's Contingency") to be used to fund increases in the Direct Construction Costs of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work. The Contractor's Contingency shall be negotiated between the Parties and it shall reflect the risk inherent in the state of completion of the Construction Documents at the time the GMP Proposal is submitted.

2. Any re-allocation of funds from the Contractor's Contingency to cover increases in the Direct Construction Costs must be approved by the City in advance and in writing, which approval shall not to be unreasonably withheld. In written requests to use the Contractor's Contingency, the Contractor shall provide detailed documentation of the scope of work affected and the basis for any increases in costs resulting in the need to use Contractor's Contingency funds.

3. As the Construction Documents are finalized and the buyout of the Work progresses the Contractor's Contingency amount shall be reduced by mutual agreement of the City and Contractor. The buyout shall occur within the first 20% of the construction duration for each Notice to Proceed issued for construction. Should savings occur after the buyout stage, such savings, and related reductions to the Contractor's Contingency amount, will be retained by the City.

E. Calculation Methods; Audits.

1. The City and the Contractor understand and agree that any GMP agreed to under this Project will be administered as a measured quantity/unit price guaranteed not-to-exceed contract. This not-to-exceed amount is defined by the individual work items and their associated competitively bid and/or negotiated unit prices plus negotiated on-site general conditions, fee structures, markups and Contractor's Contingency. Final contract price/payout will be based on field measured final completed quantities, approved unit prices and approved Change Directives and Change Orders. Furthermore, the term "actual cost" is defined as the final negotiated unit prices (costs) mutually agreed to by the City and Contractor. The City and the Contractor understand and agree that individually priced, "self-performed" items may include the cost associated with the risk of delivering the work.

2. The City and the Contractor understand and agree that the City, its authorized representatives, and/or the appropriate federal or state agencies may audit the Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate any GMP, and including, but not limited to, self-performed items, qualifications-only selected Subcontractor items, Change Orders, use of allowance funds and use of Contractor's Contingency funds. The City and its authorized representatives shall have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this Subsection. The City shall give Contractor or Subcontractor reasonable advance notice of intended audits.

F. Discounts. All discounts for prompt payment shall accrue to the City to the extent such payments are made directly by the City. To the extent payments are made with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

3.4 Construction Fee. The "Construction Fee" is the maximum amount payable to the Contractor for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by the City elsewhere in this Agreement. The Construction Fee includes, but is not limited to, the following items.

A. Profit. All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the Contractor, which shall not exceed 7.5% of the total applicable GMP amount, excluding Contractor's Contingency.

B. Salaries. Salaries of Contractor's officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

C. Overhead. Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; home office operations and support staff (i.e. accounting, purchasing); trade or professional association dues; costs for hiring and/or relocation of any of the Contractor's personnel; and travel, per diem and subsistence expense of Contractor, its officers or employees except as specifically allowed under General Conditions, which shall not exceed 5.0% of the total applicable GMP amount, excluding Contractor's Contingency.

D. Financial Costs. Any financial costs incurred by the Contractor including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

E. Professional Fees. Any legal, accounting, professional or other similar costs incurred by the Contractor, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

F. Taxes. Any Federal and/or State income and franchise taxes paid by Contractor. Any levies, assessments, fines, penalties, sanctions or other impositions made by any governmental body against Contractor.

G. Damages and Related Costs. Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Contractor, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM schedule milestones; costs arising from Contractor's contractual indemnification obligations; liquidated or actual damages imposed by the City for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

H. Insurance Deductibles. The cost of any and all insurance deductibles payable by the Contractor and costs due to the failure of Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

I. Costs in Excess of GMP. Any and all costs that would cause the Guaranteed Maximum Price to be exceeded.

J. Other Unidentified Costs. Any and all costs not specifically identified as an element of the Direct Construction Costs.

### 3.5 Competitive Bidding and Sub-Bids.

A. Subcontractor Selection. The Contractor will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors available for a specific trade, the Contractor will request approval by the City's Project Manager to submit less than three names. No change in the City approved Subcontractors will be allowed without prior written approval by the City.

B. City Objections. If, prior to receipt of sub-bids or prior to award of Subcontractors or suppliers, the City objects to any nominated Subcontractor or supplier or to any self-performed Work for good reason, the Contractor will nominate a substitute Subcontractor or supplier, preferably if such option is still available, from those who submitted sub-bids for the Work affected. Once such substitute Subcontractors and suppliers are consented to by the City, the Contractor's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

C. Documents; Pre-bid Conference. The Contractor will distribute Construction Documents, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

D. Subcontractor Bid Submittal. The Contractor, at the required time, will close the bidding and collect all sub-bids received within the prescribed deadline for receipt of sub-bids. Promptly, after the closing of sub-bids, the Contractor will (in the presence of the City's Project Manager and Project Designers) open and read all properly and timely submitted sub-bids. The Contractor will submit a completed Sub-Bid tabulation form to the City's Project Manager within a reasonable time after the closing of the sub-bid opening proceedings.

E. Subcontractor Bid Evaluation. The Contractor, upon opening of sub-bids will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective suppliers selected by each apparent low sub-bidder. The Contractor will resolve any sub-bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

F. Notice of Intent for Subcontracts. Within 15 Days after sub-bid opening, the Contractor will deliver to the City's Project Manager a written notice of intent to award subcontracts, itemizing the Subcontractors and suppliers selected by the Contractor. The notice of intent to award subcontracts will detail (1) for each Subcontract the amount of the sub-bid and the corresponding Subcontractor or supplier, (2) the sum of sub-bids received for all intended Subcontract, (3) trade work that the Contractor intends to self-perform, if any.

G. Pre-award Conference. Promptly after receipt of the notice of intent to award subcontracts, the City will conduct a pre-award conference with the Contractor and other Project team members. At the pre-award conference, the Contractor will (1) review the nominated slate of Subcontractors and suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or supplier; (2) discuss City concerns relating to any proposed self-performed Work; (3) review the Contractor's proposed Contract Price for the Work during the



construction phase; (4) resolve possible time frames for the commencement date of the Contract Time for the construction phase Work; (5) schedule the pre-construction conference; and (6) discuss other matters as necessary.

3.6 Submittal Requirements. The Contractor shall include with each GMP Proposal a written statement of its basis, which shall include:

A. Detailed Scope. A detailed scope of services related to the respective GMP Proposal, including a breakdown of the GMP as it relates to the applicable part of the overall Scope.

B. Documents. A list of the Construction Documents, including all addenda, that were used in preparation of the respective GMP Proposal.

C. Allowances. A list of allowances and a statement of their basis.

D. Assumptions. A list of the assumptions and clarifications made by the Contractor in the preparation of the respective GMP Proposal to supplement the information contained in the Construction Documents.

E. Substantial Completion. The Substantial Completion date, if applicable, upon which the respective GMP Proposal is based and the Master Schedule for the Work upon which the respective Substantial Completion date is based, including a clear statement of the number of rain delay days included within the Master Schedule.

F. Alternate Prices. A schedule of applicable alternate prices.

G. Unit Prices. A schedule of applicable unit prices.

H. Additional Services. A statement of Additional Services included, if any.

I. Acceptance Period. The time limit for acceptance of the GMP Proposal.

3.7 GMP Proposal Review. The Contractor shall meet with the City and the Project Designers to review each GMP Proposal. In the event that the City discovers any inconsistencies or inaccuracies in the information presented, the City shall give written notice to the Contractor, who shall make appropriate adjustments to the GMP, its basis or both.

A. Independent Estimate. Upon receipt of any GMP Proposal from the Contractor, the City may submit the same documents that were used by Contractor in developing its GMP to an independent third party for review and verification. The third party will develop an independent estimate of the Cost of the Work and review the Master Schedule for the associated scope of the GMP Proposals.

B. GMP Exceeding Independent Estimate. If the Contractor's GMP Proposal is greater than the independent third party's estimate, the City may require the Contractor to reconfirm its GMP Proposal. The Contractor will accept the independent third party's estimate

for the Cost of the Work as part of its GMP or present a written request, within seven Days of receiving the estimates, to the City identifying, explaining and substantiating the differences. The Contractor may be requested to, or at its own discretion may, submit a revised GMP Proposal for consideration by the City. At that time the City may do one of the following.

1. Accept the Contractor's original or revised GMP Proposal, if within the City's budget, without comment.
2. Accept the Contractor's original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the Contractor that the Project budget has been increased to fund the differences.
3. Reject the Contractor's original or revised GMP Proposal because it exceeds either or both the City's budget and the independent third party's estimate, in which event, the City may terminate this Agreement.

C. Design Changes During Negotiation. If, during the review and negotiation of GMP Proposals, design changes are required, the Contractor will authorize and cause the Project Designers to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the Contractor. The Contractor will promptly notify the Project Designers and City's Project Manager if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

3.8 No Prior Costs. Prior to the City's acceptance of a GMP Proposal, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work related to such GMP Proposal, except as provided in this Agreement or as the City may specifically authorize in writing.

3.9 Acceptance; Effect. Upon acceptance by the City of each GMP Proposal, the GMP contained therein and its basis shall be set forth in the applicable GMP Amendment. Once established, the GMP and the corresponding Substantial Completion date shall be subject to modification only as provided in Articles 6 and 8 below. The City's approval of the GMP Amendment will include the amount of the City's Contingency. The amount of the City's Contingency will be set solely by the City and will be in addition to the Project costs included in the Contractor's GMP Proposals. Use and management of the City's Contingency is at the City's sole direction.

3.10 GMP Effective Date. Each GMP Proposal shall not become a part of this Agreement until the City accepts such GMP Proposal in writing by executing the applicable GMP Amendment, on or before the date specified in each such GMP Proposal for such acceptance.

3.11 Failure to Agree Upon GMP. If the City and the Contractor do not agree to any provisions of the GMP Proposal, including the designated Default Neutral Arbitrator, all references in this Agreement to the GMP shall not be applicable, and the Parties shall proceed on the basis of reimbursement as provided in Article 7 below.

## **ARTICLE 4 CONSTRUCTION SERVICES**

4.1 Control of Construction. After the date any Amendment to this Agreement is executed by the City and the Contractor approving a GMP Proposal, the Contractor shall become responsible for the means, methods, sequences and procedures used in the construction of the portion of the Project related to such GMP Proposal and shall proceed with the Contractor's Construction Services related to the GMP Proposal under this Agreement.

4.2 Completeness and Accuracy of Contractor Work. The Contractor will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other pre-construction deliverables prepared or compiled pursuant to its obligations under this Agreement and will at its sole own expense correct its work or deliverables. The fact that the City has accepted or approved the Contractor's work or deliverables will in no way relieve the Contractor of any of its responsibilities under the Agreement, nor does this requirement to correct the work or deliverable constitute a waiver of any claims or damages otherwise available by law or contract to the City.

4.3 Alteration in Character of Work. In the event an alteration or modification in the character of work or deliverable materially increases or decreases the scope of service, cost of performance, or Master Schedule as determined by the City, the Work or deliverable will nonetheless be performed as directed by the City. However, before any altered or modified work begins, a Change Directive or Change Order must be approved and executed by the City and the Contractor to address such change. Such Change Directive or Change Order will not be effective until approved by the City. Additions to, modifications to, or deletions from the Project provided herein may be made, and the compensation to be paid to the Contractor may be adjusted accordingly, only by mutual agreement of the Parties. No claim for extra work done or materials furnished by the Contractor will be allowed by the City except as provided herein, nor will the Contractor do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing by the City. Work or material(s) furnished by the Contractor without such prior, written authorization will be the Contractor's sole jeopardy, cost, and expense, and the Contractor hereby agrees that, without prior, written authorization, no claim for compensation for such work or materials furnished will be made.

4.4 Construction Phase General Services. The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner according to the standards set forth in Subsection 1.6(A) above. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project's Contract Documents, as modified and agreed to by the City. Contractor's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. Contractor's Representative shall communicate regularly with City but not less than once each week and shall be vested with the authority to act on behalf of Contractor. Contractor's Representative may be replaced only with the written consent of City.

A. Government Approvals and Permits.

1. The Contractor shall be primarily responsible to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. The Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices. The City will be the applicant for the following permits; however, the Contractor shall be responsible for any work associated with obtaining the permits, as directed by the City:

- a. Maricopa County Environmental Services Department
  - i. Approval to Construct
  - ii. Approval of Construction
- b. Arizona Pollutant Discharge Elimination System AZPDES (NPDES) SWPPP, as required by the AZPDES Construction General Permit (CGP).
- c. Maricopa County Environmental Dust Control Permit

2. Copies of the required permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

3. City shall be responsible for permit(s) and fees for building and demolition permits. City will also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility design fees for permanent services.

4. Contractor shall be responsible for all other permits and review fees not specifically listed in Subsection 4.4(A)(1) above.

5. Contractor is responsible for all water bills on the Project meters until Substantial Completion of the Project. Arrangements for construction water are the Contractor's responsibility.

**B. Pre-construction Activities.**

1. Prior to the commencement of any Work, the City's Representative will schedule a pre-construction conference. The purpose of this conference is to establish a working relationship between the Contractor, utility firms, various City agencies and other entities as may be appropriate or beneficial. The agenda will include critical elements of the Work and Master Schedule, submittal schedule, cost breakdown of major lump sum items, payment requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and emergency telephone numbers for all

representatives involved in the course of construction. Minimum attendance at the preconstruction conference shall be the Contractor's Representative, the job superintendent, the Contractor's safety officer and the individuals deemed necessary by the City.

2. The Notice to Proceed date will be set by the City. At or after the pre-construction conference and upon delivery of the required bonds and insurance in a City-approved format or at such other time as the City may elect, a Notice to Proceed letter will be issued confirming the construction start date, the Contract Time and the Substantial Completion date. Failure by the Contractor to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it will not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.

3. The Contractor shall update the Schedule of Values based on the categories used in the buyout of the Work but not greater than the approved GMP; the update shall identify the Contractor's Contingency. The Schedule of Values will subdivide the Work into all items comprising the Work.

C. Project Management.

1. The Contractor shall refine the Management Plan for the Project. In refining the Management Plan, the Contractor shall consider the City's schedule, cost and design requirements for the Project. The Contractor shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the City. The Management Plan shall also include a description of the various proposal packages recommended for the Project. The Management Plan shall be presented to the City for acceptance.

2. The Contractor shall conduct periodic Project meetings attended by the City's Representative, the Project Designers and other necessary parties. Such meetings shall serve as a forum for the exchange of information concerning the Project and the view of construction progress. The Contractor shall prepare and distribute minutes of these meetings to the City's Representative, the Project Designers and others in attendance.

3. The Contractor shall coordinate transmittal of documents to regulatory agencies for review and shall advise the City of potential problems in completing such reviews.

4. The Contractor shall assist the City in public relations activities and shall prepare information for and attend public meetings regarding the Project.

D. Reports.

1. The Contractor shall prepare and distribute design phase change reports monthly to the City that shall list all City-approved Change Directives and Change

Orders as of the date of the report and shall state the effect of the Change Directives and Change Orders on the Project budget and the Master Schedule.

2. The Contractor shall prepare and distribute schedule maintenance reports monthly to the City comparing the actual and scheduled dates for Subcontractors' contract awards and completion of each such Subcontractor's portion of the Project.

3. The Contractor shall prepare and distribute the Project cost reports monthly to the City specifying actual award prices and construction costs for each of the individually awarded components of the Project as compared to the Project budget.

4. The Contractor shall prepare and distribute cash flow reports monthly to the City specifying actual cash flow for each of the individually awarded components of the Project as compared to the projected cash flow.

5. The requirements for filing reports set forth in this Subsection 4.4(D) shall not be deemed to meet the requirements for requests for extensions of time or requests for Change Directives and Change Orders as set forth in Section 6 and Section 8 below.

#### 4.5 Work Management.

A. Contractor Resources. Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete the Work according to the Contract Documents. The Contractor shall provide and maintain a management team on the Site to provide contract administration. The Contractor shall establish and implement coordination and communication procedures among the Contractor, the City, the Project Designers and Subcontractors.

B. Means, Methods and Techniques. Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Contractor shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

C. Supervisor Presence. Contractor's Representative or the Contractor's Superintendent shall be present at the Site at all times that construction activities are taking place.

1. All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

2. In the event of noncompliance with this Subsection, the City may require the Contractor to stop or suspend the Work in whole or in part.

D. Manufacturer Requirements. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the Contractor's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.

E. Measurements. Before ordering materials or doing work, the Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the accuracy of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the plans; differences shall be submitted to the City for resolution before proceeding with the Work.

F. Field Measurements and Conditions. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Construction Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City immediately.

G. Grades, Lines, Levels and Bench Marks. The Contractor shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.

H. Proper Employee Conduct. Any person employed by the Contractor or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly or is otherwise found to be inappropriate due to the setting of the Site, shall, at the written request of the City, be removed from the Site by Contractor or Subcontractor employing such person, and the person shall not be employed again in any portion of Work without the written approval of the City. The Contractor or Subcontractor shall hold the City harmless from damages or claims which may occur in the enforcement of this Subsection.

I. Coordination of Activities. Contractor shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

J. Change Processing. The Contractor shall establish and implement procedures for expediting and processing requests for information, Shop Drawings, material and equipment sample submittals, contract schedule adjustments, Change Directives, Change Orders, substitutes, payment requests and the maintenance of logs. The Contractor shall maintain daily job reports. The Contractor shall be the party to whom requests for information, submittals, Subcontractor schedule adjustments, substitutions, Change Directive requests, Change Order requests and payment requests shall be submitted.

K. Subcontractor Meetings. Periodically, the Contractor shall conduct meetings at the Site with each Subcontractor. The Contractor shall conduct coordination meetings

with all Subcontractors. The Contractor shall record, transcribe and distribute minutes to all attendees, the City and the Project Designers.

L. Coordination of Inspections and Testing. Technical inspection and testing provided by the Project Designers or others who are not Subcontractors shall be coordinated with the Contractor. The Contractor shall be provided a copy of all inspection and testing reports on or before the next business day after the inspection or test. The Contractor is not responsible for providing, nor does the Contractor control, the actual performance of such technical inspection and testing. The Contractor is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.

M. Self-Performed Work. The Contractor shall perform, with its own forces, construction work that amounts to not less than 45% of the total Contract Price for construction of the Project. For the purposes of this paragraph, the total Contract Price for construction of the Project (1) includes the total of the GMP amounts as agreed upon by the Contractor and the City and (2) does not include the cost of preconstruction services, design services or any other related services or the costs to procure any right-of-way or other costs of condemnation.

N. No Subcontractor Reliance. Contractor shall ensure that each Subcontractor (1) has inspected the Site and has thoroughly reviewed this Agreement as the same may be revised by the City, and is not relying on any opinions or representations of the City, (2) agrees to perform and complete the Work in strict accordance with this Agreement and under the Contractor's direction, (3) agrees that any exclusions of any Work must be approved in writing by the Contractor prior to acceptance of any agreement between Contractor and a Subcontractor or same shall not be excluded hereunder, (4) is responsible for all safety precautions and programs and shall provide all protection and necessary supervision to implement said precautions and programs as set forth in Section 4.13 below, (5) shall provide all competent supervision necessary to execute all Work and any work incidental thereto in a thorough, first-class, workmanlike manner and (6) has acknowledged that it is Subcontractor's responsibility that all of the Work and any work incidental thereto conforms to, and is performed in accordance with, Applicable Law.

O. Subcontractor Change Request. The Contractor shall review the contents of a request for changes to the subcontract time or price submitted by a Subcontractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the Contractor's analysis reveals that the request is valid, the Contractor shall prepare a detailed report to the City for approval in accordance with Articles 6 and 8 below, as applicable. The Contractor shall also prepare and timely deliver a detailed report to the City of other such requests and requests found to be invalid and timely inform the Subcontractor of any such determination. The Contractor shall prepare the necessary change documents for signature by the Subcontractor.

P. Quality Control. The Contractor shall establish and implement a program to monitor the quality of construction by itself and by Subcontractors. The purpose of the program shall be to protect the City against defects and deficiency in the Work of the Contractor or the Subcontractors. The Contractor shall reject the Work and transmit to the Subcontractor a notice of nonconforming work when the Contractor believes the Work does not conform to the



requirements of the Contract Documents. Except for minor variations as stated herein, the Contractor is not authorized as part of this service to change, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

Q. Subcontractor Document Request. The Contractor shall coordinate and expedite submittals of information from the Subcontractors for record drawings and specification preparations and shall coordinate and expedite the transmittal of Project Record Documents to the City.

R. Traffic Control. All traffic affected by the Work under this Agreement shall be regulated in accordance with the most recent revision of the United States Department of Transportation *Manual on Uniform Traffic Control Devices* (the "MUTCD") and the City of Phoenix Traffic Barricade Manual (the "Barricade Manual") (the MUTCD and the Barricade Manual are collectively referred to herein as the "Traffic Control Requirements"), which are incorporated herein by reference; provided, however, that this Agreement shall govern in a conflict with the terms of the MUTCD or the Barricade Manual. At the time of the pre-construction conference, each Subcontractor shall designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring and altering traffic control measures, as necessary. At the same time the Contractor will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried through the Work area in an effective manner and that motorists, pedestrians, bicyclists and workers are protected from hazard and accidents. The Contractor shall ensure that Subcontractors adhere to the following:

1. All traffic control devices and advance warning signs (such as REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT and DO NOT PASS) required for the Work under this Agreement shall be placed in accordance with the Traffic Control Requirements.

2. The Subcontractor provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals and signs and shall take all necessary precautions for the protection of the Work and safety of the public. The Subcontractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes.

3. All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the Subcontractor shall conform to the standard design generally accepted for such purposes and payment for all such services and materials shall be considered as included in the other pay items of the Agreement.

4. The Subcontractor shall ensure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Subcontractor shall notify the City at least 48 hours in advance for City personnel to temporarily relocate said signs. The City will direct the Subcontractor

as to the correct positions to re-set all traffic and street name signs to permanent locations when notified by the Subcontractor that construction is complete.

5. When construction activities or traffic hazards at the Site require the use of flagmen, it shall be the Subcontractor's responsibility to provide trained flagmen to direct traffic safely.

6. Manual traffic control shall be in conformity with the MUTCD, except that the designated liaison officer shall be contacted at the Avondale Police Department.

7. When traffic hazards at the Site warrant the use of certified police personnel to direct traffic, arrangements must be made with the liaison officer at the Avondale Police Department.

8. The assembly and turnarounds of the Subcontractor's equipment shall be accomplished using adjacent local streets when possible.

9. Equipment used and/or directed by the Subcontractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Subcontractor shall provide a flagman or off-duty, uniformed law enforcement officer to assist with spotting.

10. During construction, it may be necessary to alter traffic control. Any such alterations shall be in accordance with the Traffic Control Requirements.

11. No street within the Project area may be closed to through traffic or to local emergency traffic without prior, written approval of the City. The City may give written approval at its sole discretion and only if sufficient time exists to allow for notification of the public at least two Days in advance of such closing. Partial closure of streets within the Project shall be done in strict conformity with the City's written directions.

12. Caution should be used when excavating near intersections with traffic signal underground cable. Subcontractor shall notify the City 24 hours in advance of any work at such intersections. The Subcontractor shall install and maintain temporary overhead traffic signal cable as specified by the City when underground conduit is to be severed by excavations at intersections. The Subcontractor shall provide an off-duty uniformed City of Avondale police officer to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items shall be repaired and restored to the City's satisfaction. Magnetic detector loops shall, under no circumstances, be spliced.

13. The Subcontractor shall accommodate local access to adjacent properties in accordance with the specification set forth below.

14. Where crossings of existing pavement occurs, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow, as determined by the City or its authorized representative in his sole discretion. If plates cannot be used, crossings shall either be back-filled or the Subcontractor shall provide a detour.

#### 4.6 Control of the Work Site.

A. Debris Removal. Throughout all phases of construction, including suspension of Work, Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its Construction Services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or an agreed upon portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or an agreed upon portion of the Project for its intended use.

B. Dust Control. Contractor shall take whatever steps, procedures or means necessary to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of Applicable law and such other Specifications as the Parties may agree to in writing.

C. Accessibility. 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.

D. Material and Equipment Storage. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site by the Contractor. When equipment or materials are no longer required for the Work, each shall be removed promptly from the Site.

E. Protection of Site. Protection of the Work, the Site, and construction materials and equipment stored at the Site from weather, theft, damage and all other adverse conditions is solely the responsibility of the Contractor.

#### 4.7 Time Management.

A. Master Schedule Updates. The Contractor shall, not less than monthly, adjust and update the Master Schedule and distribute copies to the City and the Project Designers. All adjustments to the Master Schedule must be (1) made for the benefit of the Project and (2) acceptable to the City; provided, however, that such adjustments or updates shall not extend the time for performance of the Work beyond the Substantial Completion date unless such extension is requested by the Contractor and approved by the City in accordance with Section 6 below.

B. Subcontractor Schedule Verification. The Contractor shall review each Subcontractor's construction schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.

C. Subcontractor Progress Monitoring. The Contractor shall (1) review the progress of construction of each Subcontractor on a monthly basis, (2) evaluate the percentage completion of each construction activity as indicated in the Subcontractor's construction schedule and (3) review such percentages with the Subcontractor. This evaluation shall serve as data for input to the periodic construction schedule report that the Contractor shall prepare and distribute to the appropriate Subcontractor, the City's Representatives and the Project Designers. The report shall serve as the basis for (i) determining the actual progress compared to scheduled progress and (ii) determining the progress payment due to the Subcontractor. The Contractor shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Subcontractor.

D. Change Evaluation. The Contractor shall, prior to the issuance of a Change Directive or Change Order, determine the effect on the Master Schedule of time extensions requested by a Subcontractor. The Contractor may require a Subcontractor to prepare and submit a recovery schedule in the event the Subcontractor fails to meet the Master Schedule.

E. Minor Schedule Revisions. The Master Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve the Contractor of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

F. Payment Requests. An updated Master Schedule shall be submitted monthly to the City as part of the Payment Request.

1. The Contractor shall provide City with a monthly status report for the Master Schedule detailing the progress of the Work, including (a) if the Work is proceeding according to schedule, (b) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (c) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the applicable GMP and within the Contract Time.

2. With each schedule submittal the Contractor shall include a transmittal letter including the following:

- a. Description of problem tasks (referenced to field instructions and requests for information), as appropriate.
- b. Current and anticipated delays including:
  - i. Cause of the delay.

- ii. Corrective action and schedule adjustments to correct the delay.
  - iii. Known or potential impact of the delay on other activities, milestones, and the Substantial Completion date.
- c. Changes in construction sequence.
- d. Pending items and status thereof including but not limited to:
  - i. Time Extension requests.
  - ii. Other items.
- e. Substantial Completion date status:
  - i. If ahead of schedule, the number of Days ahead.
  - ii. If behind schedule, the number of Days behind.
- f. Other project or scheduling concerns.

G. City Review. City's review of and response to the Master Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not: (1) relieve the Contractor from (a) compliance with the requirements of the Contract Documents or (b) the time extension request process set forth in Section 6 below; or (2) be construed as relieving the Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

H. CPM Diagram. The updated Master Schedule shall include a CPM diagram schedule that shows the sequence of activities, the interdependence of each activity and indicate the Critical Path.

1. The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

2. The CPM diagram schedule shall indicate all relationships between activities.

3. The activities making up the Master Schedule shall be in sufficient detail to ensure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

4. The CPM diagram schedule shall be based upon activities that coincide with the Schedule of Values.

5. The CPM diagram schedule shall show all submittals associated with each Work activity and the review time for each submittal.

6. The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the Contractor activities.

7. The schedule shall include a Critical Path activity that reflects anticipated rain and weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Services or other source approved in writing by the City.

I. Occupancy Consideration. The Master Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority.

J. Float Time. Float time shall be as prescribed below:

1. The total Float within the overall Master Schedule is not for the exclusive use of either the City or the Contractor, but is jointly owned by both and is a resource available to and shared by both Parties as needed to meet contract milestones and the Project completion dates.

2. The Contractor shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing. Float time within the schedule is jointly owned; no time extensions will be considered or granted nor delay damages considered or paid until a delay occurs that extends the Work beyond the Substantial Completion date.

3. City-caused delays on the Project may be offset by City-caused time savings (i.e., Critical Path submittals returned in less time than anticipated by the Master Schedule; approval of substitution requests and credit changes which result in savings of time to the Contractor). In such an event, the Contractor shall not be entitled to have considered or receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

K. Occupancy/Use Plan. The Contractor shall prepare an occupancy plan for the Project. This plan shall be provided to the City not later than 60 Days prior to the scheduled Substantial Completion date.

#### 4.8 Cost Management.

A. Subcontract Schedule of Values. The Contractor shall, in participation with the Subcontractors, determine a Schedule of Values for each of the construction subcontracts. The Schedule of Values shall be the basis for the allocation of the Contract Price to the activities shown on the Subcontractors' construction schedule. The City shall approve the subcontract Schedule of Values before acceptance for progress billings.

B. Contract Price Allocation Each Subcontractor's construction schedule shall have the applicable portions of the Contract Price allocated among the Subcontractor's scheduled activities so that each of the Subcontractor's activities shall be allocated a price and the sum of the prices of the activities shall equal to or less than the total Contract Price. The Contractor shall review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to a Subcontractor and Contractor shall be based on the Subcontractor's percentage of completion of the scheduled activities as set out in each Subcontractor's construction schedule report and the Subcontractor's compliance in accordance with the Contract Documents.

C. Additional Information. In instances where a lump sum or unit price is not determined prior to performing Work described in a request for changes to the Contract Price, the Contractor shall request from the Subcontractor records for the cost of payroll, materials and equipment and the amount of payments to its Subcontractors, if any, incurred by the Subcontractor in performing the Work.

D. Trade-off Studies. The Contractor shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the City's Representative and the Project Designers.

E. Payment Applications. In consultation with the Project Designers, the Contractor shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Contractor shall make appropriate adjustments to each payment application and shall prepare and forward a progress payment report to the City. The progress payment report shall state the total Contract Price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate for payment that shall be signed by the Contractor and delivered to the City. The Contractor shall keep the Project and the Site free and clear of all liens and claims from its Subcontractors, suppliers or materialmen.

#### 4.9 Shop Drawings, Product Data and Samples.

A. Purpose. Shop Drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

B. Review. The Contractor shall review, approve, verify, and submit to the Project Designers five copies of each Shop Drawing, product data, sample, and similar submittal required by the Contract Documents as to cause no delay in the Work or in the activities of the

City or of separate contractors. Submittals made by the Contractor that are not required by the Contract Documents may be returned without action.

C. Project Designer Approval. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Project Designers. Such Work shall be in accordance with approved submittals.

D. Contractor Verification. By approving, verifying and submitting Shop Drawings, product data, samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

E. No Deviation Approval; Errors. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Designer's approval of Shop Drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Project Designer in writing of such deviation at the time of submittal and the Project Designer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, samples, or similar submittals by the Project Designer's approval thereof.

F. Highlight Changes. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, product data, samples, or similar submittals, to revisions other than those requested by the Project Designers on previous submittals.

G. Informational Submittals. Informational submittals upon which the Project Designer is not expected to take responsive action may be so identified in the Contract Documents.

H. Other Certifications. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Project Designer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

#### 4.10 Quality Control, Testing and Inspection.

A. New Materials. All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

B. Inspection and Approval. All construction materials to be used in the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

C. Test Methods. The procedures and methods used to sample and test material will be determined by the Project Designers. Unless otherwise specified, samples and



tests shall be made in accordance with MAG 700 Series and the standard methods of AASHTO or ASTM as referenced in the MAG 700 Series.

D. Testing Facility. The Contractor will select a pre-qualified independent testing laboratory and will pay for initial City acceptance testing.

1. When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and retesting will be paid for by the Contractor. Contractor's Contingency cannot be utilized for the cost of retesting.

2. When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

E. Cooperation. The Contractor will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide the laboratory's employees or agents access to the Work at all times.

F. At-source Approval. At the option of the City, materials may be approved at the source of supply before delivery.

G. Code Compliance. Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority shall be the responsibility of and shall be paid by the Contractor, unless otherwise provided in the Contract Documents.

H. Responsibility. Contractor's quality control testing and inspections shall be the sole responsibility of the Contractor and shall be paid solely by the Contractor.

#### 4.11 Trade Names and Substitutions.

A. Substitutions. Substitute or alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number may be permitted, unless indicated that no substitutions are permitted, and if permitted are subject to the following:

1. The substitution shall be submitted by Contractor in writing to the City, including sufficient detail to properly analyze the request.

2. The Contractor and the Project Designer shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

3. The submittal shall outline any required changes in the Contract Documents to adapt the design to the proposed substitution.

4. The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution,

including cost of design, license fees, royalties, and testing. Also, the submittal shall include any request for adjustment in the Contract Time created by the substitution.

B. Samples; Additional Information. The Contractor, if requested by the City, shall submit samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

C. City Determination. The City will make the final decision and will notify the Contractor in writing as to whether the substitution has been accepted or rejected.

D. Presumed Rejection. If the City does not respond in a timely manner, the Contractor shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

#### 4.12 Project Record Documents.

A. Redline Prints. During the construction period, the Contractor shall maintain at the Site a set of redline, blue-line or blackline prints of the Construction Documents and Shop Drawings for Project Record Document purposes. The Contractor will certify that these documents are up to date when it submits its monthly pay application. The Contractor shall also:

1. Mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents and give particular attention to information regarding concealed elements that would be difficult to identify or measure and record later. Items required to be marked include, but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings.
- Depths of foundations below first floor.
- Locations and depths of underground utilities.
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order or Change Directive.

- Details not on original Contract Documents.
  - Similar deviations, variations and modifications.
2. Mark completely and accurately Project Record Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents.
  3. Mark Project Record Document sets with red erasable colored pencil.
  4. Note Change Order or Change Directive numbers, as required to identify the source of the change to the Construction Documents.
  5. As a condition of Substantial Completion, submit Project Record Documents and Shop Drawings to the City Representative for review and comment.

B. Corrections. Upon receipt of the reviewed Project Record Documents from the City, the Contractor shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

1. A complete set of electronic Project Record Documents prepared in AutoCAD format compatible with City CADD technology. The Contractor shall cause the Project Designers to revise and update the electronic drawing files. Each drawing shall be clearly marked with “As-Built Document.”
2. The original copy of the Project Record Documents (including all redline mark-ups).

4.13 Project Safety. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

A. Responsibility. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

B. Safety Representative. Contractor shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Contractor’s safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

C. Daily Inspections. The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Contractor’s personnel,

Subcontractors and others as applicable. Contractor shall provide the City copies of daily inspection reports and weekly safety meeting minutes, with the monthly payment applications.

D. Legal Requirements. Contractor and Subcontractors shall comply with Applicable Law relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate Applicable Law. If Contractor believes a City-specific requirement violates Applicable Law, the Contractor shall notify the City of such violation within 24 hours of discovery.

E. Reporting. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Applicable Law, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

F. Subcontractor Responsibility. Contractor's responsibility for safety under this Section is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for (1) complying with Applicable Law, including those related to health and safety matters, and (2) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

4.14 Substantial Completion. When the Contractor considers that the Work has reached Substantial Completion, it shall submit a request to the City's Project Manager for a certificate of Substantial Completion. Substantial Completion must occur not later than the date set forth in the applicable GMP Amendment, subject to modification by changes in the Contract Time according to Article 6 below. A prerequisite for Substantial Completion, over and above the extent of construction completion required, is receipt by the City of acceptable documentation that Contractor has successfully tested and demonstrated all systems for their intended uses. The City shall determine when the Project and the Contractor's Work is substantially complete. The Substantial Completion date shall be confirmed by a Certificate of Substantial Completion signed by the City and Contractor. The Certificate of Substantial Completion shall state the respective responsibilities of the City and the Contractor for security, maintenance and damage to the work and insurance. The Certificate of Substantial Completion shall also include the Punch List as created by the Contractor and modified by the Project Designers in consultation with the City and establish the time for completion and correction of all Punch List items. The Contractor shall proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. If the City and the Contractor cannot agree as to the appropriate Substantial Completion date, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in Article 13 below. Notwithstanding such disagreement, the Contractor shall diligently proceed with completion of the Punch List items. Warranties required by the Contract Documents shall commence on the Substantial Completion date or designated portion thereof unless otherwise provided in the Contract Documents.

4.15 Final Completion. The City shall determine when the Project and the Contractor's Work has reached Final Completion. Final Completion must occur not later than 60 Days after the Substantial Completion date, subject to modification by changes in the Contract Time in

Article 6 below. Final Completion shall be achieved only upon the City's written acceptance of (A) the construction, (B) all testing, (C) demonstration by the Contractor that the Work functions as required by the Contract Documents and meets all Contract Document requirements, (D) resolution of all outstanding system deficiencies and Punch List items, if any, (E) delivery of all as-built documentation, drawings, completed Project Record Documents (with revisions made after Substantial Completion), annotated submittals and design document deliverables, (F) submittal, acceptance, and delivery of the 100% complete O&M manuals, (G) delivery of warranties, inspection certificates, bonds and all other required documents, (H) all pre-requisites for final payment and (I) submittal of Contractor's request for final payment and acceptance enclosing all required documentation. Upon Final Completion the City shall issue a Certificate of Final Completion to the Contractor on behalf of the City. Following receipt of payment from the City, the Contractor shall make all payments due to the Subcontractors.

#### 4.16 Correction of Defective Work.

A. During the Work. During the Work, Contractor shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work.

B. During Warranty Period. Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents within the warranty period described in Subsection 5.6(A) below, or within such longer period to the extent required by the Contract Documents or as may be allowed by law. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

C. Commencement by Contractor. Contractor shall take meaningful steps to commence correction of nonconforming Work subject to Subsections 4.16(A) and (B) above within seven Days of receipt of written notice from the City. This includes correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Contractor fails to commence the necessary steps within such seven-Day period, the City, in addition to any other remedies provided under the Contract Documents or allowed by law, may provide Contractor with written notice that the City will commence correction of such nonconforming Work with its own forces. If the City corrects such nonconforming Work with its own forces, the GMP will be adjusted to deduct the cost to the City. If the City performs corrective Work after final payment, Contractor shall be responsible for all reasonable costs incurred by the City in performing such correction.

D. Emergencies. In the event nonconforming Work creates an emergency requiring an immediate response, the Contractor will respond and initiate corrections within 24 hours.

E. No Effect on Limitations Period. The two-year period referenced in Subsection 5.6(A) below applies only to Contractor's obligation to correct nonconforming Work as provided in this Section and is not intended to constitute a period of limitations for any other

rights or remedies the City may have regarding Contractor's obligations under the Contract Documents or as may be allowed by law.

4.17 Additional Services. Any Additional Services must be authorized in advance by the City in writing; the Contractor shall furnish or obtain from others such authorized services. The Contractor shall be paid for these Additional Services by the City as herein provided to the extent they exceed reasonably inferable obligations of the Contractor under this Agreement. Potential Additional Services include:

A. Planning. Providing additional planning surveys or alternative site evaluations other than as required or reasonably inferred in this Article 4.

B. Future/Outside of Project Design. Providing design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the Project, other than general planning and master planning for future work as indicated by the City's Project program. Providing design and engineering of any work outside the Site if said work is not expressly identified and included in the Scope.

C. Major Document Revisions/Additional Documents. Making major revisions in the construction documents, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the City or are due to causes beyond the control and without the fault and negligence or partial fault or negligence of the Contractor or its consultants or agents. Preparing additional documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the construction phase, other than as required or reasonably inferred in this Article 4. Making revisions to Construction Documents after the City has approved them when revisions are due to causes beyond the control and not the fault or partial fault of the Contractor.

D. Advanced Soils Analysis. Providing additional soils sampling, classification, and analysis other than as required or reasonably inferred in the foregoing sections of Article 4. Contractor is entitled to rely upon the soils analysis and recommendations as provided by a geotechnical consultant; however, Contractor is responsible for interpretation of such data for the purpose of establishing the means and methods of construction and such interpretation shall not be considered Additional Services during the design phase or the construction phase.

E. Expert Testimony. Preparing to serve or serving as an expert witness for the City in connection with any public hearing, arbitration proceeding, or legal proceeding wherein the Contractor or Subcontractor of the Contractor is not a party or allegedly at fault; provided, however, preparing to serve or serving as a fact witness for the City or rendering testimony necessary to secure governmental approval for the Project shall not constitute an additional service.

F. Survey. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats other than as required or reasonably inferred in this Article 4.

G. Additional Travel. Providing Additional Services and costs necessitated by out-of-town travel required of and approved in writing by the City other than visits to the Project and other than for travel required to accomplish the Work.

H. Unrelated Services. Providing any other services not otherwise included in this Agreement, not reasonably inferred by this Agreement or not customarily furnished in accordance with generally accepted contractual practices consistent with the term of this Agreement.

I. Replacement Work. Providing consultation concerning replacement of Work damaged by fire or other causes and not due in whole or in part to Contractor's action or inaction during construction, or furnishing services required in connection with the replacement of such work.

J. Special Studies. Providing additional special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project, other than as required or reasonably inferred in this Article 4.

K. O&M Analysis. Providing analyses of operating and maintenance costs other than as required for value analysis in Subsection 2.2(E) above, unless provided for in the Scope.

L. Assisting with City-Performed Work. Designing, and providing other services supporting the procurement of materials to be obtained, or work, if any, to be performed by the City, that are not a part of the Work.

## **ARTICLE 5**

### **POST-CONSTRUCTION PHASE**

5.1 Final Accounting and Close-out. At the conclusion of the Project, the Contractor shall prepare final Project accounting and close-out reports.

5.2 Occupancy Plans. The Contractor shall prepare and distribute reports as necessary associated with the occupancy plan.

5.3 Certificates. The Contractor shall secure required certificates of inspection, testing or approval and deliver them to the City.

5.4 Manufacturer Manuals and Warranties. The Contractor shall require the Subcontractors to provide manufacturers' operations and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. Prior to Final Completion of the Project, the Contractor shall compile such manuals, warranties and guarantees, bind same in an organized manner and deliver the bound materials to the City; the City shall not be required to issue the final payment to the Contractor pursuant to Section 9.6 below until after the compiled manuals, warranties and guarantees have been delivered to the City. At the discretion of the City, electronic records may be substituted for the bound materials required in this section.

5.5 Inspection and Testing. With the assistance of the City's maintenance personnel, the Contractor shall direct the inspection of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

5.6 Warranties.

A. Warranty for the Work. Contractor or its assignee shall give to the City a two-year warranty against deficiencies in material and workmanship for all Work on the Project or other such warranty as required by the City Engineer, which warranty shall begin on the Substantial Completion date. Any material deficiencies in material or workmanship identified by City staff during the two-year warranty period shall be brought to the attention of the Contractor and its assignee that provided the warranty, which both shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the City Engineer. Continuing material deficiencies in a particular portion of the Work shall be sufficient grounds for the City to require (1) an extension of the warranty for an additional two-year period and (2) the proper repair of or the removal and reinstallation of, that portion of the Work that is subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, the Contractor agrees to repair any damage to the Work caused by construction activities on the Site. Nothing contained herein shall prevent the City or the Contractor from seeking recourse against any other third party for damage to the Work caused by such third party.

B. New Materials. The Contractor warrants that all materials and equipment furnished under construction phase(s) of this Agreement are (1) new unless otherwise specified and approved by the City, (2) of good quality, (3) in conformance with the Contract Documents and (4) free from defective workmanship, defective materials and Hazardous Materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion if the warranted items are fully installed, operational and available for use and if not, at such time after the date of Substantial Completion as they are fully installed, operational and available for use.

C. Actions by Others. Contractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Contractor or anyone for whose acts Contractor may be responsible and/or liable.

D. No Limitation on Other Warranties. Nothing in this warranty is intended to limit any manufacturer's warranty that provides City with greater warranty rights than set forth in this Section or the Contract Documents.

E. No Limitation on Legal Remedies. Nothing in this warranty is intended to limit any other remedy at law that may be available to the City.



## **ARTICLE 6 CONTRACT TIME**

6.1 Progress and Completion. The City and the Contractor agree the time limits stated in the Contract Documents, as the same may be amended and updated by the Parties, are of the essence of this Agreement.

6.2 Commencement of the Work. The Work, except for the (A) environmental investigation services set forth in Section 2.1 above, (B) review of Construction Documents and design remedies services set forth in Section 2.2 above, and (C) Pre-Construction Phase General Services set forth in Section 2.3 above, shall commence on the Notice to Proceed date of the applicable GMP Amendment, and shall proceed in general accordance with the Schedule for the Work set forth therein. Each GMP Amendment shall establish a separate Notice to Proceed date, Substantial Completion date and portion of the Contract Time applicable to that GMP. The Substantial Completion dates may be sequential or may run consecutively.

6.3 Prosecution of the Work. The Contractor shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Master Schedule. If the delay is an Inexcusable Delay, as defined below, the Contractor shall prepare a recovery schedule for the City's review and approval, showing how the Contractor will compensate for the delays and achieve Substantial Completion by the date shown on the Master Schedule. If the Contractor is unable to demonstrate how it will overcome Inexcusable Delays, the City may order the Contractor to employ such extraordinary measures as are necessary to bring the Work into conformity with the date of Substantial Completion set forth therein, the costs of which shall be included as part of the Cost of the Work. If the delay is an Excusable Delay, as defined below, the City shall either (A) authorize an equitable extension in the Master Schedule to account for such delay, and equitably adjust the GMP on account of such delay or (B) request that the Contractor prepare a recovery schedule showing how (if possible) the Contractor can achieve Substantial Completion by the date shown on the Master Schedule, and equitably adjust the applicable GMP in accordance with the Change Order provisions of this Agreement related to any extraordinary activities required of the Contractor on account of such recovery schedule.

6.4 Critical Path Activities. To the extent the Contractor completes activities on the Critical Path earlier than scheduled, the savings in time on account thereof shall belong solely to the Contractor.

6.5 Construction Activities. At such time as the Construction Documents, or any portion thereof, are complete, the Contractor shall submit a revised Master Schedule to the City for incorporation into the Contract Documents, which will expand the Master Schedule approved to date, but which will not, in and of itself, change the Substantial Completion date for the Project. This revised Master Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities, the sequence of the Work and all significant activities.

## 6.6 Extensions of Time.

A. Limited to Excusable Delay. An extension in the scheduled Substantial Completion date will only be granted in the event of Excusable Delays affecting Work activities on the Critical Path. The Contractor shall be entitled to general condition costs and extra costs related to the Excusable Delay for idle labor, equipment inefficiency and lost productivity of the performance of the Work; however, the Contractor must submit evidence reasonably satisfactory to the City substantiating such costs. Such adjustment to the contract sum and Substantial Completion date shall be issued in an amendment to this Agreement.

B. Excusable Delays. To the extent any of the following events results in an actual delay in the Work affecting activities on the Critical Path, such shall constitute an “Excusable Delay” (to the extent not set forth below, a delay will be considered an “Inexcusable Delay”):

1. Delays resulting from Force Majeure events. The term “*Force Majeure*” means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Without limiting the foregoing, Force Majeure includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions-intervention-acts or failures or refusals to act by government authority, and other similar occurrences beyond the control of the Party declaring Force Majeure which such Party is unable to prevent by exercising reasonable diligence. The Force Majeure shall be deemed to commence when the Party declaring Force Majeure notifies the other Party, in accordance with Subsection 14.6, of the existence of the Force Majeure and shall be deemed to continue as long as the results or effects of the Force Majeure prevent the Party from resuming performance in accordance with this Agreement. Force Majeure shall not include: (a) late delivery of equipment or materials caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, inefficiencies or similar occurrences, or (b) late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Subsection 6.6(B). Any delay or failure in performance by either Party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by Force Majeure. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other Party in writing. The time of Substantial Completion or Final Completion shall be extended by written amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed Party from performing in accordance with this Agreement.

2. Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Contractor in preparing the Master Schedule, including, without limitation, archaeological finds and unusual soil conditions (including rock or other geological conditions), underground foundations, abandoned or not properly identified utility lines and water conditions.

3. Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by or on behalf of the Contractor.

4. Delays resulting from changes in Applicable Law occurring after the date of execution of this Agreement.

5. Delays occurring due to the acts or omissions of the City and those within the control of the City.

6. Delays occurring due to the acts or omissions of a utility, so long as Contractor has coordinated with the utility causing the delay and the delay occurs despite reasonable steps taken by Contractor to avoid the delay.

7. Delays resulting from weather conditions that make it unreasonable to perform the Work in accordance with the Master Schedule.

C. Process for Requesting Extension of Time. In order to obtain an extension of time due to an Excusable Delay, the Contractor must comply with the following requirements: The Contractor shall notify the City of the Excusable Delay as soon as practicable, but in no event more than seven Days after the Contractor becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Contractor expects to be delayed. After the cessation of the Excusable Delay, the Contractor shall notify the City of the number of Days the Contractor believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by the City, the request for an extension of time contained in the resulting Change Order proposal or amendment to this Agreement, as applicable, shall be deemed sufficient for purposes of this Subsection.

D. City Determination. Within 10 Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then-current status of Excusable Delays and Inexcusable Delays, the City will provide the Contractor with written notice of City's determination of the number of Days of Excusable Delay and/or Inexcusable Delay within 10 Days after receipt by the City of the Contractor's written request for such determination. The Contractor shall not, however, deem an issuance by the City of such a determination to be a concurrence with any matters set forth in the Contractor's request. The Contractor may invoke the dispute resolution procedures set forth in Article 13 below with respect to such determination.

6.7 Concurrent Delays. To the extent the Contractor may be entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Contractor or by an Inexcusable Delay, the Contractor shall not be entitled to any additional costs for the period of such concurrency.

6.8 Weather Delays. The Contractor shall include and clearly identify an appropriate number of Days of weather-related delays within (A) the aggregate Master Schedule for the Work and within the portions of the Master Schedule submitted with each GMP Proposal relating to any phase of the Project and (B) each GMP Amendment. If the Contractor experiences additional weather-related delays beyond the number of Days set forth in the Master Schedule and the GMP

Amendment, the Contractor shall be entitled to commensurate extension of time and reimbursement of costs associated with such delay; provided such requests for extensions of time are submitted and approved according to the process set forth in Section 6.6 above. If the Contractor fails to include an appropriate number of Days of weather-related delays within the applicable GMP Proposal for any portion of the Project, the Contractor shall not be eligible for any extension of time or reimbursement of costs related to otherwise Excusable Delays relating to weather for the applicable GMP Proposal.

#### 6.9 Liquidated Damages.

A. Established. The Contractor and the City acknowledge that in the event that the Contractor fails to achieve Substantial Completion or Final Completion of the Project by the dates established therefore in the applicable GMP Amendment, as adjusted, the City will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the Parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that the City would incur as a result of late Substantial Completion or Final Completion of the Project. Such liquidated damages shall be the sole and exclusive remedy of the City for late completion of the Project, and the City hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

##### B. Amount of Liquidated Damages.

1. If the Contractor fails to achieve Substantial Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Substantial Completion date set forth in the applicable GMP Proposal, as adjusted, for any reason other than Excusable Delays, the Contractor shall pay to the City liquidated damages in the amount per Day as determined by the Maricopa Association of Governments specifications existing on the date this Agreement is approved by the City Council (the "MAG Specifications") for each Day Substantial Completion is delayed beyond the Substantial Completion date set forth in the applicable GMP Amendment.

2. If the Contractor fails to achieve Final Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Final Completion date, as adjusted, for any reason other than Excusable Delays, the Contractor shall pay to the City liquidated damages in the amount per Day as determined by MAG Specifications for each Day Final Completion is delayed beyond the Final Completion date established according to the applicable GMP Amendment.

3. In no case may the amount of liquidated damages due under this Subsection 6.9(B) for any single Day of delay exceed the highest amount, as determined according to MAG Specifications, that would be charged for any single Inexcusable Delay existing on such Day.

4. Payment of liquidated damages is to be made contemporaneously with any required payment to the Contractor, and such payments may be offset against each other.

## **ARTICLE 7 CONTRACT PRICE**

### **7.1 Pre-construction Phase Compensation.**

A. Project Designers' Services Included. The cost of services performed directly by the Project Designers are included in the Contractor's compensation.

B. Amount. The City shall pay the Contractor an amount not to exceed \$\_\_\_\_\_ for services performed during the Pre-construction Phase, as set forth in Article 2 above, and as more particularly described in the Pre-Construction cost summary, attached hereto as Exhibit J and incorporated herein by reference, including all cost items, allowances and reimbursable expenses.

C. Equitable Adjustment. Compensation of Pre-construction Services shall be equitably adjusted if such services extend beyond \_\_\_\_\_, for reasons beyond the reasonable control and not the fault or partial fault of the Contractor or as provided in Section 8.2 below. For changes in Pre-construction Services, compensation shall be adjusted as mutually agreed upon by the City and the Contractor at the time of such extended services.

D. Payments. Payments for Pre-construction Services shall be due and payable within 30 Days following approval of the Contractor's monthly invoice by the City. Payments due the Contractor that are unpaid for more than 30 Days from the due date of the invoice shall bear interest at the statutory rate.

7.2 Construction Phase Compensation. The portion of Contract Price applicable to the Construction Services shall be the aggregate of all approved GMP Amendments.

A. GMP. The Guaranteed Maximum Price is composed of the Direct Construction Costs and the Construction Fee. The Contractor is at risk to cover any additional Project costs. To the extent the combined total of the Direct Construction Costs and the Construction Fee at the conclusion of the Project is less than the GMP, the difference shall be retained by the City.

B. GMP Adjustment. If a GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 8. The markups permitted on such changes shall be no greater than the markups delineated in the approved GMP.

C. City's Contingency. City's Contingency funds are to be used at the discretion of the City to cover any increases in Project costs that result from City-directed changes or unforeseen Site conditions. City's Contingency will be approved in conjunction with the applicable GMP Amendment but will not be included in the full Contract Price. Markups for

Construction Fee and taxes will be applied by the Contractor at the time that City's Contingency is used. The amount of contingency for each GMP amendment will be negotiated separately.

D. Payment Data. The Contractor shall submit to the City, upon request, all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks. The requirements of this Section shall be included in all contracts between the Contractor and its Subcontractors and Consultants. The City may exercise its rights under this Section as often as reasonably necessary in the City's sole judgment to ensure the City has a complete and accurate understanding of all Project costs.

7.3 Adjustment in the Contract Price. Adjustment to the respective components of the Contract Price shall be made as follows:

A. Changes in the Work. For changes in the Work as provided in Article 8 below, the applicable Contract Price shall be adjusted as mutually agreed by the Parties, in writing, prior to commencement of any work pursuant to such changes.

B. Delays in the Work. For delays in the Work not caused, in whole or in part, by the Contractor, Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, there will be an equitable adjustment in the Contract Price to compensate the Contractor for increased expenses due to unforeseeable circumstances, according to the requirements of Article 6 above.

C. Replacement Work. If the Contractor is placed in charge of managing the replacement of an insured or uninsured loss not caused by or the fault of the Contractor or other parties identified in Subsection 7.3(B) above, the Contractor shall be paid an additional fee in the same proportion that the applicable portion of the Contract Price bears to the estimated applicable Cost of the Work, or as otherwise agreed to by the Parties.

## **ARTICLE 8 CHANGES IN THE WORK**

8.1 Prescribed Methods for Changes. Changes in Contractor's Services shall only be made by a written Change Directive or Change Order to this Agreement signed by the City and the Contractor. Changes involving (A) a change in the lump sum for the Pre-Construction Services set forth in Section 7.1 above or (B) a change in any GMP, shall be considered a Change Order and must be approved as an amendment to this Agreement and executed by the City and the Contractor. The Contractor shall not (A) perform any additional Services or (B) eliminate any duties included in the Services until a written amendment addressing the Change Order has been properly approved and executed by both Parties. The Contractor shall proceed to perform the Services required by the Change Order only after receiving written notice from the City directing the Contractor to proceed.

8.2 Change Control System. The Contractor shall establish and implement a change control system. All proposed changes shall first be described in detail in writing by the requesting

party. The requesting party shall submit detailed information to the Contractor for evaluation concerning the costs and time adjustments, if any, necessary to perform the proposed changed work. The Contractor shall discuss the proposed change with the appropriate Subcontractor and endeavor to determine the Subcontractor's basis for the cost to perform the work and the effect, if any, on the applicable GMP. The Contractor shall make a recommendation to the City pursuant to this Article 8 prior to the City's acceptance of all change requests.

8.3 Change Directives; Change Orders; GMP Adjustments. Changes in the Work that are within the general scope of this Agreement may be accomplished by Change Directive without invalidating this Agreement; provided, however, that any change in the Work that will result in an increase to a GMP or extension of the Substantial Completion date shall be pursuant to a Change Order approved by a written amendment to this Agreement clearly delineating the amounts attributable to compensation for the General Conditions Costs, the Construction Fee and other Cost of the Work.

8.4 Determination of Cost. An increase or decrease in a GMP resulting from a change in the Work shall be determined by one or more of the following methods:

- A. Unit prices set forth in this Agreement or as subsequently agreed.
- B. Mutually accepted, itemized lump sum.
- C. Costs determined as defined in Article 3 above.

D. If an increase or decrease cannot be agreed to as set forth in Subsections 8.4(A) and (B) and the City issues a written order for the Contractor to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change.

8.5 No Obligation to Perform. The Contractor shall not be obligated to perform changed Work until a Change Directive or a Change Order/amendment to this Agreement, as applicable, has been executed by the City and the Contractor, except as provided in Subsection 8.4(D) above.

8.6 Adjustment of Unit Prices. If a proposed change alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the City or the Contractor, the unit prices shall be equitably adjusted and, if the result is an increase to a GMP, an amendment to this Agreement shall be executed.

8.7 Unknown Conditions. If, in the performance of the Work, the Contractor or its Subcontractor finds latent, concealed or subsurface physical conditions that (A) differ from the conditions the Contractor or its Subcontractor should have reasonably anticipated, (B) differ substantially from available soils reports or (C) differ substantially and materially from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement at this location (occurrence of shifting and expansive soils, including clay soils and sandstone expressly noted as commonly occurring in the Project area), then the applicable GMP compensation and/or the Substantial Completion date may be equitably adjusted only if the

Contractor notifies the City within seven Days after the conditions are first observed in accordance with Article 6 above.

8.8 Emergencies. In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in a GMP, compensation for Pre-construction Services, the Contract Price and/or extension of the Substantial Completion date on account of emergency work shall be determined as provided in this Agreement.

## **ARTICLE 9 PAYMENT**

### **9.1 Progress Payments.**

A. Submittal Process. On or before the 15th day of each month after the construction phase has commenced, the Contractor shall submit to the City an “Application for Payment” consisting of the Cost of the Work performed up to the end of the prior month, including the cost of material stored on the Site or at other locations approved by the City, along with a proportionate share of the Construction Fee. For the purpose of audit, prior to submission of the next Application for Payment, the Contractor shall make available at the request of the City a statement accounting for the disbursement of funds received under the previous Application. The form and extent of such statement shall be as agreed upon between the City and Contractor.

B. City’s Payment. Within seven Days after approval of each monthly Application for Payment, the City shall pay directly to the Contractor the appropriate amount for which Application for Payment is made, less amounts (1) previously paid by the City, (2) sufficient to pay expenses the City reasonably expects to incur in correcting deficiencies that are set forth in writing and provided to the Contractor and (3) any retainage as set forth in Section 9.2 below.

C. No Liens. The Contractor warrants and guarantees that the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the City upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances.

D. Non-Conforming Work. The City’s progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of this Agreement or the Contract Documents.

E. Unfinished Items. Upon Substantial Completion of the Work, the City shall pay the Contractor the unpaid balance of the Cost of the Work, General Conditions Costs and the Construction Fee, less a sum equal to the Contractor’s estimated cost of completing any unfinished items as agreed to between the City and the Contractor as to extent and time for completion. The City thereafter shall pay the Contractor monthly the amount retained for unfinished items as each item is completed.



## 9.2 Retainage.

A. Exceptions to Retainage Requirement. No retainage shall be withheld with respect to gross receipts tax and premiums for bonds and insurance.

B. Amount Retained. With respect to the Work, the City shall retain 10% of the amount of each estimate until Final Completion and acceptance of all material, equipment and work covered by the Contract Documents.

1. Any securities submitted by Contractor in lieu of retainage as may be allowed by law, shall be deposited in an escrow account by the City. The City shall be listed as payee or multiple payee with Contractor on all such securities.

2. When the Work is 50% completed, one-half of the amount retained including any securities substituted pursuant to Subsection 9.2(B)(1) shall be paid to the Contractor upon the Contractor's request, provided the Contractor is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After the construction Work is 50% completed, no more than 5% of the amount of any subsequent progress payments made under the Contract Documents may be retained, provided the Contractor is making satisfactory progress on the Project. If, at any time, the City determines satisfactory progress is not being made, 10% retention shall be reinstated for all progress payments made under the Contract Documents after the determination.

9.3 Payment for On-site and Off-site Stored Materials. Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Contractor furnishing evidence to the Owner that (A) title to the materials and equipment will pass to the City upon payment therefore, (B) the materials and equipment are adequately insured and (C) such other matters as the City may reasonably request in order to protect its interests.

9.4 Title to Construction Work. The Contractor warrants that title to all Work covered by an Application for Payment shall pass to the City no later than the time of payment. The Contractor further warrants that, upon submittal of an Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from the City shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

## 9.5 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset against any money due to the Contractor any amounts Contractor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset against any money due to the Contractor any amounts Contractor owes to the City for delinquent fees, transaction privilege use taxes and property taxes, including any interest or penalties.

9.6 Final Payment.

A. Fully Completed Work. Final payment, consisting of the unpaid balance of (1) the Cost of the Work, (2) compensation for Pre-Construction Services and (3) the Construction Fee, shall be due and payable when the Work is fully completed and accepted by the City. Before issuance of final payment, the City may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

B. Waiver of Claims. In making final payment, the City waives all claims against the Contractor except for:

1. Outstanding liens.
2. Improper workmanship or defective materials.
3. Work not in conformance with the Contract Documents or work not completed.
4. Terms of any special warranties required by the Contract Documents.
5. Delivery to City of all warranties, operation and maintenance manuals, record drawings and other documents as required by the Contract Documents.
6. Right to audit Contractor records for a period of three years.
7. Claims previously made in writing that remain unsettled.

C. Acceptance as Waiver. Acceptance of final payment by the Contractor shall constitute a waiver of affirmative claims by the Contractor against the City, its employees, elected officials and agents, except those previously made in writing and identified as unsettled at the time of final payment.

9.7 Payments to Subcontractors.

A. The Contractor shall pay its Subcontractors or suppliers within seven Days of receipt of each progress payment from the City and as required by Arizona law. The Contractor shall pay for the amount of Work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment. In addition, 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 shall pay Subcontractors or suppliers the reduced retention within 14 Days of the payment of the reduction of the retention to the Contractor. No Contract between the 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 or by Arizona law.

B. Failure to Timely Pay. The Contractor agrees that if it fails to make payments in accordance with these provisions, the City may take any one or more of the following actions:

1. Hold the Contractor in default under this Agreement.
2. Withhold future payments, including retention, until proper payment has been made to Subcontractors or suppliers in accordance with these provisions.
3. Reject all future offers to perform work for the City from the Contractor for a period not to exceed one year from Substantial Completion date of this Project.
4. Terminate this Agreement.
5. Make a claim against the bonds required pursuant to Article 11.

C. No Waiver. Should the City 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.

D. Inclusion in Subcontracts. The Contractor shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

#### 9.8 Record Keeping and Finance Controls.

A. Retention Requirement. Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and the Contractor shall be kept on a generally recognized accounting basis and shall be available for three years after Final Completion of the Project.

B. Audit Rights. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

C. Pricing Data Inaccuracies. The City reserves the right to decrease Contract Price and/or payments made on this Agreement, in an amount determined by the City in its sole discretion, if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data.

D. Inclusion in Subcontracts. The Contractor shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

E. City Remedies. The City reserves the right to decrease Contract Price and/or payments made under this Agreement, in an amount determined by the City in its sole discretion, if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

## **ARTICLE 10 INSURANCE AND INDEMNITY**

### **10.1 Insurance Representations and Requirements.**

#### **A. General.**

1. Insurer Qualifications. Without limiting any obligations or liabilities of the Contractor, the Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

2. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

3. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

4. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms

of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

5. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

6. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

7. Waiver. All policies, excluding Professional Liability but including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

8. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

9. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth below and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

10. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations

of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the City 30 Days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

i. Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

ii. Auto Liability – Under ISO Form CA 20 48 or equivalent.

iii. Excess Liability – Follow Form to underlying insurance.

b. Contractor's insurance shall be primary insurance with respect to performance of this Agreement.

c. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

d. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11. Endorsements. Contractor shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Article.

B. Required Insurance Coverage.

1. Commercial General Liability. Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-

completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

2. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

3. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Contractor engages in any professional services or work in any way related to performing the work under this Agreement, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

4. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

5. Builder's Risk Insurance. Unless expressly waived by the City in a written amendment to this Agreement, the Contractor shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the City, the Contractor, and the Contractor's Subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief,

transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Contractor shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 Days' prior written notice to the City.

10.2 Indemnity. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Contractor, its officers, employees, agents, or any tier of subcontractor in connection with Contractor's work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

## **ARTICLE 11 BONDS**

11.1 Performance Bond. After the City and the Contractor have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Contractor shall be required to furnish the City with an irrevocable security binding the Contractor to provide faithful performance of the Agreement in the amount of 100% of the percentage of the GMP attributable to the Construction Services, payable to the City and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or any other related services. Performance security shall be in the form of a performance bond, certified check or cashier's check. If the Contractor fails to execute the security document as required, the Contractor may be found in material default of this Agreement, permitting the City to terminate this Agreement for cause as set forth in Section 12 below. In case of default the City reserves all rights. All performance bonds shall be executed on the form attached hereto as Exhibit K, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

11.2 Payment Bond. After the City and the Contractor have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Contractor shall be required to furnish the City with an irrevocable security for the protection of all claimants supplying labor or materials to the Contractor or any Subcontractor in the prosecution of the construction and not for the protection of persons providing any design services, preconstruction services, finance services, maintenance services, operations services or other related services related to the Agreement. Payment security shall be in the amount of 100% of the portion of the



GMP attributable to the Construction Services and be payable to the City. Payment security shall be in the form of a payment bond, certified check or cashier's check. If the Contractor fails to execute the security document as required, the Contractor may be found in material default of this Agreement, permitting the City to terminate this Agreement for cause as set forth in Section 12 below. All payment bonds shall be executed on a the form attached hereto as Exhibit L, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

## **ARTICLE 12 TERMINATION AND SUSPENSION**

### **12.1 Termination by the Contractor.**

A. Procedure. Upon 30 Days' written notice to the City of one of the reasons set forth below, and if the City fails to cure or initiate reasonable action to cure within 30 Days of receipt of said notice, the Contractor may terminate this Agreement for any of the following:

1. If the Work has been stopped for a 60-Day period:
  - a. Under court order or order of other governmental authorities having jurisdiction; or
  - b. As a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials are not available.
2. If the Work is suspended by the City for more than 60 Days.
3. If the City materially delays the Contractor in the performance of the Work.
4. If the City otherwise materially breaches this Agreement.

B. Payment to Contractor. Upon termination by the Contractor in accordance with Subsection 12.1(A) above, the Contractor shall be entitled to recover from the City payment for all Work completed to the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead, extended general conditions and profit on the Work performed. The City may subtract reasonable estimates of costs for deficient work from the payments noted above.

### **12.2 Termination by the City for Cause.**

A. Contractor Default. If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially violates or materially breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for 15 Days after the Contractor receives written notice of such nonperformance or violation from the City, then the City may, without prejudice to any right or remedy otherwise available to the City, terminate this Agreement.

B. Contractor Insolvency. Upon the appointment of a receiver for the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, the City may terminate this Agreement, without prejudice to any right or remedy otherwise available to the City, upon giving three Days' written notice to the Contractor. If an order for relief is entered under the bankruptcy code with respect to the Contractor, the City may terminate this Agreement by giving three Days' written notice to the Contractor unless the Contractor or the trustee does all of the following:

1. Promptly cures all breaches within such three-Day period.
2. Provides adequate assurances of future performance.
3. Compensates the City for actual pecuniary loss resulting from such breach(es).
4. Assumes the obligations of the Contractor within the established time limits.

C. Failure to Agree on a GMP. If the City and the Contractor fail, after good faith efforts, to agree upon a GMP, this Agreement may be terminated upon 15 Days' notice from either Party to the other. In the event of a termination for failure to agree on a GMP, the Contractor's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Contractor shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination under this Subsection.

12.3 Termination by the City for Convenience. The City may, upon 30 Days' written notice to the Contractor, terminate this Agreement, in whole or in part, for the convenience of the City, without prejudice to any right or remedy otherwise available to the City. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the City, the Contractor's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Contractor shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination of convenience by the City.

12.4 Set Off. Upon termination of this Agreement by the City, the City shall be entitled to furnish or have furnished the Services to be performed hereunder by the Contractor by whatever method the City may deem expedient. Also, in such case, the Contractor shall not be entitled to receive any further payment until completion of the Work and the total compensation to the Contractor under this Agreement shall be the amount that is equitable under the circumstances. If the City and the Contractor are unable to agree on the amount to be paid under the foregoing sentence, the City shall fix an amount, if any, that it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly. The Contractor may dispute the City's assessment of the termination amount by the method of dispute resolution under Article 13 of this Agreement.

12.5 Suspension by the City for Convenience.

A. Procedure. The City may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the City may determine to be appropriate for its convenience, but not in abrogation of the rights given Contractor in Section 12.1 above.

B. Adjustments to GMP and Schedule. Adjustments caused by suspension, delay or interruption shall be made for increases in the applicable GMP and/or the applicable Substantial Completion date. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

### **ARTICLE 13 DISPUTE RESOLUTION**

13.1 Scope. Notwithstanding anything to the contrary provided elsewhere in the Contract Documents, except for Subsection 13.4 (G) below, the alternative dispute resolution ("ADR") process provided for herein shall be the exclusive means for resolution of claims or disputes arising under, relating to or touching upon the Agreement, the interpretation thereof or the performance or breach by any party thereto, including but not limited to original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to agreements containing this ADR provision.

13.2 Neutral Evaluator, Arbitrators. The City will select a Neutral Evaluator to serve as set forth in this ADR process. The City and Contractor shall each select an arbitrator to serve as set forth in this ADR process. Each arbitrator selected shall be a member of the State Bar of the State of Arizona and shall have experience in the field of construction law. None of the arbitrators nor any of the arbitrator's firms shall have presently, or in the past, represented any party to the arbitration.

13.3 Neutral Evaluation Process. If the Parties have been unable to resolve the disputes after discussions and partnering, the following neutral evaluation process shall be used to resolve any such dispute.

A. Notification of Dispute. The City shall notify the Neutral Evaluator in writing of the existence of a dispute within 10 Days of the City or the Contractor declaring need to commence the neutral evaluation process.

B. Non-Binding Informal Hearing. The Neutral Evaluator shall schedule a non-binding informal hearing of the matter to be held within seven Days from receipt of notification of the existence of a dispute. The Neutral Evaluator may conduct the hearing in such manner as he deems appropriate and shall notify each party of the hearing and of its opportunity to present evidence it believes will resolve the dispute. Each party to the dispute shall be notified by the Neutral Evaluator that it shall submit a written outline of the issues and evidence intended to be introduced at the hearing and the proposed resolution of the dispute to the Neutral Evaluator before the hearing commences. Arbitrators shall not participate in such informal hearing or proceedings process. The Neutral Evaluator is not bound by the rules of evidence when admitting evidence in the hearing and may limit the length of the hearing, the number of witnesses or any evidence introduced to the extent deemed relevant and efficient.

C. Non-Binding Decision. The Neutral Evaluator shall render a non-binding written decision as soon as possible, but not later than five Days after the hearing.

13.4 Binding Arbitration Procedure. The following binding arbitration procedure, except as provided in Subsection 13.4(G) below, shall serve as the exclusive method to resolve a dispute if any party chooses not to accept the decision of the Neutral Evaluator. The party requesting binding arbitration shall notify the Neutral Evaluator in writing within three Days of receipt of the Neutral Evaluator's decision of a request for arbitration. If the Contractor requests arbitration it shall post a cash bond with the Neutral Evaluator in an amount agreed upon by the Parties or, in the event of no agreement, the Neutral Evaluator shall establish the amount of the cash bond to defray the cost of the arbitration as set forth in Subsection 13.4(M) and the proceeds from the bond shall be allocated in accordance with Subsection 13.4(M) by the Arbitration Panel.

A. Arbitration Panel. The Arbitration Panel shall consist of three arbitrators: the City's appointed arbitrator, the Contractor's appointed arbitrator and a third arbitrator (or "Neutral Arbitrator") who shall be selected by the Parties' arbitrators as set forth in Subsection 13.4(B) below. If one or more Subcontractor(s) is (are) involved in a dispute, the Subcontractors shall agree on an appointee to serve as arbitrator on behalf of all such Subcontractors. The Neutral Evaluator shall not participate in the proceedings.

B. Selection of Neutral Arbitrator. The Parties' arbitrators shall choose the Neutral Arbitrator within five Days of receipt of notification of a dispute from the Neutral Evaluator. The Neutral Arbitrator shall have the same qualifications as those of the arbitrators set forth in Section 13.2 above. In the event that the selected arbitrators cannot agree on the Neutral Arbitrator as set forth above, the Neutral Arbitrator shall be the "Default Neutral Arbitrator." The Default Neutral Arbitrator shall be selected as follows: the City and the Contractor shall each submit two names to the presiding judge of the Maricopa County Superior Court, who shall select one person to serve as the Default Neutral Arbitrator.

C. Expedited Hearing. The Parties have structured this procedure with the goal of providing for the prompt, efficient and final resolution of all disputes falling within the purview

of this ADR process. To that end, any Party can petition the Neutral Evaluator to set an expedited hearing. If the Neutral Evaluator determines that the circumstances justify it, the Neutral Evaluator shall contact the selected Arbitration Panel and arrange for scheduling of the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical but in no event later than 20 Days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the Parties to the dispute, or by decision of the Arbitration Panel upon a showing of emergency circumstances.

D. Procedure. The Arbitration Panel will select a chairman and will conduct the hearing in such a manner that will resolve disputes in a prompt, cost-effective manner giving regard to the rights of all parties. Each Party shall supply to the Arbitration Panel a written pre-hearing statement which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitration Panel shall review and consider the Neutral Evaluator decision. The chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with deadlines provided herein, and the Parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of any materials or information for which a privilege is recognized by Arizona law. The chairman, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary or sensitive materials or information from public disclosure or other misuse. Any Party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to confirm such orders of the chairman.

E. Hearing Days. In order to effectuate Parties' goals, the hearing once commenced, will proceed from Day to Day until concluded, absent a showing of emergency circumstances.

F. Award. The Arbitration Panel shall, within 10 Days from the conclusion of any hearing, by majority vote issue its award. The award shall include an allocation of fees and costs pursuant to Subsection 13.4(M) below. The award is to be rendered in accordance with this Agreement and the laws of the State of Arizona.

G. Scope of Award. The Arbitration Panel shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitration Panel shall be without any authority to issue an award against any individual Party in excess of 20% of the original Agreement amount, but in no event shall any award exceed \$2,000,000, exclusive of interest, arbitration fees, costs and attorneys' fees. If an award is made against any individual Party in excess of \$100,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and a statement as to how damages were calculated. Any claim in excess of 20% of the original Agreement amount or in excess \$2,000,000 shall be subject to the jurisdiction of the Superior Court of Arizona, Maricopa County. Any Party may contest the validity of the amount claimed if an action is filed in the Superior Court.

H. Jurisdiction. The Arbitration Panel shall not be bound for jurisdictional purposes by the amount asserted in any Party's claim, but shall conduct a preliminary hearing into

the question of jurisdiction upon application of any Party at the earliest convenient time, but not later than the commencement of the arbitration hearing.

I. Entry of Judgment. Any Party can make application to the Maricopa County Superior Court for confirmation of an award, and for entry of judgment on it.

J. Severance and Joinder. To reduce the possibility of inconsistent adjudications, the Neutral Evaluator or the Arbitration Panel, may: (1) at the request of any Party, join and/or sever Parties, and/or claims arising under other contracts containing this ADR provision and (2) the Neutral Evaluator, on his own authority, or the Arbitration Panel may, on its own authority, join or sever Parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the Parties' goal of the prompt and efficient resolution of disputes; provided, however, that the Contractor, the Project Designers and other Project professionals shall not be joined as a Party to any claim made by a Subcontractor. Nothing herein shall create the right by any Party to assert claims against another Party not germane to the Agreement or not recognized under the substantive law applicable to the dispute. Neither the Neutral Evaluator nor the Arbitration Panel is authorized to join to the proceeding Parties not in privity with the City. The Contractor cannot be joined to any pending arbitration proceeding, without the Contractor's express written consent, unless the Contractor is given the opportunity to participate in the selection of the non-City appointed arbitrator.

K. Appeal. Any party may appeal (1) errors of law by the Arbitration Panel if, but only if, the errors arise in an award in excess of \$100,000, (2) the exercise by the chairman or Arbitration Panel of any powers contrary to or inconsistent with this Agreement or (3) on the basis of any of the grounds provided in ARIZ. REV. STAT. § 12-1512. Appeals shall be to the Maricopa County Superior Court within 15 Days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this Section, but not to conduct a trial, entertain the introduction of new evidence or conduct a hearing *de novo*.

L. Uniform Arbitration Act. Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as codified in Arizona in ARIZ. REV. STAT. § 12-1501, *et seq.*

M. Fees and Costs. Each Party shall bear its own fees and costs in connection with any informal hearing before the Neutral Evaluator. All fees and costs associated with any arbitration before the Arbitration Panel, including without limitation the Arbitration Panelists' fees, and the prevailing Party's reasonable attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing Party, except as provided for herein. In no event shall any Arbitrator's hourly fees be awarded in an amount in excess of \$200 per hour and (1) costs shall not include any travel expenses in excess of mileage at the rate paid by the City, not to exceed a one way trip of 150 miles, and (2) all travel expenses, including meals, shall be reimbursed pursuant to the travel policy of the City in effect at the time of the hearing. The determination of prevailing and non-prevailing Parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitration Panel. Fees for the Neutral Evaluator shall be paid by the City.

N. Confidentiality. Any proceeding initiated under ADR shall be deemed confidential to the maximum extent allowed by Arizona law and no Party shall, except for disclosures to a Party's attorneys or accountants, make any disclosure related to the disputed matter or to the outcome of any proceeding except to the extent required by law, or to seek interim equitable relief, or to enforce an agreement reached by the Parties or an award made hereunder.

O. Equitable Litigation. Notwithstanding any other provision of ADR to the contrary, any Party can petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a Party or to the Project pending resolution of a dispute pursuant to ADR provided herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order entered by the Arbitration Panel. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

P. Change Order. Any award in favor of the Contractor against the City or in favor of the City against the Contractor shall be reduced to a Change Order amendment to this Agreement and executed by the Parties in accordance with the award and the provisions of this Agreement.

Q. Merger and Bar. Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of the Agreement performance period which reasonably should have or could have been brought against any Party that was or could have been brought into this ADR process, with respect to the subject claim. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any Party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error, or omission.

R. Inclusion in Other Contracts. The Contractor shall cooperate with the City in efforts to include this ADR provision in all other Project subcontracts. The Contractor agrees that any modification to this ADR provision that is included in the construction or other subcontracts shall also apply to the Contractor. It is the intent of the Parties that any changes to this ADR provision in later contracts will be evolutionary and designed to incorporate the terms of this ADR provision without material changes to the substance or procedure of this ADR provision.

## **ARTICLE 14 ADDITIONAL PROVISIONS**

14.1 Confidentiality. The Contractor shall not disclose or permit the disclosure of any confidential information except to its agents, employees and Subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement.

14.2 Limitation and Assignment. The City and the Contractor each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the City nor the Contractor shall assign or transfer its interest in this Agreement without the written consent of the other, except that the Contractor may assign accounts receivable to a commercial bank for

securing loans without approval of the City. Nothing contained in this Section shall prevent the Contractor from employing such consultants, associates or Subcontractors as the Contractor may deem appropriate to assist in performance of the Services hereunder.

14.3 Entire Agreement. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Contractor. Nothing contained in this Agreement is intended to benefit any third party. Subcontractors, if any, and the Project Designers are not intended third-party beneficiaries of this Agreement.

14.4 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be enforceable without such provision.

14.5 Meaning of Terms. References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

14.6 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City:                      City of Avondale  
   11465 West Civic Center Drive  
   Avondale, Arizona 85323  
   Attn: Charles A. Montoya, City Manager

With copies to:                      City of Avondale  
   11465 West Civic Center Drive  
   Avondale, Arizona 85323  
   Attn: RFQ Administrator  
   Attn: City Attorney

If to Contractor:                      \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_  
   Attn: \_\_\_\_\_

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above



governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.7 Governing Law. This Agreement shall be governed by the laws of the State of Arizona and venue shall be in Maricopa County.

14.8 No Waiver of Performance. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition right with respect to further performance.

14.9 Headings. The headings given to any of the provisions of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.10 Asbestos Free Materials. The Project is to be constructed by the Contractor with asbestos free materials. A written, notarized statement on company letterhead shall be submitted to the City by the Contractor with the final payment request certifying that the Contractor has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted. The Contractor shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Contractor or any of its Subcontractors or agents and were not specified in the design or required by the Contract Documents, the Contractor shall be liable for all costs related to the abatement of such asbestos and damages or claims against the City notwithstanding any statute of limitations or other legal bar to any claim by the City.

14.11 Cancellation. This Agreement may be cancelled by the City pursuant to ARIZ. REV. STAT. § 38-511.

14.12 Survival of Representations and Warranties. Notwithstanding any other provision of this Agreement, the representations, warranties and covenants herein shall survive termination of this Agreement.

14.13 Endangered Hardwoods Prohibited. Contractor shall ensure that products containing endangered wood species shall not be utilized in the construction of the Project unless exempted pursuant to ARIZ. REV. STAT. § 34-201(J), as amended.

14.14 Records and Audit Rights. Contractor's and its Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its Subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Contractor and its Subcontractors are complying with the warranty under Subsection 14.15 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Contractor's and its Subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B)

evaluation of the Contractor's and its Subcontractors' compliance with the Arizona employer sanctions laws referenced in Subsection 14.15 below. To the extent necessary for the City to audit Records as set forth in this Subsection, Contractor and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its Subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to this Agreement. Contractor and its Subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Subsection. The City shall give Contractor or its Subcontractors reasonable advance notice of intended audits. Contractor shall require its Subcontractors to comply with the provisions of this Subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.15 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its Subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its Subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

14.16 Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

14.17 Independent Contractor. The Contractor is and will be an independent contractor and whatever measure of control the City exercises over the work or deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Agreement will give or be construed to give the City the right to direct the Contractor as to the details of accomplishing the work or deliverable. These results will comply with all applicable laws and ordinances.

14.18 Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then-current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City Council elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The City Council shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Contractor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this Section.

14.19 Fair Interpretation. All Parties have been represented by counsel, or have had the opportunity to be represented by counsel, in the negotiation and drafting of this Agreement. This Agreement will be construed according to the fair meaning of its language. The rule of construction that ambiguities will be resolved against the Party who drafted a provision will not be employed in interpreting this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

“City”

CITY OF AVONDALE,  
an Arizona municipal corporation

\_\_\_\_\_  
Charles A. Montoya, City Manager

ATTEST:

\_\_\_\_\_  
Marcella Carrillo, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
                                      ) ss.  
COUNTY OF MARICOPA    )

On \_\_\_\_\_, 2019, before me personally appeared Charles A. Montoya, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the City of Avondale.

\_\_\_\_\_  
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**“Contractor”**

\_\_\_\_\_,  
a(n) \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(ACKNOWLEDGMENT)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019, before me personally appeared \_\_\_\_\_  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a(n) \_\_\_\_\_, whose identity was proven to me on the basis of  
satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she  
signed the above document on behalf of the Contractor.

\_\_\_\_\_  
Notary Public

(Affix notary seal here)

EXHIBIT A  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Construction Documents]

See following pages.

EXHIBIT B  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Amendments]

See following pages.

EXHIBIT C  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[GMP Proposals]

See following pages.



EXHIBIT D  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Master Schedule]

See following pages.

EXHIBIT E  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[The City's RFQ]

See following pages.

EXHIBIT F  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Contractor's Response to the RFQ]

See following pages.

EXHIBIT G  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Subcontractor Selection Program]

See following pages.

EXHIBIT H  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Traffic Control/Construction Sequencing]

See following pages.

EXHIBIT I  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Allowable General Conditions Cost Line Items]

See following pages.

## **ALLOWABLE GENERAL CONDITIONS COST LINE ITEMS**

On-Site Project Management Staff  
Safety Coordinator/Assistant(s)  
Project Executive  
Office Engineer(s)  
Project Expeditor(s)  
Assistant Superintendent(s)

CPM Scheduler  
Superintendent(s)  
Project Manager(s)  
Project Support Staff  
Out-of-State Project Specific Travel\*

Bonds and Insurance  
Builder's Risk Insurance  
General Liability Insurance  
Payment and Performance Bonds  
Other Project Insurance as Required by Contract

Temporary Project Utilities  
Non-LEED Recycling Dumpsters  
Project Electricity  
Monthly Telephone / Internet Service  
Street Rental and Barricades  
Fencing and Covered Walkways  
Site Erosion Control (BMP) and Project Entrance(s)

Temporary Toilets  
Temporary Fire Protection  
Telephone / Internet System Installation  
Temporary Water Distribution and Meters  
Temporary Electrical Distribution and Meters  
Project Water, Ice and Supplements to Prevent Dehydration

Field Offices & Office Supplies  
Partnering Costs  
Job Photos/Videos  
Project Specific Signage  
Postage/Special Shipping  
Project/As-Built (Record) Drawings  
Project Milestone Event(s)\*  
Move-In/Out and Office Setup  
Employee Identification System  
Small Tools and Storage Trailers  
Monthly Office Trailer Rental Costs  
Mobilization and Demobilization (Equipment Only)

First Aid Supplies  
Reproduction Services  
Monthly Office Supplies  
Remote Parking Expenses  
Project Reference Manuals  
Security System/Watchman  
Safety Material and Equipment  
Drinking Water and Accessories (Including Ice)  
Office Clean-Up/Janitorial Services  
Field Engineering

\* Specific justification and all estimated costs shall be submitted and approved by the City prior to any travel or event.

EXHIBIT J  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Pre-Construction Cost Summary]

See following pages.



EXHIBIT K  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Performance Bond]

See following page.

PERFORMANCE BOND

HISTORIC AVONDALE PHASE 1 IMPROVEMENTS  
EN 19-186

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, \_\_\_\_\_ (hereinafter called 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 Avondale (hereinafter called the Oblige) in the amount of \_\_\_\_\_ (Dollars) (\$ \_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Oblige, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, for the material, service or construction described as \_\_\_\_\_ 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 Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Principal Seal

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

\_\_\_\_\_  
Surety Seal

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

\_\_\_\_\_  
Agency of Record

EXHIBIT L  
TO  
DESIGN - BUILD AGREEMENT  
BETWEEN  
CITY OF AVONDALE  
AND

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[Payment Bond]

See following page.

PAYMENT BOND

HISTORIC AVONDALE PHASE 1 IMPROVEMENTS  
EN 19-186

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, \_\_\_\_\_ (hereinafter called 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 Avondale (hereinafter called the Obligee) in the amount of \_\_\_\_\_ (Dollars) (\$ \_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, for the material, service or construction described as \_\_\_\_\_ 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 Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's Subcontractors in the prosecution of the Work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal Seal

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

\_\_\_\_\_  
Surety Seal

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

\_\_\_\_\_  
Agency of Record