

**CONSTRUCTION CONTRACT
BETWEEN
CITY OF BUCKEYE
And
CONTRACTOR NAME
CONTRACT #**

THIS CONTRACT is entered into as of this ____ day of _____, 2015, by and between the CITY OF BUCKEYE, an Arizona municipal Corporation and _____ ("Contractor"). The terms of this Contract are to be construed consistently with the other Contract Documents enumerated in Article 1 of the General Conditions of the Construction Contract.

In consideration of the mutual promises of the parties, the City and the Contractor agree as follows:

1. THE WORK: The Contractor shall furnish all labor, materials, equipment, supplies and other items necessary to perform the Work for the Project described as: SKYLINE REGIONAL PARK PROJECT located at _____, in strict accordance with the Drawings and Specifications prepared by _____ ("Design Professional" or "DP") and all other Contract Documents.

2. CONTRACT TIME: The Contractor shall commence the Work only if and when directed in a written Notice to Proceed signed by the City. The Work shall commence no later than 10 days after the issuance of the Notice to Proceed. Substantial Completion, as defined herein, shall be achieved within 90 calendar days. In view of the difficulty or impossibility of determining the City's damages from delay, should the Contractor fail to achieve Substantial Completion by that date, as extended by any City approved Change Orders, the Contractor agrees to pay and will pay to City, in addition to all other sums pursuant to the Contract Documents, the sum of \$1070.00 for each calendar day of delay as liquidated damages for such delay and not as a penalty. This sum may be withheld from the balance of the Contract Price as it becomes due. Should liquidated damages exceed the Contract Price due or to become due, then the Contractor shall pay the City the difference within 3 days of receipt of written demand.

3. CONTRACT PRICE: Subject to increases and decreases for Change Orders in accordance with the Contract Documents, the City shall pay to the Contractor the following Contract Price, in progress payments as provided in the Contract Documents:

4. SUPPLEMENTAL TERMS AND CONDITIONS: The following supplemental terms and conditions and/or documents are part of this Contract:

- A. Bid Form
- B. Special Provisions
- C. Construction Project Specifications
- D. Construction Project Drawings
- E. Payment and Performance Bonds

IN WITNESS WHEREOF, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this ____ day of _____, 2015.

CITY OF BUCKEYE

Jackie A. Meck, Mayor

ATTEST:

Lucinda Aja, City Clerk

RECOMMENDED:

Christopher A. Williams, Manager
Construction and Procurement

APPROVED AS TO FORM:

Scott Ruby
City Attorney

CONTRACTOR:

CONTRACTOR SIGNATURE

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GENERAL CONDITIONS

ARTICLE 1

GENERAL DEFINITIONS

"Addenda" means clarifications or changes in the Work provided to bidders in writing prior to the public bid on the Contract.

"Contract Documents" or "Contract" means the Construction Contract between City and Contractor, the General Conditions of the Construction Contract, any Supplemental Conditions of the Construction Contract, the Drawings, the Specifications, the Performance and Payment Bonds, the Project Manual, Addenda and Modifications.

"Date of Substantial Completion" shall be the date certified by the Design Professional to the City that the work is in the Condition defined herein as substantial completion.

"Day" means calendar day unless specifically otherwise provided herein or by law.

"Design Professional" (DP) is that individual, partnership, or other legal entity defined in Section 1 (Design Professional) herein.

"Modifications" means Change Orders signed by the City, or other written amendments signed by both the City and the Contractor at or after the execution of the Contract, or the DP's written interpretations or directions for minor changes in the Work. A "minor change" is defined as one having no impact on cost or time or the City's approved design intent, as determined by the City.

"Project" means all components of the improvements to be constructed for the City, regardless of whether the Work is all or only a part.

"Project Manual" means the written volume so titled which includes the bid documents, sample forms, specifications, and description of the project.

"Substantial Completion" means the Contractor's work is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the work or designated portion thereof for the use for which it is intended.

"Work" consists of all labor (including supervision), materials, equipment, supplies and other items reasonably required to construct all or a portion of the Project according to the Contract Documents.

ARTICLE 2
INTENT

A. The Contract represents the entire and integrated agreement between the City and the Contractor, and it supersedes all prior oral or written negotiations, representations or agreements. The Contract may only be changed by written modifications, and the Contractor understands and agrees that if the Contractor proceeds with any work upon verbal request only, Contractor is agreeing by his conduct that such work, or change in the work, constitutes a minor change.

B. The Contract Documents are to include all items reasonably necessary to construct the Work, expressly or by inference. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

C. The organization of the Specifications into divisions, sections, and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Sub-contractors or in establishing the extent of Work to be performed by any trade.

D. Generally, the Drawings indicate dimensions, positions and details of construction; the Specifications establish criteria and quality for materials and standards for workmanship. All Work shall be performed in a workmanlike manner and all materials used shall be new and of the highest quality and of the type best adapted to their purpose unless otherwise specified.

ARTICLE 3
DESIGN PROFESSIONAL (DP)

A. The DP is the individual or legal entity defined in the Contract Documents and/or otherwise designated by the City who is retained by the City to design and/or oversee the Project.

B. The DP shall have the right, responsibility and authority to carry out the specific duties required of the DP, as described herein and in the contract between the DP and the City, including any amendments thereto. Any such amendments shall be in writing and furnished to the Contractor.

C. The DP will visit the site as it is deemed by the DP or City to be appropriate in order to advise the City as to the quality and progress of the construction. The Contractor shall cooperate with the DP in all respects in this regard, including attending meetings as requested.

D. The DP will be the initial interpreter of the requirements of the Contract Documents. The DP shall render written interpretations with reasonable promptness following a written request from the City or the Contractor. These interpretations shall be consistent with the intent of the Contract Documents.

E. Any claims or controversies between the City and the Contractor may be referred in writing to the DP for a written determination.

F. Any disagreements with the DP's interpretations or determinations must be timely submitted and resolved in accordance with the term and conditions of this Contract.

G. The DP will review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, for conformance with the Contract Documents. Such action shall be taken with reasonable promptness as specified so as to cause no delay. The DP's approval of a specific item or component shall not indicate approval of an assembly of which the item is a component.

H. Following consultation with the City, the DP will take appropriate action on Change Orders and may authorize minor changes in the Work as defined above.

I. The DP and City will each have the authority to reject work which does not conform to the Contract documents and to require special inspection or testing but will take such action only after consultation with the other. However, neither the authority to act given to the DP and the City under this subparagraph nor any decision made by them in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility by them to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.

J. Based on the DP's observations, evaluation of applications for payment and consultation with the City, the DP will determine the amount owing the Contractor and will issue certificates for payment.

ARTICLE 4 CONTRACTOR

A. The Contractor is the individual or legal entity identified in the Contract Documents who is licensed to perform the Work under the laws of the State of Arizona. The Contractor shall only use duly licensed Subcontractors in connection with the Work, subject to the provisions for City approval contained in the Contract Documents.

ARTICLE 5
OTHER CONTRACTORS AND COOPERATION

A. The City reserves the right to award other contracts related to the Project, or to perform certain work itself. Such other work may or may not be known to the City or disclosed to the Contractor prior to bidding this project. The Contractor shall afford the City and other contractor's reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly coordinate its Work with theirs in such manner as the DP may direct. The Contractor shall also assure at its own cost reasonable access of other contractors to the site and their work.

B. Upon request of the Contractor, the DP or City will provide the Contractor with a copy of all plans, specifications, schedules and other data relating to other contracts or work. The Contractor shall thoroughly examine these documents and shall within three (3) days of completing such examination notify the DP in writing of any conflicts with the Work to be performed by the Contractor. In no event shall such notice be given so late as to interfere with or delay the work to be performed by the Contractor. Failure of the Contractor to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims the Contractor may have as a result of the necessity to coordinate the Contractor's work with other activities.

C. Should the Contractor sustain any damage through any act or omission of any other contractor, Contractor shall have no claim or cause of action against the City for such damage and hereby waives any such claim. The Contractor does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor. The phrase "acts or omissions" as used in this section shall be defined to include, but not be limited to, any reasonable delay on the part of any such other contractor, whether due to negligence, gross negligence, inadvertence or any other cause.

D. Should the Contractor cause damage to the work or property of any other contractor or of the City, the Contractor shall upon receiving due notice, promptly attempt to settle with such other contractor by agreement, repair or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the City on account of any damage alleged to have been caused by the Contractor, the City shall notify the Contractor who shall, to the furthest extent permitted by law, indemnify and hold harmless for, from, and against defend such proceedings, and if any judgment or award against the City arises there from the Contractor shall pay or satisfy it and shall reimburse the City for all attorney's fees and court or other costs which the City has incurred.

ARTICLE 6
SITE CONDITIONS AND ENVIRONMENTAL MATTERS

A. The Contractor shall thoroughly acquaint himself with all available information concerning the conditions of the Work and is responsible for correctly and fully estimating the difficulty and cost of successfully performing the Work.

B. The Contractor agrees that it has thoroughly examined the site, plans and specifications, boring data and all other soils information and as-built data made available and by submission of the bid herein avows that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or existing obstacles to be encountered. The Contractor acknowledges that boring data and other soils information and as-built data made available is only a general indication of materials and/or conditions likely to be found adjacent to holes bored or in existing structures or facilities or other areas. If the Contractor determines that the information is erroneous, inadequate or ambiguous, it shall immediately report its conclusions to the DP and the City in writing. If the Contractor determines that the information is erroneous, inadequate, or ambiguous, and after reporting its conclusions to the City, remains dissatisfied or uninformed, the Contractor shall refrain from submitting a bid, or if the Contractor does submit a bid, the Contractor shall be deemed to have waived any claim it may have as the result of the alleged erroneous, inadequate or ambiguous information.

C. The Contractor shall immediately, and before such conditions are disturbed, notify the DP and the City in writing of:

1. Subsurface or latent physical conditions encountered at the site which differ materially from those indicated in the Contract and which were not known by the Contractor or could not have been discovered by careful examination and investigation of the information available at bid time and which could adversely affect the timely performance of the Work or its cost; or

2. Unknown and unexpected physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered in the locale or generally recognized as inherent in Work of the character provided for in the Contract.

D. The DP and/or the City shall within ten (10) days, or such other reasonable time as necessary, investigate the conditions discovered. If the DP and/or the City find that conditions are so materially different as to support an equitable adjustment in the Contract Price or the Contract Time, this will be done by written Change Order. If the DP and/or the City determine that no Change Order will be issued, the Contractor shall continue with the Work at no additional cost and under no change in Contract Time.

E. No claim by the Contractor for an increase in the Contract Price or Contract Time hereunder shall be allowed without proper advance notice and an adequate opportunity for the City to investigate.

F. Environmental Matters: Contractor shall provide or cause to be provided a copy of this Section (Environmental Matters) to each Subcontractor and each Sub-subcontractor participating in the Work.

1. Definitions. The following terms will have their respective designated meanings:

“Environmental Law” means any and all laws, ordinances, regulations, rules and administrative and court decisions (federal, state and local) now or hereafter in effect and as in effect from time to time and as amended from time to time pertaining to environmental conditions or to protection or regulation of the environment (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.); the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. Section 2601, et seq.); the Superfund Amendments and Reauthorization Act of 1986, Title III (42 U.S.C. Section 11001 et seq.); the Clean Air Act (42 U.S.C. Section 7401, et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f, et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101, et seq.); the Oil Pollution Act (33 U.S.C. Section 2701 et seq.); the Arizona Environmental Quality Act (Arizona Revised Statutes Section 49-101, et seq.); the Arizona Underground Storage Tank Act (A.R.S. Section 49-1001, et seq.); the Arizona Water Quality Assurance Revolving Fund Act (A.R.S. Section 49-281, et seq.) And any successor statutes to the foregoing and any regulations, rules or guidelines promulgated pursuant thereto.)

“Hazardous Substance” means any of the following: (i) any petroleum, oil, gasoline, kerosene, other petroleum product, flammable substance, volatile organic compound, volatile solvent, explosive, asbestos, polychlorinated biphenyl, dioxin, toxic herbicide or pesticide, radioactive material, radon gas and materials containing formaldehyde; (ii) any material, substance or waste now or hereafter defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “extremely hazardous substances,” “restricted hazardous wastes,” “toxic substances,” “regulated substances,” “solid wastes,” “pollutant,” or “contaminant” or words of similar import in any Environmental Law; (iii) any other material, substance or waste now or hereafter classified or regulated as “hazardous” or “toxic” under any Environmental Law; (iv) any material, substance or waste now or hereafter listed in the United States Department of Transportation Table (49 CFR 172.101) or classified by the United States Environmental Protection Agency as

“hazardous” (40 CFR Part 302) or in any successor or replacement tables or classifications as in effect from time to time; and (v) any Hazardous Waste.

“**Hazardous Waste**” means “hazardous waste”, as defined in the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time (including, without limitation, any such waste resulting from removal of, demolition of, modifications of or additions to part or all of any existing structure, facility or equipment) .

“**Contractor Hazardous Waste**” means any Hazardous Waste arising during or from the Work that is generated by the acts or omissions of Contractor, a Subcontractor or any Sub-subcontractor (including, without limitation, a Contractor Release) and that is not City Hazardous Waste.

“**City Hazardous Waste**” means Hazardous Waste (i) that consists of Hazardous Substances in any existing structure, facility or equipment on City’s property or otherwise present on City’s property at commencement of the Work, and (ii) that has become Hazardous Waste due to any part of the Work. However, City Hazardous Waste does not include any Hazardous Substance that has become a Hazardous Waste due to any Contractor Release.

“**Project Hazardous Waste**” means any Hazardous Waste arising on City’s property from the Work (including, without limitation, Contractor Hazardous Waste and City Hazardous Waste), regardless of: (a) whether generated by the acts or omissions of City, Contractor, a Subcontractor or a Sub-subcontractor; (b) whether it consists of Hazardous Substances that were on or in City’s property at commencement of the Work and that have become Hazardous Waste in the course of the Work; and (c) whether it consists of Hazardous Substances that are brought on to City’s property for or during the Work by Contractor, a Subcontractor or a Sub-subcontractor and that have become Hazardous Waste in the course of the Work.

“**OSHA**” means the Federal Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time.

“**Release**” means any discharging, disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pouring, pumping, releasing, spilling, or similar action or event.

“**Contractor Release**” means a Release of a Hazardous Substance (including, without limitation, Hazardous Substances that were on or in City’s property at commencement of the Work) arising from acts or omissions of Contractor or any Subcontractor or Sub-subcontractor or their employees or workers. However, Contractor Release does not

include Releases of pre-existing Hazardous Substances on City's property of which City had not made Contractor aware and as to which Contractor, Subcontractors and Sub-subcontractors acted reasonably.

G. General Requirements.

1. Compliance with Environmental Law and OSHA. Contractor shall comply with, and shall cause all Subcontractors and Sub-subcontractors to comply with, this section and with all Environmental Law and OSHA applicable to (i) Contractor, (ii) Subcontractors, (iii) Sub subcontractors, (iv) the Work and (v) all of their activities in respect of the Work.

2. Hazardous Substances. (i) Hazardous Substances may be transported to and from and stored, used and be present on City's property in such quantities as are generally recognized to be usual and customary for performance of the Work. (ii) Hazardous Waste may be generated on City's property of such kinds and in such quantities as are generally recognized to be usual and customary in connection with performance of the Work. Hazardous Waste so generated may be stored temporarily on City's property. (iii) Prior to final completion of the Work, Contractor shall remove or cause to be removed from City's property and disposed of in accordance with Environmental Law and OSHA any Hazardous Substances (other than Project Hazardous Waste) brought onto City's property during the Work or used in connection with the Work. (iv) Other than as provided in (i), (ii) and (iii), Contractor shall not, and Contractor shall cause all Subcontractors and Sub-subcontractors to not, dispose of, generate, manufacture, process, produce, Release, treat or otherwise store, use or have in or on or transport to or from City's property any Hazardous Substance, regardless of whether the Hazardous Substance is preexisting on City's property or otherwise.

3. Releases of Hazardous Substances. Upon any Release of any Hazardous Substance in connection with the Work, whether relating to a pre-existing condition on City's property (for example, arising from any demolition of, modification of, or addition to any structure, facility or equipment) or relating to acts or omissions of Contractor, a Subcontractor or a Sub subcontractor, Contractor shall take any immediate action reasonably necessary to contain the Release. City may elect to have Contractor control and carry out any containment, clean-up, removal and remediation activity. Alternatively, City shall have the right to elect to control and carry out any containment, clean-up, removal and remediation activity. Regardless of who takes the actions, Contractor shall absorb, without reimbursement from City, all costs and expense incurred by Contractor in connection with any Contractor Release. In addition, Contractor shall pay or reimburse City for all costs and expenses incurred by City relating to any Contractor Release. If the amount is not paid promptly, City may offset the amount against any amount payable by City to Contractor under the Contract Documents or otherwise. Remediation, removal, and other cleanup action arising from any Release shall be in full compliance with Environmental Law and OSHA and shall be

subject to approval by City. In addition, City may require remedial, removal or other cleanup action in excess of applicable minimum requirements of Environmental Law and OSHA (A) as reasonably necessary or appropriate in the judgment of City to permit human use and habitation of City's property and to permit use of City's property, and (B) as reasonably consistent in the judgment of City with such habitation and uses.

4. Hazardous Waste. City will arrange for handling, storage and disposal of any Project Hazardous Waste. On an interim basis until City can make arrangements, Contractor shall assure proper handling (including, without limitation, segregation from waste that is not Hazardous Waste) and storage of Project Hazardous Waste in full compliance with Environmental Law and OSHA. Contractor shall pay all of City's expenses of storing, handling and disposing of Contractor Hazardous Waste. City will deliver a statement to Contractor showing City's expenses, and Contractor will promptly pay such amount to City. If the amount is not paid promptly, City may offset the amount against any amount payable by City to Contractor under the Contract Documents or otherwise.

5. Notifications to City. Contractor shall notify City's Project Manager immediately upon occurrence of any of the following: (i) any discovery by Contractor, a Subcontractor or any Sub-subcontractor of any Hazardous Substance in any existing structure, facility or equipment on City's property. (ii) any Release of any Hazardous Substance on City's property in connection with the Work; (iii) the creation or generation of any Hazardous Waste resulting from the Work (including, without limitation, Hazardous Waste arising from the removal of, demolition of, modification of, or addition to any existing structure, facility or equipment); (iv) the need for any remediation or removal of any Hazardous Substance relating to the Work whether relating to a pre-existing condition on City's property or to acts or omissions of Contractor, a Subcontractor or a Sub-subcontractor; or (v) any claim, demand, inquiry, investigation, litigation or other action or proceeding by any governmental authority or other person relating to any Hazardous Substance, Hazardous Waste, Environmental Law or OSHA relating to the Work. Except for immediate action to contain any Release of any Hazardous Substance and except for interim handling and storage of Project Hazardous Waste, Contractor shall not take any action as to any matter in **(i), (ii), (iii), (iv)** or **(v)** without the prior written approval of City and City shall have the right to elect to control and carry out any such action or matter.

6. Other Asbestos. Contractor and each Subcontractor and Sub-subcontractor to comply with all requirements of Environmental Law and OSHA concerning any other asbestos in the Work area.

H. Construction Site Safety Requirements: Contractor shall have sole responsibility and liability for construction site safety. Without limiting other actions in this regard, Contractor shall, and shall cause each Subcontractor and Sub-subcontractor to, comply with worker health and safety requirements in Environmental Law and OSHA. In

addition, Contractor shall take all reasonable necessary and appropriate steps to assure the health and safety of persons occupying any part of the facility in which the Work site is located or in the vicinity of or passing by the Work site and shall also take all reasonable necessary and appropriate steps to protect from damage or destruction the property of City and other persons in any part of the Facility in which the Work site is located or in the vicinity of or passing by the Work site. Among other actions in this regard Contractor shall comply with the requirements of the applicable fire code.

I. Environmental, Health and Safety Concerns by Contractor, Subcontractors or Sub-subcontractors. If in the course of the Work, any environmental, health or safety concern exists or arises, whether relating to a Hazardous Substance, OSHA or otherwise, then the Work activities related to the concern must be discontinued until the concern is resolved. This means prior to disturbing a suspected Hazardous Substance or otherwise interacting with a potential health or safety hazard. The City's Project Manager must be notified immediately of the concern. Work shall not resume until approval has been provided by City. Close coordination will be maintained between City and Contractor so the Project schedule is impacted the least amount possible.

J. Scope of Indemnity. The indemnity in Article 17 of this Contract includes any claim by any person and City's attorneys' fees and other costs and expenses in defending any claim by any person that City is responsible or liable for any of the following arising from the acts or omissions of Contractor, any Subcontractor, any Sub-subcontractor or any of their employees or other workers relating to the Work: (i) any violation of Environmental Law or OSHA; (ii) any failure by Contractor, any Subcontractor or any Sub-subcontractor to perform or comply with any obligation or requirement in this Article (?), (iii) any Contractor Release of any Hazardous Substance; (iv) any improper disposition of any Hazardous Substance or Hazardous Waste; (v) any claim by any employee, agent, independent contractor or other worker of Contractor, any Subcontractor or any Sub-subcontractor and any claim by any other person of personal injury, death or property damage arising from any Contractor Release of any Hazardous Substance or arising from any failure by Contractor, any Subcontractor or any Sub-subcontractor to comply with any Environmental Law or OSHA or this section.

ARTICLE 7 DRAWINGS AND SPECIFICATIONS

A. The Contractor shall study and compare the Contract Documents sufficiently in advance of beginning each phase or portion of the work to be performed and immediately report any material error, inconsistency, conflict, ambiguity, or omission that is discovered.

B. The Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as Shop Drawings. Where required, the Contractor shall perform no portion of the Work without approved Shop Drawings, Product Data or

Samples; any Work performed in violation of this provision will be solely at the Contractor's risk regardless of DP's and/or City's knowledge of such Work.

C. In the event of any conflict or ambiguity, Contract Documents shall be interpreted as being complementary, requiring a complete project or designated portion thereof. In the event of conflict in the Contract Documents, the priorities stated below shall govern:

1. Addenda shall govern over all other Contract Documents and subsequent addenda shall govern over prior addenda only to the extent modified.

2. In case of conflict between plans and specifications, the specifications shall govern.

3. Conflicts within the drawings: (1) Schedules, when identified as such, shall govern over all other portions of the drawings. (2) Specific notes shall govern over all other notes and all other portions of the drawings, except the schedules described in (1) above. (3) Larger scale drawings shall govern over smaller scale drawings. (4) Figured or numerical dimensions shall govern over dimensions obtained by scaling.

D. Conflicts within the specifications: Contract General Conditions shall govern over all sections of the specifications except for specific Modifications thereto that may be stated in Supplementary General Conditions or addenda. No other section of the specifications shall modify the Contract General Conditions.

E. In the event provisions of codes, safety orders, Contract Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

F. In the event of any conflict, the Contractor shall request an interpretation by the DP before performing the Work.

G. If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, or materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard. "Minor detail" shall include the concept of substantially identical components, where the price of each such component is small even through the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial. The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Document.

F. The Contractor shall maintain at the site, for the use of the City and of the DP, one copy of all Drawings, Specifications, bulletins, addenda, Change Orders, field orders, approved Shop Drawings, approved Submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees and other contract related documents and their Modifications, if any, in good order and marked daily by the Contractor to record all approved changes made during construction. These shall be turned over to the DP by the Contractor at the time of Substantial Completion for the purpose of assembling and correlating the material for use by the City.

G. The Contractor shall submit to the DP, with such promptness as to cause no delay in its Work or in that of any other Contractor, all Submittals and Shop Drawings as required by the Contract Documents, or as necessary to illustrate details of the Work.

H. Each Submittal and Shop Drawing must be accompanied by a transmittal letter containing a list of the titles and numbers of the Shop Drawings. Each series shall be numbered consecutively for ready reference and each Submittal and Shop Drawing shall be marked with the following information:

1. Date of Submission
2. Name of Project
3. Location of Project
4. Branch of Work (Specification Section)
5. Project Number
6. Name of Submitting Contractor
7. Name of Subcontractors
8. Revision Number

I. All Subcontractor Submittals and Shop Drawings shall be submitted to the DP by the Contractor and shall bear written approval by the Contractor. Any Submittals or Shop Drawings submitted without this approval will be returned for resubmission; the Submittals or Shop Drawings will be considered as not having been submitted, and any delay caused thereby shall be the Contractor's sole responsibility.

J. The Contractor shall include with Submittals and Shop Drawings, a letter indicating all deviations from the DP's Drawings and Specifications. Failure to so notify the DP of such deviations will be grounds for subsequent rejection of the related Work or materials. If, in the opinion of the DP, the deviations are not acceptable, the

Contractor will be required to furnish the item as specified or as indicated on the DP's Drawings.

K. It is the Contractor's obligation and responsibility to check all of its Submittals and Shop Drawings and to be fully responsible for them and for coordination with connecting Work. Submittals and Shop Drawings shall indicate in detail all parts of an item of work, including erection and setting instructions and engagements with Work of other trades or other separate contractors.

L. By approving or submitting Submittals and/or Shop Drawings, the Contractor thereby represents that it has determined and verified availability, field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each Submittal and/or Shop Drawing with the requirements of the Work and of the Contract Documents. If any specified material item or part is not available, the Contractor shall so indicate to the DP.

M. The DP shall review Submittals and Shop Drawings and return them to the Contractor within twenty (20) calendar days of receipt unless otherwise previously agreed in writing. For scheduling purposes, the Contractor must assume a 20-day review period for each Submittal or set of Shop Drawings. For complex Submittals, the Contractor must assume two 20-day review cycles. If review and approval are delayed beyond twenty (20) calendar days, the DP shall notify the Contractor and the City in writing stating the reason for the delay. Approval shall not relieve the Contractor from the responsibility for deviations from the drawings and specifications, unless it has been called to the DP's attention, in writing, at the time of submission. Any Modification will be approved only if it is in the interest of the City to effect an improvement in the Work and does not increase the Contract Price or Contract Time. Any such Modification is subject generally to all other provisions of the Contract Documents, and is without prejudice to any and all rights under any surety bond.

N. If the DP returns a Submittal or Shop Drawing to the Contractor with the notation "rejected, revise, and resubmit", or "approved as noted," the Contractor, so as not to delay the Work, shall promptly submit a Submittal or Shop Drawing conforming to the requirements of the Contract Documents and indicating in writing on the Submittal or Shop Drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the DP. Any other differences between the resubmittal and the prior submittal shall also be indicated on the Shop Drawing and on the resubmittal as a special note.

O. No extension of time will be granted to the Contractor because of its failure to submit Submittals or Shop Drawings in ample time to allow for review, possible resubmittals and approval. Fabrication of Work shall not commence until the Contractor has received written approval. The Contractor shall furnish prints of its approved

Submittals and Shop Drawings to all the Contractors whose work is in any way related to the Work. Only prints bearing this approval will be allowed on the site.

ARTICLE 8
PRODUCT SAMPLES, TESTS, AND CERTIFICATES

A. The Contractor shall furnish Product Samples of all items requested or required by the Specifications. Product Samples shall be properly identified and submitted with such promptness as to cause no delay in Work or in the work of any other contractor and to allow time for consideration by the DP and the City. The DP and/or City will review Product Samples in accordance with "Submittals, Drawings, and Shop Drawings" above.

B. Each Product Sample must be accompanied by a letter of transmittal containing the following information:

1. Date of Submission
2. Name of Project
3. Location of Project
4. Branch of Work (Specification Section Number)
5. Project Number
6. Name of Submitting Contractor
7. Name of Subcontractor

C. The Contractor shall furnish to the DP a certificate stating that material or equipment submitted complies with Contract Documents. If a certificate originates with the manufacturer, the Contractor shall endorse it and submit it to the DP together with a statement of compliance in its own name.

D. No tests, inspections or approvals performed or given by the City or the DP or others acting for the City or any agency of Federal, State or Local government nor any acts or omissions by the City or the DP in administering this Contract shall relieve the Contractor from its duty to perform the Work in accordance with the Contract Documents and applicable law.

E. Unless the DP is authorized at the time of submittal to return samples at the Contractor's expense, rejected samples will be destroyed.

F. After delivery of materials, the DP may make such tests as it deems necessary, with samples required for such tests being furnished by and at the cost of the

Contractor. Any test is for the benefit of the City and shall not relieve Contractor of the responsibility for providing quality control measurements to assure that Work strictly complies with the Contract Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.

G. On the basis of the test results, materials, workmanship, equipment or accessories may be rejected even though general approval has been given. If items have been incorporated in Work, the DP shall have the right to cause their removal and replacement by items meeting Contract Document requirements or to demand and secure appropriate reparation to the City from the Contractor.

ARTICLE 9 AS-BUILT DRAWINGS

A. Prior to Substantial Completion, the Contractor shall complete and turn over to the DP the As-Built Drawings. The As-Built Drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from contract Change Orders and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items both inside and outside the facility shall be accurately located on the As-Built Drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The As-Built Drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color.

B. For any changes or corrections in the Work which are made subsequent to Substantial Completion, revisions shall be submitted to the DP prior to Final Payment.

ARTICLE 10 SUPERINTENDENCE BY THE CONTRACTOR

A. The Contractor shall have a competent superintendent on the site at all times during the progress of the Work. Contractor's superintendent must be acceptable to the City. The superintendent shall have such assistants with such individual specialized competencies including, but not limited to, CPM scheduling, as may be necessary to fully understand and oversee all aspects of the Work. The superintendent and his assistants all shall be physically fit for their Work and capable of going to all locations where Work is being performed. A communication to the superintendent or his designated assistants by the City or DP is binding upon the Contractor. The Contractor's superintendent shall be responsible for the prevention of accidents at the site. The Commercial Construction Safety Code of the Arizona Industrial Commission shall apply to all Work, and a copy of the Code shall be available at the site.

B. The Contractor shall at all times enforce strict discipline and good order among the workers on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the work assigned to him. The Contractor shall be responsible to the City for all acts and omissions of its employees, Subcontractors, Suppliers, anyone whom the Contractor may allow to perform or inspect or supervise any Work, and their agents and employees together with anyone whom the Contractor may allow to come on the Project site. In addition, if the Contractor receives written notice from the City to dismiss those subcontractors or employees or one who is a hindrance to proper or timely execution of the Work, the Contractor shall dismiss those employees and agrees to replace those dismissed without delay to the Project and at no additional cost to the City.

C. The Contractor shall competently and thoroughly direct and superintend all of the Work and shall be solely responsible for all construction safety, means, methods, techniques, sequences and procedures. It shall coordinate and schedule all Work under this contract, the performance of all its employees, Subcontractors, and Suppliers, and the timely procurement of all necessary labor, materials, equipment, supplies, and all else needed to do the Work.

ARTICLE 11 SUBCONTRACTS

A. The Contractor shall supply with its bid to the City a written list of all proposed subcontractors and suppliers. The City will promptly reply to the Contractor in writing stating whether the City or the DP, after due investigation, has any objection to any such proposed subcontractor or supplier. The Contractor shall not employ any subcontractor or supplier against whom the City or the DP has reasonable objection. If, prior to the award of the Contract, the City or DP has a reasonable objection to any subcontractor or supplier and refuses in writing to accept such person or organization, the apparent low bidder may, prior to the award, either withdraw his bid without forfeiture of bid security or may propose an acceptable substitution thereof provided that same results in no change in the bid price. Failure of the bidder to submit an acceptable substitute in a timely manner shall render its bid nonresponsive.

B. No substitution or change shall be made by the Contractor in the subcontractor/supplier list after its submission to the City without prior written approval by the City. Unapproved or untimely substitutions may be cause for invalidation of the Contractor's bid in the City's discretion, thereby rendering the Contract voidable.

C. All work performed for the Contractor by a subcontractor shall be pursuant to an appropriate written agreement which specifically binds the subcontractor to all applicable terms and conditions of the Contract Documents, but no contractual relationship shall exist between any subcontractor or supplier of any tier and the City, unless the City invokes the assignment provisions of the following subsection. Upon

request, the Contractor shall provide fully executed copies of any subcontracts and purchase orders to the City.

D. The Contractor hereby assigns to the City (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by the Contractor for performance of any part of the Work, which assignment will be effective upon termination of the Contract by the City and only as to those subcontracts and purchase orders which the City assumes in writing. All subcontracts and purchase orders shall provide that they are freely assignable by the Contractor to the City and its assigns. Such assignment is part of the consideration to the City for entering into this Contract with the Contractor and may not be withdrawn prior to final completion.

E. The City may require each proposed subcontractor whose subcontract will exceed [exceed what?] to furnish a performance bond and a payment bond on City-approved forms in the full amount of its subcontract. The City will reimburse the Contractor for the documented cost of the subcontractor's performance bond premiums in the event the City requires such bonds by the subcontractor.

ARTICLE 12 COMMUNICATIONS

A. All project notices, requests, instructions, modifications, approvals, and claims must be in writing, unless expressly specified otherwise in the Contract.

B. Copies of all such communications from the Contractor to the DP shall be delivered to the City.

C. Communications will be deemed to have been made if delivered in person or if mailed to the address designated in the Contract or otherwise agreed upon by the parties.

ARTICLE 13 PERMITS, TAXES AND FEES

A. The Contractor shall secure and pay for any necessary building permits and for all other permits, fees, licenses and inspections necessary for the proper execution and completion of the Work, and shall immediately deliver copies to the City and DP. The Contractor shall be responsible for complying with all applicable Federal, State and local laws, codes, notice requirements, and regulations applicable to the site and prosecution of the Work. Contractor shall be responsible for and pay any costs associated with or arising from any non-compliance. Usual city building permit and inspection fees are not applicable to work constructed on the City's property.

B. The Contractor shall pay all taxes for and related to the Work or its portion thereof which are legally enacted at the time bids are received, whether or not yet effective.

**ARTICLE 14
BONDS**

A. The Contractor shall file with the City at or prior to the time of execution of the Contract, a performance bond and a payment bond on City-approved forms, each in the full amount of the Contract. The Surety furnishing these bonds shall be satisfactory to the City and shall be authorized to do business in the State of Arizona.

**ARTICLE 15
INSURANCE**

A. Insurance Requirements: Concurrently with the execution of the Contract, the Contractor shall furnish the City of Buckeye a certificate of insurance on a standard insurance industry ACORD form. The ACORD form shall be issued by an insurance company authorized to transact business in the State of Arizona.

B. Contractor, subcontractors and sub consultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

C. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

D. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, subcontractors or sub consultants and Contractor is free to purchase such additional insurance as may be determined necessary.

E. Minimum Scope and Limits Of Insurance. Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below. The Contractor waives all rights of subrogation under the following policies.

(1) Commercial General Liability-Occurrence Form Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000

Each Occurrence \$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Buckeye shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

The policy shall contain a waiver of subrogation against the City of Buckeye.

- (2) Automobile Liability- Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract

Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Buckeye shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor including automobiles owned, leased, hired or borrowed by the Contractor".

- (3) Workers Compensation and Employers Liability

<u>Workers Compensation</u>	<u>Statutory</u>
Employers' Liability	
Each Accident	\$ 100,000
Disease-Each Employee	\$ 100,000
Disease-Policy Limit	\$ 500,000

- (4) Umbrella/Excess Liability: Umbrella/Excess Liability insurance with a limit of not less than \$5,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above.

The policy shall contain a waiver of subrogation against the City of Buckeye.

F. Additional Insurance Requirements. The policies shall include, or be endorsed to include, the following provisions:

- (1) On insurance policies where the City of Buckeye is named as an additional insured, the City of Buckeye shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

- (2) The Contractor's insurance coverage shall be primary insurance and non-

contributory with respect to all other available sources.

(3) Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

G. Sub consultant's and Subcontractor's Insurance. Contractor's certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. All coverage's for subcontractors and sub consultants shall be appropriate to cover all of its work performed herein.

H. Notice Of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given, by certified mail, return receipt requested to:

Chris Williams
Manager, Contracting and Purchasing
City of Buckeye
530 E. Monroe Avenue
Buckeye, AZ 85326

I. Acceptability Of Insurers. Insurance is to be placed with insurers duly licensed in the State of Arizona and with an A. M. Best's rating of no less than A -. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

J. Verification of Coverage

(1) Contractor shall furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. *Any policy endorsements that restrict or limit coverages shall be clearly noted on the certificate of insurance.*

(2) All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract or the signing of this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

(3) All certificates of insurance required by this Contract shall be sent directly to the City of Buckeye, Contracts Manager. The contract number and project description shall be included on the Certificates of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time.

K. Approval. Any modification or variation from the insurance requirements in this Contract shall be approved by the City, whose decision shall be final.

L. Liability Notwithstanding Insurance: Approval, disapproval or failure to act by Owner regarding any insurance supplied by Contractor or its Subcontractors shall not relieve the Contractor of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. Neither the bankruptcy or insolvency of Contractor's insurer nor any denial of liability by Contractor's insurer shall exonerate Contractor from the liability or responsibility of Contractor set forth in this Contract.

ARTICLE 16 ALLOWANCES

A. If required by the Bid Documents issued by the City for the Work, the Contract price shall include an allowance or allowances as specified in the request for bids. The Contractor's price for the Work shall include all of the Contractor's costs associated with such allowance or allowances. If the actual costs to the Contractor of such allowance or allowances are different from the specified sum, increases or decreases in the cost of the allowance and associated Contractor's cost may be adjusted in accordance with Section 28.3 (Changes) of this Contract.

ARTICLE 17 INDEMNIFICATION

A. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold Owner, its officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of Owner, its officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 18
PROGRESS AND SCHEDULING

A. Planning, scheduling and progress monitoring are essential functions of the Contractor. Within ten (10) days after the award of the Contract, the Contractor shall prepare and submit for the City and the DP a Schedule of Values allocating the Contract Price among the various portions of the Work for purposes of progress payments. The Schedule of Values shall be substantially equivalent to AIA Forms G702 and G703 or as specified by City. In addition, Contractor shall submit Construction Progress Schedules in full accordance with the requirements and provisions located in Division 1 of the Specifications.

B. The Contractor shall also furnish the DP with a Narrative Report corresponding with each monthly update which shall include a description of current and anticipated problem areas, delaying factors and their impact, fragmentary networks (fragnet) of delays, and an explanation of corrective action taken or proposed. If the Project is behind schedule in any month, the Contractor's Narrative Report shall indicate precisely what measurements it will take in the next thirty days to put the Work back on schedule.

C. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the Progress Schedule, to prevent work stoppage, and to ensure completion of the Project within the Contract Time.

D. The Contractor shall be responsible to prepare, submit and maintain the schedules and Narrative Reports indicated above, and the failure to do so may be considered a material breach of this Contract. Any additional or unanticipated cost or expense required to maintain the schedules shall be solely the Contractor's obligation and shall not be charged to the City.

ARTICLE 19
DAILY LOG

A. The Contractor shall maintain a daily log of construction activities for each calendar day of the Contract Time, using a form approved by the DP. The Contractor shall document all activities at the Project site, including:

1. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the job site, and any other weather conditions which adversely affect Work at the site;
2. Soil conditions which adversely affect Work at the site;

3. The hours of operation by Contractor and individual Subcontractor personnel;
4. The number of Contractor and Subcontractor personnel present and working
By Subcontractor and trade, and updated schedule activity number.
5. The equipment active or idle at the site;
6. A description of the Work being performed at the site, by updated schedule
Activity number.
7. Any delays, disruptions or unusual or special occurrences at the site;
8. Materials received at job site; and
9. A list of all visitors at the site.

B. The Contractor shall provide copies of the daily logs to the City on a weekly basis. The daily log does not constitute written notice to the City when such notice is required by the Contract Documents.

ARTICLE 20 MISCELLANEOUS DUTIES

A. The Contractor shall submit to the City upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor payment applications and each Subcontractor's progress payment check. The requirements of this subsection shall be provided in all contracts between the Contractor and its Subcontractors.

B. During construction and for five (5) years after Final Payment, the Contractor shall retain and shall also require all Subcontractors to retain for review and/or audit by the City all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs, and all other matters related to the bidding and performance of the Work.

Upon request by the City, a legible copy or the original of any or all such records shall be produced by the Contractor at any time during or after construction as the City may request.

C. The Contractor shall be responsible for laying out its own Work and for any damage which may occur to work of any other contractor because of the Contractor's own errors or inaccuracies. The Contractor shall also be responsible for unloading, uncrating, storing and handling all materials and equipment to be erected or placed by it, whether furnished by the Contractor or others.

D. The Contractor, Subcontractors and Suppliers shall be responsible for taking all appropriate field measurements prior to fabrication and installation of any item. Such measurements shall be taken sufficiently in advance so as to avoid any delay or potential delay. Failure to adhere to this provision shall render such delays the responsibility of the Contractor.

E. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, wiring, conduit, ductwork, trim and other parts required for or in connection with any item or material to make a complete, serviceable, finished and quality installation shall be furnished and installed as part of the item whether or not expressly called for by the Drawings or Specifications.

F. All materials shall be shipped and stored and handled in a manner that will afford protection and ensure their being in factory-new condition at the time they are incorporated in the Work. After installation, they shall be properly protected against damage or deterioration until Final Completion of the Project.

G. When standards and specifications issued by The American Society of Testing and Materials, the American Institute of Steel Construction, the U.S. Department of Commerce (Commercial Standards), or other technical or standard setting organizations are cited in the Contract Documents, such standards or specifications (and all related standards or specifications) shall be equally as binding and have the full force and effect as though incorporated word for word. Unless otherwise specifically stated, the standards and specifications referred to shall be the latest edition or revision of such specifications that is in effect on the date of the public bid.

H. Any part of the Work damaged during installation or prior to final acceptance of Work shall be repaired so as to be unnoticeable and to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced. After installation, all exposed surfaces and parts of an item or of the Work shall be cleaned in a manner that will not damage the finish or any of the parts of the item, so that the completed work is left in first class condition, free of all defects. All damaged or defaced Work shall be repaired or replaced to the City's satisfaction at the expense of Contractor.

I. The Contractor shall procure and furnish to the City all guarantees, warranties, manuals and spares that are called for by the specifications or that are mentioned in the manufacturer's product literature. Guaranties and warranties shall commence as of the date of Substantial Completion of the Project.

J. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the City harmless from loss on account thereof, except that the City shall be responsible for loss

attributable when a particular design, process or the product of a particular manufacturer or manufacturers is specified. If the Contractor has any reason to believe that the design, process or product specified could be an infringement of a patent, it shall be responsible for such loss unless it promptly gives such information in writing to the DP and City.

K. The Contractor shall limit its operations to the confines of the Project, except as necessary to connect to existing utilities, and shall not, without the prior written permission of the affected property City, and encroach on property outside the site. Contractor shall not permit unauthorized persons or activities on the site and shall maintain the site in a safe and secure manner.

L. The Contractor shall prearrange time with the DP whenever it becomes necessary to interrupt any service to make connections, alterations or relocations and shall fully cooperate with the City in doing Work so as to cause the least annoyance and interference with the continuous operation of the City's business or official duties. Any existing plumbing, heating, ventilating, air conditioning or electrical disconnections which may affect portions of this construction or building or any other building must be coordinated with the DP to avoid any disruption of operation within the building or construction or other building or utilities. In no case, unless previously approved in writing by the DP, shall utilities be left disconnected at the end of a workday or over a weekend. Any interruption of utilities, whether negligently, intentionally, or accidentally, shall not relieve the Contractor's responsibility for the interruption or from liability for loss or damage caused by such interruption even though such loss or damage was not foreseeable by Contractor or subcontractor, or from responsibility for repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workmen responsible for the repair and restoration leave the job.

M. The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. If the Contractor fails to properly clean up during construction, or if a dispute arises between the Contractor and/or separate Contractors as to their responsibility for cleaning up, the City may clean up and charge the costs thereof to the Contractors responsible as determined by the City and/or DP. At the completion of the work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up at the completion of the work, the City may do so and the cost thereof shall be charged to the Contractor.

ARTICLE 21 INSPECTION OF WORK

A. All Work done and all materials are subject to inspection by the City and/or the DP to determine if they conform to the Contract Documents. The DP and City shall at all times have access to the Work, including materials being fabricated or stored off site.

The Contractor shall furnish at the Contractor's cost any facilities necessary for sufficient and safe access to the Work.

B. Inspections, tests, measurements, or other acts of the City and/or the DP are for the sole purpose of assisting the City and/or the DP in determining that the Work, materials, rate of progress, and quantities comply with the Contract Documents and/or Contractor's requests for payment. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with contract requirements nor relieve the Contractor from any of the quality, compliance and responsibility for the Work assigned to it by the Contract Documents. No inspection by the City and/or the DP shall constitute or imply acceptance or waiver of rights.

C. Nonconforming Work or materials may be rejected and Contractor shall correct such rejected Work without additional compensation, even if the Work or materials have been previously inspected or accepted by the City and/or the DP or even if the City and/or the DP failed to observe the unsuitable Work or materials.

D. Any Work required to be inspected by the DP and/or the City prior to being covered, which is covered up without prior inspection or without prior consent of the DP and/or the City, must be uncovered and recovered by the Contractor, if requested by the DP or the City, at no cost to City, notwithstanding the provisions of the following subsection.

E. Contractor shall notify the City and DP in writing at least 48 hours prior to the time at which the City or DP must be present to perform an inspection. Failure to provide such notice will place the Contractor at risk for all consequences of non-inspection and having to uncover work.

ARTICLE 22 CORRECTION OF WORK

A. If any portion of the Work is covered over contrary to the request of the DP or City or as required by the Contract or the applicable building standards, it must be uncovered for observation at the Contractor's expense if requested by the DP or City in writing.

B. If any portion of the Work, other than those portions required to be inspected by the DP and/or the City prior to being covered, has been covered over, the DP or City may request that it be uncovered for observation. If such portion is found to be in accordance with the requirements of the Contract Documents, the cost of uncovering it shall be charged to the City as a Change Order. If such portion is found not to be in accordance with the requirements of the Contract Documents, the Contractor shall bear such costs.

C. The Contractor shall promptly remove from the site and replace any material or correct any Work found by the DP or City to be defective or failing to conform to the requirements of the Contract, whether or not fabricated, installed or completed, and whether discovered before or after Substantial Completion. The Contractor shall bear all costs of correcting such Work or material, including the cost of necessary additional professional services and the cost of repairing or replacing all work of separate contractors or subcontractors damaged by such removal or correction. The DP shall notify the Contractor and City immediately in writing upon its knowledge that additional professional services will be necessary and of the extent and estimated costs of the additional services. The City, with the recommendation of the DP, may consent to accept such Work or material with an appropriate adjustment in Contract Price.

D. If the Contractor does not promptly replace or correct such Work or material, the City may replace or correct the Work or material, and charge or deduct the cost of removal and replacement from any monies due to the Contractor, or recover such costs from the Contractor.

E. If, within two (2) years after the date of Substantial Completion, any of the Work is found to be defective or not in accordance with the requirements of the Contract, the Contractor shall correct it promptly after receipt of a written notice from the City to do so. If the Contractor does not promptly replace or correct such Work or material, the City may replace or correct the Work or material, and charge or deduct the cost of removal and replacement from any monies due to the Contractor, or recover such costs from the Contractor. Nothing contained in this section shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract or the law. The obligation of the Contractor under this section shall be in addition to and not in limitation of any obligations imposed by special guaranties or warranties required by the Contract, given by the Contractor, or otherwise recognized or prescribed by law.

F. If, during the running of a guarantee or warranty period, the Contractor must perform repair work to any portion of the Work, the running of the warranty or guarantee period is tolled from the time the defect or deficiency is discovered through the time when the Contractor successfully completes all repairs and retesting and start-up activities.

ARTICLE 23
DELAYS AND TIME EXTENSIONS

A. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the City or the DP, or by any separate Contractor employed by the City, or by changes in the Work, or by labor disputes, fire, unusual delay in transportation, unusually severe weather conditions, adverse soil conditions, unavoidable casualties, delays specifically authorized by the City, or by causes beyond the Contractor's control, avoidance, or mitigation, and without any fault or negligence of the Contractor or Subcontractor or Supplier at any tier, then the Contract Time shall be extended by Change Order for such reasonable time as the City may determine that such event has delayed the critical path of the Work or individual milestone or overall completion of the Work after considering the advice of the DP, if the Contractor complies with the notice and documentation requirements set forth below. The Contractor shall pay any additional fees or costs incurred by the City or DP as the result of delays caused by the Contractor for circumstances not excused as provided herein.

B. Initial notice of any delay in the Work shall be made in writing to the City immediately but in no event later than 24 hours after discovery of the event giving rise to the delay. Then, Contractor shall provide additional details of the delay in writing to the City within seven (7) calendar days from the beginning of the delay. Failure to meet these time requirements shall absolutely bar any and all later claims. The detailed notice shall indicate the cause of the delay, the anticipated length of the delay, the probable effect of such delay upon the progress and cost of the Work, and potential mitigation plans. If the cause of the delay is continuing, the Contractor must give written notice every month at the same time it submits the updated progress Narrative Report to the City. Within fifteen (15) days after the elimination of any such delay, the Contractor shall submit further documentation of the delay and, if applicable, a formal written request covering an extension of time for such delay. The written request for time extension shall state the cause of the delay, the number of days extension requested and provide a fully documented analysis of the Progress Schedule, including a fragnet and any other data demonstrating a delay in the critical path of the Work or individual milestone or the overall project completion. If the Contractor does not comply with the notice and documentation requirements set forth above, the claim for delay is absolutely barred.

C. If the Contractor incurs damages related to expenses caused by a delay for which the City is solely responsible, which is unreasonable under the circumstances, and which was not contemplated by the parties at the time of formation of this Contract, then the parties shall attempt to reach an agreement on the Contractor's claim, provided that the Contractor has notified the City in writing as specified above, including why the City is believed by the Contractor to be solely responsible for the delay. Failure to provide such timely notice shall be deemed an absolute and final waiver of any rights to additional sums. Any disputes will be resolved in accordance with the City of Buckeye Procurement Code, as amended or superseded.

D. The Contractor shall have no right to claim for alleged extended or unabsorbed home office overhead; claims for delays shall be limited to provable extended site costs.

E. The date of beginning and the time for completion as specified herein are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on a date to be specified in the notice to proceed or at a preconstruction meeting, but in no event later than ten (10) days after the execution of this Contract, whichever first occurs. Said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. The time for completion of the same takes into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any extension thereof granted by the City, then the Contractor does hereby agree to pay to City the per diem amount specified in the Contract. This amount is agreed to be liquidated damages for such breach and not a penalty therefore. The per diem amount shall be paid for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. The amount is fixed and agreed upon by and between the Contractor and City because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain. Said sums may be withheld by the City from any amounts due to the Contractor from the City, whether as the result of this Contract or any other obligation between the City and the Contractor.

F. The parties hereby agree that if the Contractor submits an original or updated schedule which shows the project and/or individual Milestone(s) completing earlier than required by the adjusted contractual completion date(s), the differences between the forecasted early completion and the required completion shall be considered Project-owned float available for use by both the City and the Contractor.

G. The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, using extensive crew/resource sequencing, etc. Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the adjusted Contract completion date. Since float time within the Construction Schedule is jointly owned, it is acknowledged that City-caused delays on the project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded and the Contract completion date or milestone date is also exceeded.

H. It is agreed that no time extensions shall be granted nor delay damages paid unless the delay is clearly demonstrated by the updated Construction Schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other reasonable means.

**ARTICLE 24
SUSPENSION OF WORK**

A. The City may, at any time and without cause, order the Contractor in writing or cause the Contractor to suspend, delay or interrupt all or any part of the Work for such period of time as the City may determine to be appropriate for its convenience. Equitable adjustment shall be made for any increase in the Contract Time necessarily caused by such suspension or delay by written Change Order.

**ARTICLE 25
RIGHT TO STOP WORK**

A. If the Contractor fails to correct defective Work as required, or fails to carry out the Work in accordance with the Contract Documents, the City by written notice, may order the Contractor to stop the Work or any portion of the Work, until the cause for the order has been eliminated to the satisfaction of the City.

B. The DP may stop Work without written notice for 24 hours whenever in its professional opinion such action is necessary or advisable to ensure conformity with the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time under this subsection. The right of the City or the DP to stop the Work shall not give rise to a duty on the part of the City or DP to exercise this right for the benefit of the Contractor or others.

**ARTICLE 26
CHANGES**

A. After this Contract is signed, Modifications in the Contract Price, the Contract Time or Scope of the Work may only be made by written Change Order.

B. By written directive at any time, the City may make any changes within the general scope of the Contract or issue additional instructions, require additional or modified Work or direct deletion of Work. The Contractor shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the City and shall proceed in accordance with the procedures set forth in this section. If the Contractor proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this paragraph, the Contractor hereby waives all rights or claims Contractor may have as a result of the

change. The City's right to make changes shall not invalidate the Contract or relieve the Contractor of any liability. Any requirement of notice of change to the Surety shall be the responsibility of the Contractor.

C. The cost or credit to the City resulting from a change in Work shall be determined in one or more of the following ways:

1. By unit prices stated in the Contract.

2. By cost, as defined below, properly itemized and supported by sufficient, substantiating data to permit evaluation, plus a fee of ten percent (10%) of items (1) through (5) described below. Such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly allocable to the change in the Work:

(a) Cost of materials, including delivery but excluding Subcontractor-supplied materials.

(b) Fully-burdened cost of labor, including, but not limited to, payroll taxes, social security, old age and unemployment insurance, vacation and fringe benefits required by agreement or routinely paid by contractor, and worker's or workman's compensation insurance but excluding Subcontractor's labor.

(c) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the locale of the Work. For owned equipment, contractor must prove reasonable rental rate pursuant to actual ownership costs.

(d) Cost of Subcontracted work calculated as above and Subcontractor's Field Supervision calculated in accordance with paragraph (5) below, plus Subcontractor's insurance and bond premiums as applicable. Insurance and bond premium cost shall not exceed a total of two percent (2%) of Subcontractor's documented cost.

(e) Contractor's Field Supervision not to exceed five percent (5%) of (1), (2) and (4) above; the parties agree that this mark-up shall fully cover all contractor Field Supervision overhead.

(f) Contractor's insurance and bond premiums not to exceed a total of two percent (2%), or documented cost.

(g) Sales tax at full value.

(h) If this method of cost or credit calculation is selected, in no event shall the combined total fee including all levels or tiers of Subcontractors exceed twenty percent (20%) of the total cost of paragraphs (1),(2), (3) and (4). Field Supervision is to be excluded at all levels for the purposes of the limit imposed by this paragraph.

3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; provided that such lump sum shall not exceed that amount calculated under item B. above

D. If none of the above methods is agreed upon, the Contractor shall promptly proceed with performing the change, upon receipt of a written order signed by the City. Any dispute regarding the pricing methodology or cost of the change shall not relieve the Contractor from proceeding with the change as directed by the City. The cost or credit to the City shall be determined by the DP on the basis of the preceding subsection.

E. A fully executed Change Order shall be full and final settlement of all claims for direct, indirect, delay, disruption, inefficiency and any other consequential costs related to items covered or affected, as well as time extensions. Any such claim not presented by the Contractor for inclusion in the Change Order is irrevocably waived.

F. In an emergency affecting the safety of life, or of the structure, or of adjoining property, the Contractor, without special instruction or authorization from the City, is permitted to act at its discretion to prevent threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be determined in accordance with this section.

ARTICLE 27 PAYMENT

A. Payments on account of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized, shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

B. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the

Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

C. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

D. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Application for Payment, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

E. Payment may be withheld in whole or in part to protect the City on account of:

1. Unsatisfactory job progress as determined by the City.
2. Defective Work or materials not remedied.
3. Disputed Work or materials.
4. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
5. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
6. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
7. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
8. Deficiencies or claims asserted by City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate of Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement

would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

F. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

1. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from Subcontractors and major Suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.

2. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

G. If any payment of the Contract Price is not made within thirty (30) days and without just cause, interest shall thereafter accrue on the unpaid principal balance at the minimum rate allowed by state law (A.R.S. § 44-1201) on the due date.

ARTICLE 28 WARRANTY

A. The Contractor warrants that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be free from faults and defects and in strict conformance with the Contract Documents.

B. Neither provision of manufacturers' warranties nor Final Payment nor use or occupancy of all or a portion of the Premises by the City shall constitute an acceptance of Work not performed in accordance with the Contract Documents or relieve the Contractor or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship.

C. This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the City takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the City takes possession.

D. The Contractor or its sureties shall remedy any defects in the Work and any resulting damage to the Work or the Work of others at its own expense.

E. The Contractor shall be liable for correction of all damage resulting from defective Work. If the Contractor fails to remedy any defects or damage, the City may correct the Work or repair the damages and the cost and expense incurred in such event shall be paid by or be recoverable from the Contractor.

F. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Contract Documents.

ARTICLE 29 SUBSTANTIAL COMPLETION

A. When the Contractor requests a Substantial Completion Inspection for the Work or a designated portion thereof, the City shall determine the validity of the request. A list of items to be completed or corrected shall be prepared by the Contractor and presented to the City with the request for inspection. By submitting a request for Substantial Completion Inspection the Contractor thereby certifies that it has performed a thorough inspection of the Project in preparing the list of items to be completed or corrected, has consulted with its subcontractors, and that the remaining incomplete or defective work shall be completed within thirty (30) days of submission of the request. The City shall evaluate the Contractor's request and list of uncompleted items and, if appropriate in their judgment, add to or delete items from the list necessary to complete the work. The failure to include items on any punch list shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. By submitting a request for Substantial Completion Inspection, the Contractor thereby certifies that the remaining incomplete or defective Work required by the Contract Documents shall be completed within thirty (30) days.

B. If the City, on the basis of Substantial Completion inspection, determines that the Work has been substantially completed in accordance with the Contract Documents, then the City will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion; shall state the responsibilities of the Contractor for remaining punchlist items, maintenance, heat and utilities, security, and damage to the work; and shall fix the time, not to exceed thirty (30) days, within which the Contractor shall complete the punch list. The Certificate of Substantial Completion shall be submitted by the City to the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Project shall not be deemed substantially complete until the Certificate is issued irrespective of City occupancy.

**ARTICLE 30
FINAL INSPECTION**

A. When the Contractor submits in writing to the City a request for a final inspection of the Work, the City shall determine the validity of the request. Following the inspection, if there are items to be completed or corrected, the City DP will determine the dollar value to be withheld in accordance with the retainage provisions of the Contract. In the event that the Contractor has not completed the punch list items within the time designated in the Certificate of Substantial Completion, the City retains the right to have these items corrected at the expense of the Contractor, including all architectural, engineering and inspection costs and expenses incurred by the City.

B. The City shall not be required to release the retainage until such items have been completed and inspected.

**ARTICLE 31
ASSIGNMENT OF CLAIMS**

A. The City and Contractor recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by City. Therefore, the Contractor hereby assigns to City any and all claims for such overcharges. The Contractor in all subcontracts shall require all Subcontractors to likewise assign all claims for overcharges to the City.

**ARTICLE 32
DISPUTES**

A. All of Contractor's claims and disputes shall first be referred to the DP for initial determination, by written notice, not more than seven (7) days from the occurrence of the event which gives rise to the dispute, or not more than seven (7) days from the date that the Contractor knew or should have known of the problem. Unless the claim is made in accordance with these time requirements, it is irrevocably waived. The City shall render a written decision within a reasonable time. The City's decision may be reviewed in accordance with City of Buckeye Procurement Code, as amended or superseded. Any claim not timely filed or not complete at the time of filing is irrevocably waived.

B. Any failure of the City to make a decision within the time limit set forth shall not be construed as acquiescence in all or any part of the Contractor's claim for relief. Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any claims and controversy proceedings, and the City shall continue to make payments to the Contractor in accordance with the Contract Documents.

**ARTICLE 33
FORUM**

A. No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court, and only after all contractual and administrative procedures have been fulfilled. By submitting a bid for this project, Contractor agrees to be bound by the City of Buckeye Procurement Code Dispute Resolution Procedures and waives any objections to those procedures.

**ARTICLE 34
TERMINATION BY THE CITY**

A. This Contract may be terminated by the City under the conditions stated in A.R.S. § 38-511.

**ARTICLE 35
TERMINATION FOR CAUSE**

A. The City may terminate the Contract upon the occurrence of any one or more of the following events:

1. If the Contractor refuses or fails to prosecute the Work, or any separable part, with such diligence as will ensure its completion within the Contract Time; or if the Contractor fails to complete the Work within the Contract Time;

2. If the Contractor or any of its key subcontractors is adjudged a bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if the Contractor or any of its key subcontractors or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor or any of its key subcontractors, or if a trustee or receiver is appointed for the Contractor or any of its key subcontractors or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest or any of its key subcontractors does not provide adequate assurance of future performance in accordance with the Contract within ten (10) days after receipt of a request for assurance from the City;

3. If the Contractor fails to supply sufficient skilled workmen or suitable materials or equipment;

4. If the Contractor fails to make prompt payments to subcontractors or suppliers at any tier, or for labor, materials or equipment;

5. If the Contractor fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;

6. If the Contractor fails to follow any reasonable instructions by the City;

7. If the Contractor performs Work which deviates from the Contract Documents, and neglects or refuses to correct rejected Work; or

8. If the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the City determines that sufficient cause exists to justify the action, the City may terminate the Contract without prejudice to any other right or remedy the City may have, after giving the Contractor and its Surety seven (7) days notice by issuing a written Declaration of Default. The City shall have the sole discretion to permit the Contractor to remedy the cause for the contemplated termination without waiving the City's right to terminate the Contract.

B. If the Contract is terminated, the City may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The City may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor, without liability to the Contractor. In exercising the City's right to prosecute the completion of the work, the City may also take possession of all materials and equipment stored at the site or for which the City has paid the Contractor but which are stored elsewhere, and finish the Work as the City deems expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

C. If the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work, and all City damages including liquidated damages and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work it performed and a reasonable allowance for overhead and profit. If such costs exceed the unpaid balance, the Contractor shall immediately upon demand pay the difference to the City. In exercising the City's right to prosecute the completion of the Work, the City shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work, and the City shall not be required to obtain the lowest figure for Work performed in completing the contract. If the City takes bids for remedial Work or completion of the project, the Contractor shall not be eligible for the award of such contracts.

D. If the Contract is terminated, the City may demand that the Contractor's Surety take over and complete the Work on the Contract. The City may require that in so doing,

the Contractor's Surety not utilize the Contractor in performing the Work. Upon the failure or refusal of the Contractor's Surety to take over and begin completion of the Work within 20 days after the demand, the City may take over the Work and prosecute it to completion as provided above.

E. The City shall have the option of requiring any, all or none of the Subcontractors to perform according to their subcontracts and may assign any or all of the subcontracts to a general contractor selected to complete the Work.

F. If the City takes over the Work, unexecuted orders entered into by the Contractor for performance of any part of the Work will be effective upon acceptance by the City in writing and only as to those subcontracts and purchase orders which the City designates in writing.

G. The Contractor shall be liable for any damage to the City resulting from the termination or from the Contractor's refusal or failure to complete the Work, and for all costs necessary for repair and completion of the Project over and beyond the amount of the Contract. The Contractor shall be liable for all legal fees and costs required to enforce the provisions of the Contract.

H. If the City terminates the Contract, the Contractor shall remain liable for liquidated damages for delay until such reasonable time as may be required for final completion of the Work. Such damages shall be in addition to and not in lieu of any other damages sustained by City in completing the Work.

I. In the event the Contract is terminated, the termination shall not affect any rights of the City against the Contractor. The rights and remedies of the City under this section are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Contractor by the City will not release the Contractor from liability.

J. If the Contract is terminated under this section, and it is determined for any reason that the Contractor was not in default under the provisions of this Section, the termination shall be deemed a Termination for Convenience of the City and, the rights and obligations of the parties shall be determined in accordance with the following section.

ARTICLE 36
TERMINATION FOR CONVENIENCE OF THE CITY

A. The City, by written notice to the Contractor, may terminate this Contract in whole or in part when sufficient appropriated or other funds are not available or in the sole discretion of the City it is in the City's best interest. In such case, the Contractor shall be paid for all Work executed and reasonable termination expenses, and a reasonable allowance for profit and overhead on Work done, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by other contract payments previously made to the Contractor and as further reduced by the value of the Work as yet not completed. The Contractor shall not be entitled to profit and overhead on Work, which was not performed.

ARTICLE 37
ASSIGNMENT OF CONTRACT

A. Contractor shall not assign any amount or part of the Contract or any of the funds to be received under the Contract unless Contractor has the prior written approval of the City and the Contractor's Surety has been given notice and has given written consent to any such assignment.

ARTICLE 38
LAW TO GOVERN

A. This Contract is made under and shall be construed in accordance with the laws of the State of Arizona. If any portion of this Contract is found to be unenforceable the rest and remainder of the Contract shall remain in full force and effect so as to effectuate the intent of the parties. Each party acknowledges that it has had an opportunity to review this Contract with counsel and this document shall be construed fairly and equitably so as to effectuate the intention of the parties irrespective of who is determined to have been the drafter of the document.

EXHIBIT A
SPECIAL PROVISIONS

SPECIAL PROVISIONS
FEDERAL PROVISIONS FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECTS

A. GENERAL CONDITIONS

1. Equal Employment Opportunity:

During the performance of this contract, the CONTRACTOR agrees as follows:

- a. The CONTRACTOR will not discriminate against any employee or applicant because of race, creed, color, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, handicap, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, handicap, color, or national origin.
- c. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advertising the labor union or workers' representative of the CONTRACTOR's commitments under Section 202 of Executive Order No. 22356 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of May 8, 1978 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The CONTRACTOR agrees that the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, Maricopa County Human Services or any of their duly authorized representative, may have access to any accounting records, books, documents, papers or records of the CONTRACTOR which are directly pertinent to this contract for the purpose of audit, examination, excerpts, and transcripts for a period of six (6) years from the date of acceptance of certificate of completion. (In the event litigation, a claim or audit is begun before the expiration date of the five year period, said records shall be retained until all such actions or audit findings involving the records have been resolved.)

- f. In the event of the CONTRACTOR's non-compliance with the nondiscrimination clauses of this contract or any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further government contracts or federally assisted construction contracts, in accordance with procedures authorized in Executive Order No. 11246 of May 8, 1978, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of May 8, 1978, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The CONTRACTOR will include the provisions of paragraphs (1.a.) through (1.g.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 22346 of September 24, 1965, so that such provisions will be binding upon each SUBCONTRACTOR or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the U.S. Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a SUBCONTRACTOR or vendor as a result of such direction by the U.S. Department of Housing and Urban Development, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

2. Clean Air Act of 1970 and Federal Water Pollution Control Act:

The CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857, etc. seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) as amended on contracts in excess of \$100,000. Violations shall be reported to the Department of Housing and Urban Development and the Regional Office of the Environmental Protection Agency.

3. Employment Opportunities for Businesses and Lower Income Persons:

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that the employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

4. Handicap Accessibility: Compliance with specifications meeting "American Standard Specifications for Making Buildings and Facilities Accessible, and Usable by the Physically Handicapped" (41 CFR 101-19.603).

5. Political Activities: Compliance with the Hatch Act. The CONTRACTOR/ SUBCONTRACTOR shall not be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.
6. Lead Based Paint: Compliance with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C., 4831 et. seq.). The CONTRACTOR and all SUBCONTRACTORS shall not use lead-based paint in any rehabilitation or construction, as indicated in the code of Federal Regulations, Title 24, Part 510, 511, 570, and 590.
7. Minority And Women Business Enterprise:

All contracts/specifications (including contracts between Contractor and subcontractor) should contain the following paragraph:

Contractors/subcontractors should take all reasonable steps and make a "good faith effort" to ensure that Minority and Women Business Enterprises have the maximum opportunity to compete for and perform a contract, if they are eligible and qualified to bid and complete the work.

It is an OWNER policy that Minority and Women Business Enterprises shall have the opportunity to participate and contract on all projects, and particularly Federally funded projects. (This is in accordance with referencing regulations OMB Circular A102, Attachment 0 and Executive Order(s) 11625 and 12138). Information on known minority and women businesses is available free upon request.

A separate record must be kept on the Minority and Women Business used as subcontractors for: a) their total dollars for the project: and b) ethnic/race status.

8. DUNS Number -It is the responsibility of the contractor to obtain a DUNS Number, a unique nine-digit identification number provided by Dun & Bradstreet, (D&B). . To obtain a DUNS number or confirm your current status with D&B, contact the D&B Government Customer Response Center (GCRC) using the toll-free number, 866-705-5711, or the online webform process at <http://fedgov.dnb.com/webform>.

Additional information on DUNS numbers is available at:
www.hud.gov/offices/adm/grants/dunsnbrguide.doc.

9. Debarment- Federal CDBG and HOME funds cannot reimburse the owner if the contractor or subcontractors have exclusions on the System for Award Management, or SAM, www.sam.gov (formerly EPLS). The purpose of SAM is to provide a single comprehensive list of individuals and firms excluded by Federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. The SAM is used to keep agencies abreast of administrative, as well as, statutory exclusions taken

throughout the Federal Government. Actions may be taken under the Federal Acquisition Regulation (FAR) or supplements thereto, under specific agency regulations or under the Government-wide Nonprocurement Suspension and Debarment Common Rule [[68 FR 66533](#)] or other specific statutory authority. Debarred contractors and subcontractors are not eligible to work on this project.

- 10. BUSINESS IN SUDAN OR IRAN-** Under A.R.S. § 35-397, the Contractor certifies that it does not have scrutinized business operations in either Sudan or Iran.

B. DAVIS BACON REQUIREMENTS, INSTRUCTIONS, AND SAMPLE FORMS

This section includes the following:

- Federal Labor Standards Provisions: basic legal requirements for Davis Bacon and related federal laws.
- Current Wage Decision: contains minimum salary and fringe amounts for workers on this project.
- Instructions for Statement of Compliance and sample payroll deductions form.

Note to Contractors:

All contractors and subcontractors are required to submit weekly payroll forms. Form WH-347 or an acceptable alternative shall be submitted to the OWNER representative **WEEKLY, within seven days of the previous ending work week.**

Refer to [A Contractors Guide for Prevailing Wage Requirements for Federally Assisted Construction Projects](#) for additional information on the Davis Bacon requirements for contractors, including a sample WH-347 payroll form. Go to www.hud.gov and search for "A Contractors Guide" to access the most recent version of this Guide.

SIGNS AND POSTING:

Signs shall be posted on the job site, at contractor's cost, in compliance with local requirements. Depending on the project, changes to the sign may be made during the preconstruction meeting.

At a minimum the following must be posted in an accessible location near the employee entrance to the jobsite and must be replaced if lost or unreadable anytime during construction:

- a. Hour and Wage Decisions in effect
- b. Notice to Employees (EEO)
- c. Safety and Health Protection on the Job (DOL)

In lieu of lengthy Davis-Bacon regulations and/or revisions being attached to the specifications, they are incorporated by reference for this federal project. Any questions or information required should be directed to the OWNER representative for bidding purposes. A detailed packet and pre-construction meeting will be provided to the lowest qualified bidder (and subcontractors) awarded this project.

Federal Labor Standards Provisions

U.S. Department of Housing and Urban Development Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5 (a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage

determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5 (a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their

representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be

considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the

registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a part to the contract, but if the agency is not such a party, the sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for the prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR Part 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR Part 5.5 (a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned; without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4. Apprentices and Trainees. (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they

performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and

Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16; trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and

journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be

subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be

liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

VERIFICATION OF BONA-FIDE SELF-EMPLOYED SUBCONTRACTOR:

Prime CONTRACTOR should be prepared to provide one or more of the following regarding a SUBCONTRACTOR

1. Registered trade name and telephone listing under that name.
2. License.
3. Liability insurance or a SUBCONTRACTOR's bond.

C. Forms

Form 1, The Bidder's Information Form: Required to be submitted with each bid.

All other forms in this section: To be completed by the apparent low bidder and submitted by the deadline indicated on the form. If there is no deadline on the form, it should be submitted within 5 days of notification of bid results.

Form	Description
1.	Bidders Information Form, including DUNS Number
2.	Certification on Drug Free Workplace
3.	Certification of Equal Employment Opportunity
4.	Affirmative Action Plan Statement
5.	Section 3 clause
6.	Section 3 Business Self-Certification
7.	Assurance of Subcontractors and Minority/Women Business participation
8.	Certification of Minority/Women Business Enterprises
9.	Employment Needs
10.	Certificate of Understanding and Authorization- Labor Standards and Davis Bacon
11.	Authorization For Deductions: Request for certification of applicable fringe benefit payments for Davis Bacon payrolls
12.	Immigration Law and Regulations Certification

General Decision Number: AZ150032 01/02/2015 AZ32

Superseded General Decision Number: AZ20140032

State: Arizona

Construction Type: Building

County: Maricopa County in Arizona.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015

ASBE0073-002 08/01/2014

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 38.11	13.07

BOIL0627-001 01/01/2013

	Rates	Fringes
BOILERMAKER.....	\$ 32.51	26.16

BRAZ0003-009 07/01/2013

	Rates	Fringes
BRICKLAYER.....	\$ 22.83	6.37

CARP0408-009 09/30/2013

	Rates	Fringes
CARPENTER (Excludes Acoustical Ceiling Installation, Drywall Finishing/Taping, Drywall Hanging, Form Work, and Metal Stud Installation).....	\$ 23.75	9.24

CARP1327-001 01/01/2014

	Rates	Fringes
CARPENTER (Drywall Hanging Only).....	\$ 19.75	6.46

* ELEC0640-005 07/01/2014

	Rates	Fringes
ELECTRICIAN (Includes Low Voltage Wiring; Excludes Installation of Alarms and Sound and Communication Systems).....	\$ 26.52	9.47

ENGI0428-012 06/01/2014

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Oiler.....	\$ 22.09	9.59
(2) Crane under 15 tons.....	\$ 25.36	9.59
(3) Crane, 15 tons to 100 tons, Tower Crane.....	\$ 26.44	9.59
(4) Crane, 100 tons and over.....	\$ 27.47	9.59

IRON0075-011 01/01/2014

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 26.52	21.02
Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson		
Zone 2: 050 to 100 miles - Add \$4.00		
Zone 3: 100 to 150 miles - Add \$5.00		
Zone 4: 150 miles & over - Add \$6.50		

LABO0383-005 11/01/2013

	Rates	Fringes
LABORER (MASON TENDER-BRICK).....	\$ 18.63	4.35

PAIN0086-006 04/01/2013

	Rates	Fringes
DRYWALL FINISHER/TAPER		
ZONE A.....	\$ 19.00	5.03
ZONE B.....	\$ 22.50	5.03

ZONE PAY:

ZONE A: Free Zone: A distance of 0 to 100 miles from the old Phoenix courthouse.

ZONE B: A distance of 101 miles and over from the old Phoenix courthouse: \$3.50 per hour over ZONE A

PLAS0394-001 07/01/2014

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER....	\$ 22.84	8.57

PLUM0469-002 07/01/2013

	Rates	Fringes
PLUMBER/PIPEFITTER		
Cononino, Maricopa, and		
Yuma.....	\$ 33.55	17.05
Pima.....	\$ 30.30	16.15

SFAZ0669-001 07/01/2013

	Rates	Fringes
SPRINKLER FITTER (Fire		
Sprinklers).....	\$ 30.12	19.47

SHEE0359-002 07/01/2014

	Rates	Fringes
SHEET METAL WORKER: (HVAC		
Duct Installation Only)		
Zone 1.....	\$ 30.67	16.31

SUAZ2012-020 05/30/2012

	Rates	Fringes
ACOUSTICAL CEILING MECHANIC.....	\$ 21.14	3.14
CARPENTER (Form Work Only).....	\$ 19.67	5.45
CARPENTER (Metal Stud		
Installation).....	\$ 16.23	0.00
CAULKER.....	\$ 16.01	0.00
ELECTRICIAN (Alarm		
Installation).....	\$ 18.31	4.68
ELECTRICIAN (Installation of		
Sound and Communication		
Systems).....	\$ 17.20	2.87
FIREPROOFER.....	\$ 15.00	0.00
GLAZIER.....	\$ 18.67	1.44
INSTALLER - SIGN.....	\$ 19.16	3.58

INSULATOR - BATT.....	\$ 11.96	3.06
IRONWORKER, REINFORCING.....	\$ 14.92	0.00
LABORER: Asphalt Raker.....	\$ 15.18	1.30
LABORER: Common or General.....	\$ 13.80	2.24
LABORER: Concrete Saw (Hand Held/Walk Behind).....	\$ 21.00	7.37
LABORER: Fence Erection.....	\$ 19.73	0.00
LABORER: Landscape & Irrigation.....	\$ 11.33	0.43
LABORER: Mason Tender - Cement/Concrete.....	\$ 15.24	3.90
LABORER: Pipelayer.....	\$ 15.10	0.85
LABORER: Plaster Tender.....	\$ 12.00	0.00
LABORER: Power Tool Operator....	\$ 14.85	4.20
LATHER.....	\$ 16.15	0.00
MASON - STONE.....	\$ 18.48	0.82
MILLWRIGHT.....	\$ 20.00	2.87
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 19.20	2.47
OPERATOR: Bulldozer.....	\$ 21.12	6.14
OPERATOR: Drill Rig Caissons....	\$ 19.06	2.39
OPERATOR: Drill.....	\$ 19.16	0.00
OPERATOR: Forklift.....	\$ 17.36	0.00
OPERATOR: Grader/Blade.....	\$ 21.00	7.07
OPERATOR: Loader (Front End)....	\$ 18.55	0.95
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 21.09	3.96
OPERATOR: Roller.....	\$ 25.00	0.00
OPERATOR: Scraper.....	\$ 21.41	0.00
OPERATOR: Screed.....	\$ 22.17	4.42
OPERATOR: Trencher.....	\$ 15.01	0.58
PAINTER: Brush, Roller, Spray and Steel.....	\$ 16.53	2.63

PLASTERER.....	\$ 16.71	0.00
ROOFER, Includes Waterproofing, and Installation of Metal Roofs.....	\$ 16.71	1.67
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 18.85	2.79
TERRAZZO WORKER/SETTER.....	\$ 21.13	0.00
TILE FINISHER.....	\$ 12.50	0.00
TILE SETTER.....	\$ 15.00	0.00
TRUCK DRIVER: Dump Trucks.....	\$ 15.55	1.42
TRUCK DRIVER: Pickup Truck.....	\$ 11.00	0.87
TRUCK DRIVER: Water Truck.....	\$ 17.72	4.21
TRUCKDRIVER: 3 and 4 Axle.....	\$ 19.29	1.36

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number,

005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

□

INSERT FEDERAL FORMS 1-12

EXHIBIT B
CONSTRUCTION PROJECT SPECIFICATIONS/PROVISIONS

CONSTRUCTION PROJECT SPECIFICATIONS/PROVISIONS

General

Bidders shall familiarize themselves with all Bidding Instructions, General Conditions, Specific Requirements and Inclusions, Bid Forms, Site General Requirements, Administration and Procedures, Supplemental Terms and Conditions, Construction Subcontract, Owner's Rules and Exhibits, etc. as the Successful Bidder shall be held responsible to comply fully therewith.

It is the Bidder's responsibility to determine all quantities for the items shown on the Bid Forms by examination of the site and a review of the drawings and specifications, including any issued Addenda. Contractors shall bid all items listed on the Bid Forms. All Contractors shall be required to insert quantities and unit prices in the spaces provided in the Bid Forms.

The bid price for **Lump Sum** items shall include all costs necessary to complete the project bid item, unless there is a change in the plans after the bid date. The bidder agrees that the unit prices for the items shown on the Supplemental Pricing Data will be used only to establish the value of changes in the scope of work if plan revisions are necessary, not to determine the low bid in the base bid. The CITY AND THE CITY'S AGENT and its representatives assume no responsibility as to the completeness of the items listed in the Bid Documents.

Work Within Contract Documents

All work mentioned or indicated within the Contract Documents shall be performed by the CONTRACTOR as part of this Contract unless it is specifically indicated in the Contract Documents that such construction is to be excluded or modified.

The CONTRACTOR shall be responsible for providing all construction staking and surveying needed to construct the work in accordance with the Plans and Specifications, and shall include such costs in his bid for the applicable items of work.

Standard Specifications

Except as otherwise indicated in these Special Provisions and construction plans, the work shall conform to the latest edition of the following Standard Specifications, Standard Drawings, and the manuals referenced in the project contract documents shall be required for construction of this project, insofar as applicable for any work to be performed within the public right-of-way and within the City jurisdictional limits.

- MAG Uniform Standard Specifications and Details for Public Works Construction Arizona, English Edition, latest version.

- Arizona Department of Transportation, Construction Standard Drawings, latest version.
- City of Buckeye Design Standards and Policies as part of the City Engineer requirements.
- Manual on Uniform Traffic Control Devices (MUTCD), Millennium Edition, latest version.
- Maricopa County Department of Transportation (MCDOT) Supplement to the MAG Uniform Standard Specifications and Details for Public Works Construction, with specific emphasis to Section 460 thru Section 478 insofar as applicable

Any section or any sub-section of any Standard Specification included within these Contract Documents by reference only is understood to be made part of these Contract Documents. The CONTRACTOR shall have at least one copy of all referenced standard specifications and details at the job site at all times.

Measurements and Payments

Replace MAG Subsection 109.2 with the following:

109.2 SCOPE OF PAYMENT:

109.2.1 Scope of Payment:

The “complete-in-place” rate shall include but not limited to all labor, material and equipment costs for preparation, installation, construction, modification, alteration or adjustment of the items, which shall include all costs for salaries and wages, all payroll additives to cover employee benefits, allowances for vacation and sick leave, company portion of employee insurance, social and retirement benefits, all payroll taxes, contributions and benefits imposed by any applicable law or regulation and any other direct or indirect payroll-related costs. The rate shall also include but not necessarily be limited to all costs for indirect charges or overhead, mileage, travel time, subsistence, materials, freight charges for material to CONTRACTOR’s facility or project site, equipment rental, consumables, tools, insurance to the levels specified in the Contract Documents, as well as CONTRACTOR’s overhead, fees and profit. This rate shall further include all site clean-up costs and hauling of construction debris to disposal sites approved by the Engineer.

109.2.2 Payment:

Payment will be made for only those items listed in the proposal and will not be made in accordance with the measurement and payment provisions of the Uniform Standard Specifications where this differs from the items listed in the proposal. All materials and work necessary for completion of this project are included in proposal items. Any work or materials not specifically referred to in these items are considered incidental to the item and are include in the unit price.

Payment will not be made for unused materials.

Geotechnical Report

No Geotechnical testing has been completed by the Engineer or the OWNER. BIDDERS are to perform any necessary site investigations to satisfy themselves of the existing soil conditions prior to submission of a bid. Any failure by the CONTRACTOR to acquire information concerning soil conditions will not relieve him from the responsibility for estimating properly the difficulty or cost of successfully performing the work.

Site Investigation and Representations

CONTRACTOR acknowledges satisfaction as to the nature and location of the work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, and uncertainties of weather, the conformation and condition of the ground, the character and quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed preliminary to and during the progression of the work, and all other matters which can in any way affect the work or the cost thereof under this contract. Any failure by the CONTRACTOR to acquaint himself with all the available information concerning these conditions will not relieve him from the responsibility for estimating properly the difficulty or cost of successfully performing the work.

The OWNER assumes no responsibility for any understanding or representation made by any of its officers or agents during or prior to the execution of this contract, unless (1) such understanding or representations are expressly stated in the writing; and (2) the contract expressly provides that responsibility therefore is assumed by the OWNER.

Licenses and Permits

The CONTRACTOR shall obtain all necessary licenses and permits required in connection with the project, including but not limited to the following:

- City of Buckeye Business License – Please refer to the City’s website at www.buckeyeaz.gov under Business License for application and fees to obtain a City of Buckeye Business License

- City of Buckeye Construction Permit – 3% of Contract Amount
- Maricopa County Dust Control Permit
- *AZPDES Stormwater General Construction Permit*

The CONTRACTOR shall pay all fees necessary to obtain the licenses and permits required for this work. The costs for obtaining licenses and permits shall NOT be included in the various items of work for the project, and no additional compensation shall be made.

The OWNER shall provide the CONTRACTOR with the following permits and/or licenses prior to the start of construction:

- None Required

The CONTRACTOR shall conform to the terms and conditions as stated in the agency permit and/or license, including but not limited to, obtaining all necessary permits and/or approvals to begin construction, compliance with permitting authority inspections, and providing as-built survey data in ASCII format (point number, northing, easting, elevation, and description) required for closure of each permit. All as-built drawings shall conform to the specific permit requirements, including electronic copies in AutoCAD® 2007 DWG format or later. All As-built plans shall be signed, sealed, and dated by a Professional Engineer or Land Surveyor registered in the State of Arizona with a completed and sealed “AS-BUILT CERTIFICATION” approval block on the cover page.

Contract Time

The CONTRACTOR shall complete all project work within ninety (90) calendar days beginning with the start date specified in the Notice to Proceed.

Construction Water

The Successful Bidder shall furnish for his operations all required equipment needed to provide sufficient Construction water for the duration of his Work. All water needed to complete the Scope of Work will be furnished and paid for by the Successful Bidder.

Construction Schedule

The CONTRACTOR shall submit to the City for approval, its proposed construction schedule at the Pre-construction Conference. The construction schedule shall be in the form of a tabulation, chart, or graph and shall be in sufficient detail to show the chronological relationship of all activities of the project including, but not limited to, estimated starting and completion dates of various activities, submittal of shop drawings to the City for approval, procurement of materials, and scheduling of

equipment. The construction schedule shall reflect completion of all work under the contract within the specified construction duration.

If the CONTRACTOR desires to make a major change in the method of operations after commencing construction, or if the schedule fails to reflect the actual progress, the CONTRACTOR shall submit to the City a revised construction schedule for approval in advance of beginning revised operations.

In addition to the preliminary schedule, the CONTRACTOR shall prepare a weekly schedule to show all major elements of the work to be constructed in the next two (2) week period. This schedule shall consist of a neat, easy-to-read, bar graph format and shall be submitted to the City at the weekly progress meetings.

Construction activities on weekends are discouraged. If certain construction activities must be performed on weekends, the CONTRACTOR shall notify the City in advance, and the City will strive to provide inspection services during these times. However, if the City is unable to provide inspection services on weekends when the CONTRACTOR desires to work, the CONTRACTOR will undertake this work at his own risk, and any work performed without inspection coverage is subject to rejection.

Material Submittal Package

CONTRACTOR shall submit four (4) Material Submittal Packages containing copies of all samples, shop drawings, catalog cuts, concrete design mix, materials, etc. for review and approval, three of which will be returned, when approved. If the CONTRACTOR wishes more copies returned, he may submit more than (4) copies, in which case the extra copies will be returned to the CONTRACTOR.

Submittals must show completely all the work to be done, and any error or omission in the construction work because of incomplete submittals will be corrected by the CONTRACTOR at his own expense, even though the work is in place. Unless specifically requested as an exception by the CONTRACTOR, and approved by the City Engineer in writing, the approval by the City Engineer of any shop drawings, catalogs, schedule, sample, and related material is limited to compliance with the contract drawings and contract specifications, and such approval by the Engineer will not relieve the CONTRACTOR of the responsibility for errors or failure properly to coordinate all elements of the project affected by the submitted material. All submittals shall be clearly identified.

It is the responsibility of the CONTRACTOR to present all such submittals to the City Engineer at least two (2) weeks in advance of his need for such approval, and in any event the OWNER will entertain no request for a time extension to the Contract resulting from a delay by the City Engineer in processing such submitted material unless the material is submitted in sufficient time to permit adequate review by the City

Engineer commensurate with the complexity of the specific submittal. Submittals transmitted by other than the CONTRACTOR will be returned to the CONTRACTOR without action of any kind. Submittals will not be returned to Subcontractors.

When specified or requested by the City Engineer, the CONTRACTOR shall submit a certificate executed by the manufacturer certifying that the materials or equipment to be incorporated in the work comply with the requirements of these specifications.

Pre-Construction Photographs

The CONTRACTOR shall provide pre-construction photographs of the entire work area and adjacent areas in digital format. The pictures shall be taken at an appropriate size and in sufficient detail for comparison with as-built conditions.

The CONTRACTOR shall provide a copy of the pre-construction photographs of the entire work area in digital format to the City of Buckeye Project Inspector prior to the start of construction.

There shall be no separate payment for "Pre-Construction Photographs". All labor, materials and equipment necessary for completion of this item shall be included in the various Unit Prices bid. Any work or materials necessary but not specifically referred to in these items are considered incidental to the item and are include in the Unit Prices.

Cooperation with Utilities

The CONTRACTOR shall cooperate with all utility companies in accordance with Section 105.6 of the MAG Specifications.

An attempt has been made to determine the location of all underground and overhead utilities, drainage pipes, and structures; however, it shall be the CONTRACTOR's responsibility to coordinate with the pertinent utility companies so that any obstructing utility installation(s) may be adjusted. The location of the underground and overhead utilities as shown on the plans is based on the best available information. The CONTRACTOR shall not assume that this represents an exact location of the affected utility(s). No guarantee is made to the accuracy of the location shown on the plans. The CONTRACTOR shall determine for himself the exact location of all utilities. Should CONTRACTOR's operations result in damage to any utility, the location of which has been brought to his attention, he shall assume full responsibility for such damage. The CONTRACTOR shall contact all utilities at least five (5) days prior to construction to check if they need a representative to observe activities around their facilities.

The CONTRACTOR shall contact Arizona Blue Stake (telephone number 602-263-1100) a minimum of two (2) working days before beginning any underground work. In addition, Blue Stake notification(s) shall be maintained on a current basis.

Protection of existing overhead utility supports shall be reviewed by the City Engineer and approved by the utility owner for conformance with any permit requirements from the affected utility. CONTRACTOR shall provide all data required by the permitting agency.

Protection and Restoration of Property

Protection and restoration of property shall be in accordance with Section 107.9 of the MAG Specifications.

The CONTRACTOR will water, grade and compact all project areas which are disturbed during construction to the lines and grades shown on the plans, or as a minimum, where no lines and grades are shown, correct those disturbed areas to a condition as good, or better than pre-existing condition.

The CONTRACTOR is responsible for protecting surrounding private property, general public, CONTRACTOR's property, personnel and the work of Subcontractors carrying out their work. CONTRACTOR shall take all reasonable precautions to protect their work from damage including providing and maintaining protection and barricading of their own work. This includes, but is not limited to, any open trenches, pits, shafts, holes in floors and similar potentially hazardous areas. All costs for trench and excavation protection systems shall be considered incidental to the item and are included in the Unit Prices.

Material Supplier Shipments and Deliveries

All material suppliers supplying materials and or equipment to the jobsite are required to operate according to all applicable traffic laws, signs, and ordinances, including but not limited to, approved traffic control plans, haul routes, speed limits, safe operating limits, and noise ordinances. No delivery shall be placed outside the right-of-way without the express written permission of the property owner.

Site Preparation

All clearing, grubbing, and stripping shall be limited to areas required to construct the facilities and shall be performed in accordance with the latest versions of MAG, inclusive of Part 200, Section 201. CONTRACTOR will dispose of all excess or unsuitable material offsite in an approved landfill location.

Storm Water Pollution Prevention Plan

Construction of improvements for this project will disturb more than 0.5 acres and therefore requires an AZPDES Permit. The General Contractor is responsible for

preparing a Storm Water Pollution Prevention Plan including obtaining a copy of the AZPDES General Permit, filing an NOI and a NOT, developing, implementing, tracking, inspecting, and updating the Storm Water Pollution Prevention Plan (SWPPP) for this project.

Mail Delivery Coordination

Construction of this project shall not cause disruption of mail delivery services within the project area. It is the Contractor's responsibility to coordinate with the U.S. Postal Service and local residents to ensure safe access to all mail boxes within the project limits for U.S. Postal Service Employees and local residents.

Solid Waste Collection Coordination

Construction of this project shall not cause disruption of solid waste collection services within the project area. It is the Contractor's responsibility to coordinate with the City of Buckeye Solid Waste Division and local residents to ensure safe access to and placement of trash receptacles for collection within the project limits.

Record Drawings (As-Built Drawings)

CONTRACTOR shall provide and keep up to date a complete set of record drawings for all infrastructure improvements. Such drawings shall fully represent installed conditions including actual locations of all surface improvements, underground site utilities, signal and appurtenant conduits. The CONTRACTOR shall record all changes in the work during the course of construction on black line prints.

All changes shall be neatly and legibly drawn to scale on the set of prints using standard architectural or engineering drafting practices and shall be stamped by a licensed Civil Engineer of Record. A list of the serial number and model of the equipment used at each location shall also be kept. Within 45 days after completion and acceptance of the project by the City, **TWO (2)** sets of record drawings or "as-built" plans shall be delivered to the City Engineer's office in full size hard copy.

Upon approval of the as-built plans, CONTRACTOR shall provide all close out documentation burned to a Compact Disc (CD).

Legal Regulations and Responsibility to the Public

Add the following to MAG Section 107:

107.1 LAWS TO BE OBSERVED, add the following:

The Contractor shall insure that contract operations are in compliance with procedures and requirements of the Maricopa County Air Pollution Control Rules and Ordinances with special attention given to the fugitive dust requirements. The Contractor shall pay any penalties imposed upon the Owner where the violation is a direct result of actions or inactions by the Contractor, the contractor's employees or subcontractors.

107.15 COMMUNITY RELATIONS SUPPORT:

107.15.1 General, add the following:

The Contractor shall notify all affected residents and businesses by handbill a maximum of 48 hours and minimum of 24 hours in advance of any street restriction that will affect access to their property. The notification shall be in both the English and Spanish languages and include the statement that street parking will not be permitted weekdays during construction hours. The Contractor shall submit the handbill draft to the Engineer for approval, prior to its distribution. If the work does not occur on the specified day, the Contractor shall distribute a new notification.

The Contractor shall provide notification as required in section 401.5 to all affected emergency services such as Fire and Police Departments, verification of medical or special support needs during construction, and to other affected entities such as schools and trash services. There shall be no separate payment for this item. Payment shall be made as part of the various Unit Prices bid in the proposal. All labor, materials and equipment necessary for completion of this item shall be included in the Unit Prices bid. Any work or materials necessary but not specifically referred to in these items are considered incidental to the item and are included in the Unit Prices.

EXHIBIT C
CONSTRUCTION PROJECT DRAWINGS

EXHIBIT D
BID FORM

EXHIBIT E
PAYMENT AND PERFORMANCE BONDS