

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

THIS DESIGN - BUILD AGREEMENT (this “Agreement”) is made _____, 20____, by and between the City of Mesa, an Arizona municipal corporation (the “City”), and _____, a(n) _____ (the “Contractor”), for complete design and construction services related to _____, Mesa, Arizona, and other items as deemed necessary by the City (the “Project”). The City and the Contractor are referred to herein individually as a “Party” and collectively as the “Parties.”

**ARTICLE 1
GENERAL**

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

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

1.3 Definitions.

A. “Allowance” means a specific amount for a specific item of Work, if any, that City agrees has not been sufficiently designed, detailed, or selected (including design changes from 90% to 100% as authorized by and at the discretion of the City) at the time the Contract Price is agreed to for Contractor to provide a definitive price.

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

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

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

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

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

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

2. This Agreement.

3. The Construction Documents.

4. Any Project Specific Provision(s) added to the Scope of Work during contract negotiation.

5. Current Maricopa Association of Government (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings and City’s amendments thereto.

6. The Contractor's Guaranteed Maximum Price Proposals (the "GMP Proposals"), attached hereto as Exhibit D and incorporated herein by reference, including but not limited to:

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

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

7. The City's Request for Proposal (the "RFP") attached hereto as Exhibit F and incorporated herein by reference.

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

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

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

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

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

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

K. "Critical Path" means the sequence of activities from the start of the Work to Final Acceptance of the Project for which any delay in the completion of these activities will delay achieving Final Acceptance in the allocated time for this Contract.

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

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

N. “Direct Construction Costs” means General Conditions Costs and Cost of the Work as set forth in Section 3.3 below.

O. “Final Acceptance” means completion of the Project (or separable units or Phases as provided in the Contract Documents), including Punch List items, by the Contractor in accordance with the Contract Documents, certified to the City by the Contractor.

P. “Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Final Acceptance date.

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

R. “Hazardous Materials” means any substance as defined below:

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

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

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

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

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

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

S. “Project Schedule” is defined as set forth in Subsection 2.3(c) below.

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

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

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

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

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

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

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

1.4 City Representations.

A. City’s Project Manager. City has either designated a City staff member to act as City’s Project Manager and/or has contracted separately with a person, firm or corporation to act as City’s Project Manager. The City’s Project Manager has no design responsibilities of any nature. All instructions by the City relating to this Agreement will be issued or made through the City’s Project Manager. All communications and submittals of Contractor to the City shall be issued or made through the City’s Project Manager unless the City or the City’s Project Manager shall otherwise direct. The Contractor shall not communicate directly with City Officials without the written consent of the Project Manager. Throughout the term of this Agreement the City’s Project Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Contractor and to call periodic conferences to be attended by the Contractor and the Contractor’s Subcontractors.

B. Limited Project Management. None of the City’s project management activities are intended to supplant or conflict with the design, budget, or any other services and

responsibilities customarily furnished by the Contractor or its Subcontractors, except as otherwise specifically modified by this Agreement.

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

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

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

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

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

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

1.5 Contractor Representations.

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

B. Subcontractor Selection Program. In conjunction with its response to the City's RFP, the Contractor submitted to the City a written procedure in conformance with ARIZ. REV. STAT. § 34-601 *et seq.*, as amended, for selection of Subcontractors to be utilized in completion of the Project (the "Subcontractor Selection Program"), which is attached hereto as part of Exhibit G. The Contractor shall conduct a correspondence campaign to attempt to create

interest among Subcontractors. The Contractor shall develop and coordinate procedures to provide answers to Subcontractors' questions. The Contractor shall ensure that each Subcontractor has secured the required business licenses, permits, insurance and bonds. The Contractor shall be solely responsible for ensuring (1) the Subcontractor Selection Program is in conformance with Applicable Law and (2) all Subcontractors are selected in accordance with the Subcontractor Selection Program. The Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees for, from and against all claims, damages, losses and expenses (including, but not limited to, attorney fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the Contractor's failure to appropriately select its Subcontractors. Additionally, as part of the Contractor's submittal of any GMP Proposal under this Agreement, the Contractor shall utilize the Subcontractor Selection Program to meet its requirements under Section 3.6 below.

C. Key Personnel. The Contractor shall provide to the City a list of the proposed key project personnel of the Contractor and its Subcontractors to be assigned to the Project. This list shall include information on the professional background of each of the assigned individuals as may be requested by the City. Such key personnel and consultants shall be satisfactory to the City and shall not be changed except with the consent of the City. The Contractor will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the Services described in this Agreement. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel with qualifications acceptable to the City. Additionally, the City shall have the right to request that the Contractor personnel be removed from the Project if, in the City's sole discretion, such personnel are detrimental to the Project delivery process. Upon receipt of such request, the Contractor shall remove such personnel unless the Contractor can provide the City with sufficient documentation to prove it is commercially impractical to replace the personnel with similarly qualified personnel. The City's approval of substituted personnel shall not be unreasonably withheld.

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

E. Site Conditions. The Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work related to the Project, and that it has investigated and satisfied itself as to the general and local conditions and constraints that are applicable to the Work such as (1) conditions bearing on transportation, disposal, handling and storage of materials, (2) the availability of labor, water, power, other utilities, and roads, (3) normal weather conditions, (4) observable physical conditions at the Site, (5) the

surface conditions of the ground and (6) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Contractor encounters subsurface or concealed conditions that differ materially from those which could reasonably have been determined from a Site surface investigation by the Contractor on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then the Contractor shall give notice to the City promptly before conditions are disturbed and in no event later than seven Days after the first observance of the conditions if a Change Order is contemplated by the Contractor due to such conditions. Such materially different conditions, if discovered after a GMP is approved, may justify pursuant to the Change Order provisions set forth in Article 8 below.

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

1.7 Data Confidentiality.

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

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

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

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

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

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

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

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

F. Contractor Responsible. The Contractor assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the Contractor, its employees, agents or Subcontractors. For the purpose of seeking injunctive relief, it is agreed that a breach of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court.

ARTICLE 2 PRE-CONSTRUCTION SERVICES

Project Schedule

2.1 Construction Documents; Design Remedies.

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

B. Project Design Standards.

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

2. The Contractor shall provide a schedule of the design activities within seven days after the Notice to Proceed. The schedule shall provide 14 days to be used by the City or its designee for reviews and approvals for any interim design submissions.

3. Design activities shall commence immediately after the City has approved the Contractor's proposed schedule of design activities in writing, including via email. The Contractor shall monitor design efforts to ensure they are in accordance with the Project Schedule and shall provide adequate time for the City's review and permitting processes along with construction activities.

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

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

6. The Contractor shall submit one set of plans and specifications in a format approved by the City.

C. Design Submittals. The City shall review, consult with third-party stakeholders, and approve the interim design submissions in four calendar weeks, unless otherwise agreed to in the Project Schedule. The Contractor shall not cause the design to proceed beyond interim design until the City approves the interim design submissions as provided in this Section. If the Contractor allows the design to proceed without City approval, the cost of any resultant redesign is not a reimbursable cost. The City's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Project. Neither the City's review nor approval of any interim design submissions and Construction Documents shall be considered to transfer any design liability to the City.

1. The Project design must meet all applicable (i) Maricopa Association of Government (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; (ii) any modifications by the City to the MAG Uniform Standard Technical Specifications, Details and Drawings; (iii)

all City building and design standards, and shall include all special provisions provided by the City. Variances from the standards and guidelines must be identified in writing by the Contractor and approved by the City. Approval of variances or resolution of conflicts shall not be considered to transfer any design liability to the City.

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

3. The Contractor shall coordinate with non-City, public, and City utilities regarding standard utility issues through the City's Project Manager, and shall incorporate pertinent information in the plans.

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

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

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

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

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

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

e. Before commencement of construction, the Contractor shall submit to the City drawings and specifications in a format specified by the City.

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

portions of the Construction Documents are (1) in violation of Applicable Law or (2) in any way inadequate to achieve the intended result of the Project, the Contractor shall immediately notify the City in writing, describing the apparent violation or inadequacy.

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

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

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

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

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

for future operation and maintenance of the site including access to equipment, systems, and other improvements that require regular or occasional maintenance or replacement.

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

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

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

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

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

2.2 Pre-Construction Phase General Services.

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

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

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

B. Construction Management Plan.

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

2. Maintaining Plan. The Contractor shall keep the Management Plan current throughout the pre-construction services phase so that the Management Plan is ready for implementation at the start of the construction phase. The update/revisions will take into account: (a) revisions in Construction Documents; (b) the Contractor's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Project Designers or the Contractor; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and rights-of-way; (d) the fast-tracking (if any) of the construction, or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment and/or materials; and (g) funding issues identified by the City.

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

1. Each Project team member is responsible for its compliance with the Project Schedule requirements. The Contractor will update and maintain the Project Schedule on behalf of and to be used by the Project team based on input from other team members. The Project Schedule will be consistent with the most recent revised/updated Management Plan. The Project Schedule will be presented in graphical and tabular reports as agreed upon by the Project team. The Project Schedule will include all tasks and deliverables required by each member of the Project team to identify long lead items, real property transactions, utility relocation activity, permitting requirements, etc. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases. The Project Schedule's activities will directly correlate with the Schedule of Values (as defined in Subsection 2.2(D)(4) below). If requested, the Project Schedule shall include resource loading for manpower and cash flow. The manpower loading shall include the daily manpower required to complete the task as shown on the Project Schedule.

2. The Contractor will include and integrate in the Project Schedule the services and activities required of the City's Project Manager, Project Designers and Contractor, including all construction phase activities. The Project Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design, schematic design, and development of the Construction Documents (detailed design), (b) separate long-lead procurements, (c) permitting issues, (d) land and right-of-way

acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and suppliers, (f) major stages of construction, (g) start-up (commissioning), and (h) occupancy of the completed Work by the City. The Project Schedule will include, by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project team, preparation and processing of Shop Drawings and samples, delivery of materials or equipment requiring long-lead time procurement, milestone dates for various construction phases, total Float for all activities, relationships between the activities, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Final Acceptance and when the Work would be ready for final acceptance.

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

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

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

1. As soon as practical during the conceptual design phase, the Contractor will review all available information regarding the design and scope of the Project, and based on the Contractor's experience in performing similar work, develop a Cost Model for review and approval by the City. Once approved by the City, the Cost Model will be continually updated and kept current as the design progresses throughout

the pre-construction phase until a final GMP for the entire Project is established. The Cost Model will be the Contractor's best representation of the complete functional Project's construction costs. The Contractor will communicate to the Project team any assumptions made in preparing the Cost Model. The Cost Model will support the Contractor's construction cost estimates and may be broken down initially as dictated by the available information. The Cost Model will also include allowances as agreed to by the Project team, including but not limited to, allowances for potential additional quantities and/or additional Work that the City may require.

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

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

4. Near completion of the 90% detailed design review and included with the associated report, the Contractor will also submit to the City for review and approval a "Schedule of Values" which complies with the following requirements. The Schedule of Values will highlight significant variances from any previously submitted preliminary Schedule of Values. The Schedule of Values will be directly related to the breakdowns reflected in the Management Plan and the Contractor's Cost Model. In addition, the Schedule of Values will detail: (a) unit prices and quantity take-offs, (b) segregate Work covered by any changes to construction phase Work already in progress, (c) General Conditions costs, (d) payment for pre-construction services, (e) all other allowances and unit price Work shown and specified in the detailed Construction Documents, and (f) where requested, material and equipment costs, labor costs, and hourly labor rates. Labor costs in the Schedule of Values will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion of the Work to be performed by Subcontractors will include Subcontractor overhead and profit.

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

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

E. Sequencing Plans. The Contractor shall provide the City with construction sequencing plans. Upon approval by the City, the construction sequencing plan shall be attached hereto as Exhibit H, and incorporated herein by reference.

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

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

ARTICLE 3 GUARANTEED MAXIMUM PRICE PROPOSAL

3.1 GMP Submittal Process. At the stage of the pre-construction phase services as determined by the City, the Contractor shall, if requested by the City, submit a GMP Proposal, which shall be the sum of the estimated Cost of the Work relating to completion of the Scope for the Project and the Construction Fee relating to the Project based upon the most-current version of the Cost Model. Each GMP Proposal shall include, in the Cost of the Work, those taxes that

are applicable at the time the GMP is established. Each GMP is the total cost of the applicable portion of the Project including the cost of labor, equipment, supplies, materials, services and allowances to complete the applicable portion of the Project. The cost data is directly correlated to the specific Construction Documents in existence at the time each GMP Proposal is prepared. The assumptions used in the preparation of the GMP Proposal shall be identified by the Contractor as part of the GMP Proposal. In submitting this proposal, Contractor represents that:

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

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

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

D. Reports, Studies, Investigations. Contractor has carefully studied all reports, studies, and Investigations; including but not limited to, asbestos, hazard materials, structural studies, explorations and tests of subsurface conditions at or contiguous to the Site, and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified in the Contract Documents for the construction phase. Contractor acknowledges that such reports, studies, and investigations may not be complete for Contractor's purposes. Contractor acknowledges that City does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents for the construction phase with respect to existing conditions including underground facilities at or contiguous to the Site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions at or contiguous to the Site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this GMP Proposal for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents for the construction phase.

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

F. Conditions and Plans Correlated. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents for the construction phase and all

additional examinations, investigations, explorations, tests, studies and data with the Contract Documents for the construction phase.

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

H. No Improper Actions. Contractor has signed the City's Non-Collusion Bidding Certification included with the solicitation documents and reaffirms its compliance therewith.

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

3.3 Costs to Be Reimbursed

A. Cost of the Work. The term Cost of the Work shall mean costs necessarily incurred by Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of City. The Cost of the Work shall include only the items set forth in this Section 3.3.

B. Labor Costs

1. Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with City's approval, at off-site workshops. Cost to be reimbursed will be the actual wages paid to the individuals performing the Work.

2. Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with City's approval. No Contractor personnel stationed at the Contractor's home or branch offices shall have wages charged to the Cost of the Work. Non-field office-based Contractor management and support personnel are expected to provide service and advice from time to time throughout the job and his/her time devoted to Project matters is considered to be covered by the Contractor's Fee.

3. Wages and salaries of Contractor's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Section

3.3(B) but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of his/her time required for the Work. Employee bonuses and/or costs associated with Employee Stock Ownership Plans (“ESOP”) will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs considered to be covered by the Contractor’s Fee.

4. Costs paid or incurred by Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holiday, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 3.3(B)(1) through (3).

5. Cost of the Work shall include the actual net cost to Contractor for worker’s compensation insurance attributable to the wages chargeable to the Cost of Work per this Agreement. The actual net cost of worker’s compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums, etc. Contractor may charge an estimated amount for worker’s compensation insurance costs, but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.

6. Overtime wages paid to salaried personnel (if approved in advance in writing by City) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime worked.

7. Any overtime premium or shift differential expense to be incurred by Contractor for hourly workers shall require City’s advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Contractor is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Contractor or anyone, he/she is responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

8. Reimbursable labor burden costs will be limited to payroll taxes, worker’s compensation insurance, the employer’s portion of union benefit costs for union employees working on the Project, and the actual verifiable fringe benefit costs incurred by Contractor for non-union individuals working on the Project subject to the following maximum percentages for the following reimbursable non-union fringe benefit costs. The following maximums (as a percentage of reimbursable actual wages by individual) shall apply for each of the following types of fringe benefit costs specifically attributable to each of the non-union personnel working on the Project:

a. Medical Insurance, Dental, Life and AD&D Insurance:
12.00%

b. Holiday, vacation and other paid time not worked:
10.00%

c. Pension Plan Contributions to Vested Employee Account, Simplified Employee Pension Plans, or 401K matching plans (Note: ESOP related costs are covered by the Contractor Fee) 10.00%

d. For non-union personnel, no other fringe benefit costs (other than the three specific categories listed immediately above, shall be considered reimbursable Cost of Work. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this agreement are intended to be covered by the Contractor Fee.

C. Subcontract Costs

1. Payments made by Contractor to Subcontractors in accordance with the requirements of the subcontracts.

2. For Scope of Work Bid Packages typically performed by Subcontractors, Contractor may “self-perform” such Work on an actual cost basis subject to an agreed upon Guaranteed Maximum Price for the “self-performed Work”. The Contractor shall, unless agreed to by City in writing, bid his/her proposed guaranteed Maximum Price for the work to be “self-performed” against at least three other interested trade Contractors. All savings under any such Subcontract for “self-performed Work” shall be applied to reduce the Cost of Work under the Contract and the Guaranteed Maximum Price. For purposes of defining “self-performed Work” subject to this provision, any division of Contractor, or any separate Contractor or Subcontractor that is partially owned or wholly owned by the Contractor or any of his/her employees or employee’s relatives will be considered a related party entity and will be subject to this provision regarding “self-performed Work”. No self-performed Work will be allowed to be performed on a Fixed Price basis.

3. Contractor (with respect to its Suppliers, Subcontractors and all lower tier Subcontractors) shall provide City advance written notice and shall obtain City’s approval for any proposed Subcontract Change Order, Material Purchase Order, or other financial commitment in an amount in excess of \$5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum Cost). It is agreed that sums applicable to any Subcontract Change Order, Purchase Order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to Contractor, Subcontractors or Suppliers whether as Costs of the Work

or as reasonable termination costs in the event of termination.

D. Costs of Material and Equipment Incorporated in the Completed Construction

1. Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

2. Costs of materials described in the preceding Section 3.3(D)(1) in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, in any, shall become City's property at the completion of the Work or, at City's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to City as a deduction from the Cost of Work.

3. Proceeds from the sale of recyclable materials, scrap, waste, etc. shall be credited to job cost.

E. Costs of Other materials and Equipment, Temporary Facilities and Related Items

1. Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by Contractor. Cost for items previously used by Contractor shall mean fair market value.

2. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by Contractor at the site, whether rented from Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to City's prior written approval.

3. The Projected usage for each piece of equipment to be rented for use on the Project and the estimated total rentals shall be considered by Contractor before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the Project, Contractor shall transfer title and possession of all remaining job-owned equipment to City, or Contractor may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by City and Contractor.

4. Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is

stationed at the jobsite. When the piece of equipment is no longer needed for the Work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of Contractor.

F. Equipment Rental Rates

1. Compensation for equipment used on the Project shall be paid in accordance with the Equipment Plan submitted by Contractor in the accepted GMP Proposal and no payments will be made in excess of the rates set forth in the Equipment Plan, or actual documented costs, whichever is less.

2. All equipment rental rates and costs are subject to City's right to audit when submitted as part of Equipment Plan and/or at any time during the Project.

3. The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

4. Fair market value for used material and equipment as referred to in the Contract Documents shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.

5. All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of Contractor, and not City, and the cost of such losses shall not be reimbursable under the Contract.

6. Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to City each month. For each piece of equipment, such inventory should contain at a minimum (i) original purchase price or acquisition cost (ii) acquisition date (iii) approved Fair Market Value at the time the piece of equipment was first used on the job and (iv) final disposition.

7. All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not

considered routine and ordinary; consequently, such costs are not reimbursable and are intended to be covered by the rental rates.

G. Miscellaneous Costs

1. Costs of removal of debris from the Site.
2. That portion of the reasonable expenses of Contractor's personnel incurred while traveling in discharge of duties connected with the Work.
3. No travel expenses will be reimbursed to Contractor's representatives unless Project related travel required them to travel to a destination outside of Arizona. Any travel involving airfare will require advance written approval by an authorized City's representative.
4. That portion of insurance and bond premiums that can be directly attributed to the Contract. The City will reimburse Contractor for contractually required bond at time of first pay application for GMP and Cost-Based contracts upon receipt of proof of payment from the Contractor. If the Contractor completes Work for less than the Contract Price, Contractor shall credit the City a pro-rated amount for the unused portion of the bond payment.
5. Contractor's actual cost for insurance shall be considered to be included within the Maximum limit for General Conditions Costs. All premiums for any insurance and bonds required for the Project shall reflect the net actual costs to Contractor after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.
6. The amount to be reimbursed to Contractor for all contractually required insurance will be actual costs not to exceed a total of 2% of the Contract Value, unless Contractor establishes to City's satisfaction that the actual cost is higher, and City agrees to such actual higher cost in writing. If Contractor's cost of contractually required insurance is greater than the amount agreed to be reimbursed per this Contract Provision, the difference shall be considered to be covered by the Contractor's Fee. The City will reimburse Contractor for contractually required insurance on a monthly basis for GMP and Cost-Based contracts. If Contractor can demonstrate substantial savings by paying for all insurance in advance, the City may agree to reimburse all insurance costs at time of first pay application for GMP and Cost-Based contracts with proof of payment from Contractor.
7. Sales, use or similar taxes imposed by a governmental authority that are related to the Work.
8. Fees and assessments for the building permit and for other permits, licenses and inspections for which Contractor is required by the Contract Documents to

pay.

9. Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work and which do not fall within the scope of Section 3.3(H)(3), below.

10. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suites or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Contractor resulting from such suites or claims and payments of settlements made with City's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price.

11. Data processing costs related to the Work. However, any such data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day to day administration, management and control of the Project. The aggregate charges for any such hardware shall not exceed the Fair Market Value of the hardware at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the Fair Market Value, that particular piece of hardware shall be turned over to City whenever it is no longer needed for the Project. If Contractor elects to keep the particular piece of hardware, the job costs shall be credited with a mutually agreeable amount which shall represent the Fair Market Value of the particular piece of hardware at the time it was no longer needed for the job. Software or other costs associated with the use of computer programs shall not be considered to be a reimbursable cost and will be considered to be covered by the Contractor's Fee.

12. Deposits lost for causes other than Contractor's negligence or failure to fulfill a specific responsibility to City as set forth in the Contract Documents.

13. Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between City and Contractor, reasonably incurred by Contractor in the performance of the Work and with City's prior written approval; which approval shall not be unreasonably withheld.

14. Expenses incurred in accordance with Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if pre-approved by City in writing. If City authorizes the reimbursement of relocation costs, the reimbursable relocation expenses will be limited to a maximum of \$50,000 per person. Any relocation cost incurred by Contractor in excess of the amount reimbursed by City will be considered to be covered by the Contractor's Fee.

H. Other Costs and Emergencies

1. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by City.

2. Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

3. Costs of repairing or correcting damaged or nonconforming Work executed by Contractor, Subcontractors or Suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of Contractor and only to the extent that the cost of repair or correction is not recoverable by Contractor from insurance, sureties, Subcontractors or Suppliers.

I. Related-Party Transactions

1. The term “Related Party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with Contractor; any entity in which any stockholder in, or management employee of, Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of Contractor. The term Related Party includes any member of the immediate family of any person identified above.

2. If any of the costs to be reimbursed arise from a transaction between Contractor and a Related Party, Contractor shall notify City in writing of the specific nature of the contemplated transaction, including the identity of the Related Party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If City, after such notification, authorizes in writing the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and Contractor shall procure the Work, equipment, goods or service from the Related Party, as a Subcontractor. If City fails to authorize the transaction, Contractor shall procure the Work, equipment, goods or service from some person or entity other than a Related Party.

J. General Conditions Costs

1. General Conditions Costs may include, but are not limited to, the following types of costs incurred by Contractor during construction of the Work to the extent they are reimbursable Costs of the Work as delineated above: payroll costs for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site (Project Manager, Project Engineer, Construction Manager, etc.), workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of

consultants not in the direct employ of Contractor or Subcontractors, fees for permits and licenses.

2. General Conditions Costs may be paid on a percentage of the Contract Price as set forth in the Contract. All costs included in the General Conditions Costs shall not be separately invoiced to or paid by City.

3. The total amount of General Conditions Costs for the Work may be divided by the number of days allowed for performance of the Work, to determine a fixed daily rate for General Conditions Costs that may be used in computing the General Conditions Costs allocated to any period of time, or for any adjustments in the General Conditions Costs agreed to in writing by City.

3.4 Costs Not to Be Reimbursed. The Cost of Work shall *not* include:

A. Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the site office, except as specifically provided in Sections 3.3(B)(2) and (3).

B. Expenses of Contractors' principal office and offices other than the site office.

C. Overhead and general expenses, except as may be expressly included in Section 3.3.

D. Costs of Contractor's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly, Contractor should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at Contractor's home or branch offices, or other outside service locations.

E. Contractor's capital expenses, including interest on Contractor's capital employed for the Work.

F. Rental costs of machinery and equipment, except as specifically provided in Section 3.3(F).

G. Except as provided in Section 3.3(H)(3) of the Agreement, costs due to the negligence or failure to fulfill a specific responsibility of Contractor, Subcontractors and Suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.

H. Any cost not specifically and expressly described in Section 3.3.

I. Costs, other than costs included in Change Orders approved by City that would cause the GMP to be exceeded.

J. Costs for obtaining security clearances, including staff time, overhead, travel, and other associated costs.

3.5 Discounts, Rebates, Refunds, and Savings

A. Cash discounts obtained on payments made by Contractor shall accrue to City if (i) before making the payment, Contractor included them in an Application for Payment and received payment therefore from City, or (ii) City has deposited funds with Contractor with which to make payments; otherwise, cash discounts shall accrue to Contractor. Trade discounts, rebates, refunds and amounts received from sales or surplus materials and equipment shall accrue to City, and Contractor shall make provisions so that they can be secured.

B. Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any Subcontractor default insurance, refunds or rebates from any Contractor controlled insurance programs applicable to the Project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

C. “Cash” discounts which may accrue to Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of “Cash” discounts greater than 1.5% shall automatically accrue to City if Contractor is eligible to take advantage of the discounts.

D. Amounts that accrue to City in accordance with the provisions of Section 3.5(A) shall be credited to City as a deduction from the Cost of the Work.

E. Any and all savings on the GMP, or any separately guaranteed items comprising the GMP, shall belong to City, subject to any express right in the Contract for Contractor to share in savings. Savings are subject to City’s right to audit, and may be audited separately.

3.6 Competitive Bidding and Sub-Bids.

A. Subcontractor Selection. The Contractor will develop Subcontractor interest, submit a sufficient number of names of qualified Subcontractors for each trade in the Project and solicit bids for the various Work categories. All Subcontractors must have an active System for Award Management (SAM) Registration in order to bid on and work as a subcontractor. SAM registration is available through the US Federal Contractor Registration (USFCR) website and must be renewed annually to remain active and in compliance. USFCR recommends renewing 90 days prior to the SAM expiration date. If there are not three qualified Subcontractors available for a specific trade, the Contractor will request approval by the City’s Project Manager to submit fewer than three names. ~~No~~ change in the City approved Subcontractors will be allowed without prior written approval by the City. If Contractor desires to self-perform certain portions of the Work, it shall request to be one of the approved Subcontractor bidders for those specific bid packages. Contractor’s bid will be evaluated in

accordance with the process identified below. If events warrant and City concurs that it is necessary in order to ensure compliance with the Project Schedule and/or the most recent Detailed Cost Estimate, Contractor may be authorized to self-perform Work without bidding or rebidding the Work. When Contractor self-performs Work without bidding, only the actual costs associated with performing the Work in accordance with the approved GMP will be billed and may be subject to audit by City.

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

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

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

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

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

G. Pre-award Conference. Promptly after receipt of the notice of intent to award subcontracts, the City will conduct a pre-award conference with the Contractor and other Project team members. At the pre-award conference, the Contractor will (1) review the nominated slate of Subcontractors and suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or supplier; (2) discuss City concerns relating to any proposed self-performed Work; (3) review the Contractor's proposed Contract Price for the Work during the construction phase; (4) resolve possible time frames for the commencement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Accept the Contractor's original or revised GMP Proposal, if within the City's budget, without comment.

2. Accept the Contractor's original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the Contractor that the Project budget has been increased to fund the differences.

3. Reject the Contractor's original or revised GMP Proposal because it exceeds either or both the City's budget and the independent third party's estimate, in which event, the City may terminate this Agreement.

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

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

3.10 Acceptance; Effect. Upon acceptance by the City of each GMP Proposal, the GMP contained therein, and its basis shall be set forth in the applicable Change Order. Once established, the GMP and the corresponding Final Acceptance date shall be subject to modification only as provided in Articles 6 and 8 below.

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

3.12 Failure to Agree Upon GMP. If the City and the Contractor do not agree to any provisions of the GMP Proposal, then all references in this Agreement to the GMP shall not be applicable, and the Parties shall proceed on the basis of reimbursement of pre-construction and design services as provided in Article 7 below.

ARTICLE 4 CONSTRUCTION SERVICES

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

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

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

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

A. Government Approvals and Permits.

1. The Contractor shall be primarily responsible to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project, including building and demolition permits. The Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices. Contractor will pay review fees for all required permits. Contractor shall also pay for utility design fees for permanent services. In the event the design relates to City of Mesa Electric facilities, Contractor shall pay the City for those design services.

2. Copies of the required permits and notices must be provided to the Project Manager prior to starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

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

B. Pre-construction Activities.

1. Prior to the commencement of any Work, the City's Project Manager will schedule a pre-construction conference.

2. The Notice to Proceed date will be set by the City. At or after the pre-construction conference and upon delivery of the required bonds and insurance in a City-approved format or at such other time as the City may elect, a Notice to Proceed letter will be issued confirming the construction start date, the Contract Time and the Final Acceptance date.

3. Beginning on the date of the Notice to Proceed, Contractor shall begin to fulfill Contractor's obligations under the Contract. Contractor's obligations include providing City and other agencies with any submittals required by the Project Specific Provisions, including but not limited to, an approved Project Schedule, Traffic Control Plans, and a Stormwater Pollution Prevention Plan. Contractor shall submit all such required submittals before any physical construction work commences on the Site.

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

C. Project Management.

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

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

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

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

D. Reports.

1. The Contractor shall prepare and distribute design phase change reports monthly to the City that shall list all City-approved Change Orders as of the date of the report and shall state the effect of the Change Orders on the Project budget and the Project Schedule.

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

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

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

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

4.5 Work Management.

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

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

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

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

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

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

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

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

G. Grades, Lines, Levels and Benchmarks. The Contractor shall establish and maintain all building and construction grades, lines, levels, and benchmarks, and shall be

responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.

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

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

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

K. Subcontractor Meetings. Periodically, the Contractor shall conduct meetings at the Site with each Subcontractor. The Contractor shall conduct coordination meetings with all Subcontractors. The Contractor shall record, transcribe and distribute minutes to all attendees, the City and the Project Designers.

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

M. No Subcontractor Reliance. Contractor shall ensure that each Subcontractor (1) has inspected the Site and has thoroughly reviewed this Agreement as the same may be revised by the City, and is not relying on any opinions or representations of the City, (2) agrees to perform and complete the Work in strict accordance with this Agreement and under the Contractor's direction, (3) agrees that any exclusions of any Work must be approved in writing

by the Contractor prior to acceptance of any agreement between Contractor and a Subcontractor or same shall not be excluded hereunder, (4) is responsible for all safety precautions and programs and shall provide all protection and necessary supervision to implement said precautions and programs as set forth in Section 4.13 below, (5) shall provide all competent supervision necessary to execute all Work and any Work incidental thereto in a thorough, first-class, workmanlike manner and (6) has acknowledged that it is Subcontractor's responsibility that all of the Work and any Work incidental thereto conforms to, and is performed in accordance with, Applicable Law.

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

O. Quality Control. The Contractor shall establish and implement a program to monitor the quality of construction by itself and by Subcontractors. The purpose of the program shall be to protect the City against defects and deficiency in the Work of the Contractor or the Subcontractors. The Contractor shall reject the Work and transmit to the Subcontractor a notice of nonconforming Work when the Contractor believes the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the Contractor is not authorized as part of this service to change, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

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

4.6 Control of the Work Site.

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

B. Material and Equipment Storage. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site by the Contractor.

When equipment or materials are no longer required for the Work, each shall be removed promptly from the Site.

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

4.7 Time Management.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. The schedule shall include a Critical Path activity that reflects anticipated rain and weather delay during the performance of the Agreement. No additional compensation shall be given for any rain-related delays or impacts on the Work or the Project Schedule. No time extension will be granted in the Project Schedule unless the rainfall during the construction of Work is unusually severe, was not reasonably anticipated, and the total rainfall was significantly in excess of the normal rainfall for the Project Site location. Normal rainfall for the Project will be determined from the 10-year average rainfall for the Site as measured by the National Oceanic and Atmospheric Administration or comparable source of reliable information for rainfall in Mesa, Arizona. In addition, the excessive rainfall must have actually impacted Work activities on the Critical Path and caused delay beyond any remaining Float at the time of the rain-caused delay. The burden of documenting normal rainfall, the excessive rainfall and the impact on Critical Path activities is on Contractor. All other provisions in the Contract Documents relating to claims, including without limitation notice requirements, apply to any claim by Contractor for a rain delay.

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

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

1. The total Float Time within the overall schedule is for the exclusive use of City, but City may approve Contractor's use of Float as needed to meet contract Milestones and the Project completion date.

2. Contractor shall not be allowed to sequence, hide, or reallocate Float Time through such strategies, as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, tec. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

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

4.8 Cost Management.

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

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

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

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

4.9 Shop Drawings, Product Data and Samples.

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

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

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

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

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

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

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

4.10 Quality Control, Testing and Inspection.

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

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

C. Test Methods. The procedures and methods used to sample and test material will be determined by the Project Designers. Unless otherwise specified, samples and tests shall be made in accordance with MAG 700 Series and the standard methods ASTM as referenced in the MAG 700 Series, any applicable Mesa amendments to MAG, and the City of Mesa Field Testing Handbook.

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

1. When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and retesting will be paid for by the Contractor.

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

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

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

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

4.11 Trade Names and Substitutions.

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

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

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

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

4. The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any request for adjustment in the Contract Time created by the substitution.

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

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

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

4.12 Project Record Documents.

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

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

- Dimensional changes to the drawings.
- Revisions to details shown on drawings.
- Locations and depths of underground utilities.
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Documents.
- Similar deviations, variations and modifications.

2. Mark completely and accurately Project Record Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents.

3. Include any supplemental drawings, sketches, or other information to provide the most accurate representation of actual physical condition.

4. Note Change Order numbers, as required to identify the source of the change to the Construction Documents.

5. As a condition of Final Acceptance, Contractor shall submit complete Project Record Documents, Shop Drawings, and an updated submittal log with the dates for all accepted submittals to the City Representative for review and comment.

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

1. A complete set of electronic Project Record Documents prepared in AutoCAD format compatible with City CADD technology. The Contractor shall cause the Project Designers to revise and update the electronic drawing files. Each drawing shall be clearly marked with "Record Drawing."

2. The original copy of the Project Record Documents (including all redline mark-ups).

4.13 Project Safety.

A. The Project and all Work performed in relation thereto is governed by applicable provisions of the federal laws, including but not limited to, the latest amendments of the following:

1. Williams-Steiger Occupational Safety & Health Act of 1970, Public Law, 91-596.

2. Part 1019 and Part 1926 – Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations.

3. Part 1518 – Safety and Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.

B. Contractor is responsible for safety of the job site for employees of Contractor as well as for members of the general public and others who may drive or walk through or be at the site. City has established a written policy for Contract Construction Safety. Contractor shall comply with this policy which is attached as Exhibit M.

C. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work and stored On-Site or Off-Site; and (iii) all other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and (iv) the owners or tenants of adjacent property and their patrons, employees and invitees.

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

E. Contractor shall provide a “competent person” as required by O.S.H.A regulations. The “competent person” shall be identified at the Pre-Construction Conference with City advised in writing of any changes.

F. The “competent person” shall make routine daily inspections of the Site and shall hold weekly safety meetings with Contractor’s personnel, Subcontractors and others as applicable.

G. Contractor and Subcontractors shall comply with all legal and regulatory requirements relating to safety, as well as any City specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable legal and regulatory requirements.

H. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to the City’s Project Manager and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

I. Contractor’s responsibility for safety under this Section 4 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

J. As between City and Contractor, Contractor is responsible to City for any and all the safety issues relating to the Work on the Project. Contractor shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards. Contractor's responsibility for review, monitoring, and coordination of the Subcontractor's safety programs shall not extend to direct control over execution of the Subcontractors' safety programs. Notwithstanding Contractor's safety obligations to City, it is agreed and understood that each individual Subcontractor shall remain controlling employer responsible for the safety programs and precautions applicable to its own Work and the activities of other's Work in areas designated to be controlled by such Subcontractor for purposes of workers compensation insurance coverage. Nothing in this agreement shall relieve Contractor of his responsibility to maintain traffic, structures, etc., as noted on the Plans, Specifications, and Project Specific Provisions. Contractor is responsible to provide all necessary shoring, bracing and trench support as is necessary to maintain traffic structures, etc., as stipulated in the Plans, Specifications, and Special Provisions. If the stability of adjoining building, walls, roadways, etc., is endangered by Contractor's excavation, shoring, bracing, or under pinning shall be provided as necessary to ensure project safety. Cost for shoring, bracing, underpinning, and trench support shall be included in the appropriate items listed in the Contract Price, and no additional payment shall be made for this Work.

K. For all projects that include underground excavation or other Work that could impact City utilities, Contractor shall be required to complete a free online Underground Damage Prevention and Traffic Safety presentation by City's Energy Resources Department, prior to taking control of the jobsite. This presentation includes background training on the various City utility systems, current City programs for locating and protecting existing utilities, a review of hazardous conditions specific to buried utility lines such as gas, electric, water, sewer, telecommunications, etc., and provides a forum for establishing lines of communication between appropriate City and Contractor staff prior to beginning work on the project.

1. At a minimum, the following Contractor personnel shall attend this training and complete any required follow-up activities: Job Superintendent, Foreman, and Operator(s) from Contractor, the same staff from the Natural Gas Subcontractor(s), and any other major Subcontractor as determined by City. Contractor is encouraged to have additional field personnel attend if possible.

2. Following completion of the presentation, Contractor shall provide a letter to City's Project Manager, certifying compliance with this requirement. To be accepted by City, Contractor Certification Letter must specifically reference the Project Name and Number, the date(s) and time(s) of presentation, and the names of personnel who attended.

3. Contractor shall attend pre-scheduled training sessions as needed to accommodate the number of Contractors and schedules of upcoming projects. The training is online and will be provided by City's Energy Resources Department. Contractor may register for a pre-scheduled training session at <https://secure.mesaaz.gov/LearningCenter/Catalogs/Energy-Resources>.

4. Completion of this training shall take place prior to the Contractor taking control of the job site and will typically occur after the Pre-Construction Conference. Contractor may arrange to attend prior to the Pre-Construction Conference if desired. If the required Contractor field personnel do not attend this training session in a timely manner, a stop Work order may be issued until the training is satisfactorily completed, and this will not be an acceptable basis for claiming an extension of Contract Time. The latest acceptable date for completion of the underground damage prevention training will be established at the Pre-Construction Conference.

5. Nothing in this Section or City's Underground Damage Prevention and Traffic Safety training presentation shall be construed as replacing or superseding OSHA Regulations, Arizona State Law, and City's established policy for Contract Construction Safety, or other applicable regulations. Contractor shall maintain and have sole responsibility for safety on the job site.

4.14 Substantial Completion.

A. When Contractor considers that the Work, phase or a portion thereof, which City agrees to accept separately, is substantially complete, Contractor, in conjunction with the Inspector, shall prepare and submit to the City's Project Manager a comprehensive Punch List of items to be completed or corrected prior to Final Acceptance and Final Payment. Failure to include an item on such Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.

B. Upon receipt of Contractor's Punch List, City's Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. City's Project Manager may, at City's Project Manager's sole option, be assisted in such inspection by the Design Professional for the Project and/or a designed third-party inspector. If the inspection by the City's Project Manager discloses any item, whether or not included on Contractor's Punch List, which is not sufficiently completed in accordance with the Contract Documents so that City can occupy or utilize the Work, phase or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Final Acceptance, complete or correct such item upon notification by City's Project Manager. In such case, Contractor shall then submit a request for another inspection by City's Project Manager to determine Final Acceptance.

C. The City's Project Manager shall not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by City for its intended purpose, opening to the general public, full occupancy or use by City (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full-operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, vertical transportation and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other Work as applicable, has been performed to a similar state of essential and satisfactory completion. A minor amount of Work, as determined by and at the discretion of the City's Project Manager, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective Work, minor adjustment of controls or sound systems, or completion or correction of minor exterior Work that cannot be completed as a result of weather conditions, will not delay determination of Substantial Completion. If prior written approval is obtained from City for purposes of Substantial Completion, specified areas of the entire Work or Project may be individually certified as Substantially Complete. In no event shall Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities (as applicable) and (ii) all terms and Work required under this Agreement have been fulfilled by Contractor and same shall have also been approved and accepted by City, subject only to the Punch List items.

D. If requested by City, Contractor shall complete and turn-over to City the Project on a phased basis. Each phase shall have a separate inspection by the City's Project Manager, a Punch List generated, and then an inspection by City with final approval and acceptance only after the City's Project Manager's Punch List.

4.15 Final Acceptance

A. Unless otherwise expressly agreed to in writing by City, Final Acceptance must be obtained by no later than 30 calendar days after the date of Substantial Completion. Failure to timely obtain Final Acceptance will be a material breach of the Contract.

B. Upon receipt of written notice that the Work is ready for final inspection and acceptance, City and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not occur until all items of Work, including Punch List Items, have been completed to City's satisfaction as reflected in the written Final Acceptance.

C. Final Payment shall not be due, owing, or paid by City until Final Acceptance is issued.

D. Permitting Contractor to continue and finish the Work or any part of it after the time fixed for its completion (whether milestone, phase, Substantial completion or Final Acceptance) or after the date to which the time fixed for any completion may have been extended, does not operate as a waiver by City of any rights under the Contract Documents, law or equity.

E. Notwithstanding the existence of one or more disputes between the parties concerning the scope of the Work, the Project Schedule, Contract Time, payments or any other matter, and further notwithstanding a party's invocation of the Dispute Resolution provisions specified of this Contract, unless City suspends the Contract or Contractor's performance, Contractor shall continue to prosecute the Work, including any Change Order work or Extra Work Orders, in a diligent and timely manner and not stop, slow down or impede by action or inaction the progress of the Work.

4.16 Correction of Defective Work.

A. Contractor agrees that it shall be responsible to manage and administer the correction of any Work that is not in conformance with the Contract Documents during the warranty periods set forth in Section 5.5, below, or during any longer periods to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

B. No Effect on Limitations Period. The deadlines referenced in Section 5.5 below applies only to Contractor's obligation to correct nonconforming Work as provided in this Section and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding Contractor's obligations under the Contract Documents or as may be allowed by law.

ARTICLE 5 POST-CONSTRUCTION PHASE

5.1 Final Accounting. At the conclusion of the Project, the Contractor shall prepare final Project accounting.

5.2 Certificates. The Contractor shall secure required certificates of inspection, testing or approval and deliver them to the City. Contractor also shall submit a signed copy of Contractor's Affidavit Regarding Settlement of Claims, the form of which is attached hereto at Exhibit N.

5.3 Manufacturer Manuals and Warranties. The Contractor shall require the Subcontractors to provide manufacturers' operations and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. Prior to Final Acceptance of the Project, the Contractor shall compile such manuals, warranties and guarantees, bind same in an organized manner and deliver the bound materials to the City; the City shall not be required to

issue the final payment to the Contractor pursuant to Section 9.6 below until after the compiled manuals, warranties and guarantees have been delivered to the City. At the discretion of the City, electronic records may be substituted for the bound materials required in this section.

5.4 Inspection and Testing. If requested by the City and with the assistance of the City's maintenance personnel, the Contractor shall schedule the inspection of utilities and operations of systems and equipment for readiness and assist in their initial start-up and testing.

5.5 Warranties.

A. Warranty for the Work. Unless a longer term is specified the Contract Documents, Contractor or its assignee shall give to the City a one-year warranty against deficiencies in material and workmanship for all Work on the Project or other such warranty as required by the City Engineer, which warranty shall begin on the Final Acceptance date, unless Final Acceptance does not apply to this Contract, in which case the warranty period shall begin on the date of Acceptance noted in the Letter of Acceptance. Any material deficiencies in material or workmanship identified by City staff during the warranty period shall be brought to the attention of the Contractor and its assignee that provided the warranty, which both shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the City Engineer, which may include correction, removal or replacement of nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. Contractor shall respond in writing to any notice of nonconforming Work within 48 hours, and that response must include a plan and schedule for corrective action. Continuing material deficiencies in a particular portion of the Work shall be sufficient grounds for the City to require (1) an extension of the warranty for an additional warranty period and (2) the proper repair of or the removal and reinstallation of, that portion of the Work that is subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, the Contractor agrees to repair any damage to the Work caused by construction activities on the Site. Nothing contained herein shall prevent the City or the Contractor from seeking recourse against any other third party for damage to the Work caused by such third party.

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

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

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

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

F. Specialty Warranties. The foregoing provisions notwithstanding, Contractor shall provide written warranties for the following specialty Work for the durations set forth below:

1. Roofing Manufacture – Ten (10) years
2. Exterior Metal Wall Systems – Five (5) years
3. Termite Treatments – Five (5) years
4. Acoustical Tile – Five (5) years
5. Mechanical Contractor – Two (2) years
6. Plumbing Contractor – Two (2) years
7. Electrical Contractor – Two (2) years
8. Roofing Contractor – Two (2) years
9. Other specialty Work as specified by the City Engineer and set forth in the Contract Documents shall have a warranty period negotiated prior to contract execution.

G. Administration of Corrective Work. Contractor agrees that it shall be responsible to manage and administer the correction of any Work that is not in conformance with the Contract Documents during the warranty periods set forth in this Section 5.5, or during any longer periods to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

ARTICLE 6 CONTRACT TIME

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

6.2 Commencement of the Work. The Work, except for the (A) review of Construction Documents and design remedies services set forth in Section 2.1 above, and (B) Pre-Construction Phase General Services set forth in Section 2.2 above, shall commence on the Notice to Proceed date of the applicable Amendment or Change Order, and shall proceed in general accordance with the Schedule for the Work set forth therein.

6.3 Prosecution of the Work. The Contractor shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Project Schedule. If the delay is an Inexcusable Delay, as defined below, the Contractor shall

prepare a recovery schedule for the City's review and approval, showing how the Contractor will compensate for the delays and achieve Substantial Completion by the date shown on the Project Schedule. If the Contractor is unable to demonstrate how it will overcome Inexcusable Delays, the City may order the Contractor to employ such measures as are necessary to bring the Work into conformity with the date of Substantial Completion set forth therein, the costs of which shall be included as part of the Cost of the Work. If the delay is an Excusable Delay, as defined below, the City shall either (A) authorize an extension in the Project Schedule to account for such delay, and adjust the GMP on account of such delay or (B) request that the Contractor prepare a recovery schedule showing how (if possible) the Contractor can achieve Substantial Completion by the date shown on the Project Schedule, and adjust the applicable GMP in accordance with the Change Order provisions of this Agreement related to any activities required of the Contractor on account of such recovery schedule.

6.4 Critical Path Activities. To the extent the Contractor completes activities on the Critical Path earlier than scheduled, the savings in time on account thereof shall be considered Float Time.

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

6.6 Calculation of Delays and Damages

A. Time and Compensation Limited to Excusable/Compensable Delay. An extension in the scheduled Final Acceptance date will only be granted in the event of Excusable/Compensable (“E/C”) Delays affecting Work activities on the Critical Path. E/C Delays are delays caused solely by the City’s actions or inactions which are unreasonable under the circumstances, and which were not within the contemplation of the parties to the Contract at or prior to the time of execution of the Contract. Since the Contractor presumably has no control over the events causing the delay, it may be entitled to both contract time extensions and additional compensation for delay damages. Further, the Contractor may be entitled to additional compensation from the impact of that delay on other Work. Examples of (E/C) Delays include, but are not limited to: (i) failure to properly locate/Blue Stake an underground City-owned utility within 2 feet of the actual location; (ii) failure to relocate City-owned utilities far enough in advance of construction in an area where the Contractor is scheduled to work such that it delays start or completion of the Contractor’s regularly scheduled Work; (iii) failure to provide City-furnished equipment or materials in a timely manner if required by the Contract;(iv) failure to acquire necessary Right-of-Way or Public Utility Easements prior to the Contractor beginning Work in the area; (v) failure to timely return Shop Drawings or other Contract Submittals in accordance with the Contract; (vi) unreasonable delay by the City in making decisions which affect critical activities; (vii) surveying errors when the City is contractually responsible for providing Project Surveying.

B. Extensions of Time Sole Remedy for Excusable/Non-compensable Delays. In the event of delays over which neither the City nor the Contractor had control, the Contractor may be entitled to an extension of contract time. An extension of contract time is the sole remedy for an Excusable/Non-compensable (“E/N”) Delays because both parties to the Contract have been potentially damaged by the delay, but neither have caused it. Examples of (E/N) Delays include, but are not limited to: (i) unusually severe weather, fire, or acts of God; (ii) failure of non-City owned utilities (SRP, CenturyLink, Cable TV, Union Pacific Railroad, El Paso Natural Gas and Southwest Gas, etc.) to properly or timely locate/Blue Stake accurately; (iii) failure of non-City owned utilities to relocate in advance of construction; (iv) the voluntary or involuntary filing for Bankruptcy protection by a Supplier or Subcontractor which causes the Supplier/Subcontractor to fail to meet a contractual deadline provided the Contractor can provide documentation that it executed the required Purchase Orders/Subcontract Agreements and received delivery schedules which, if met, would have eliminated the delay; (v) delays as a result of an incomplete shutdown of a City or non-City owned utility main (the City does not guarantee a complete shutdown).

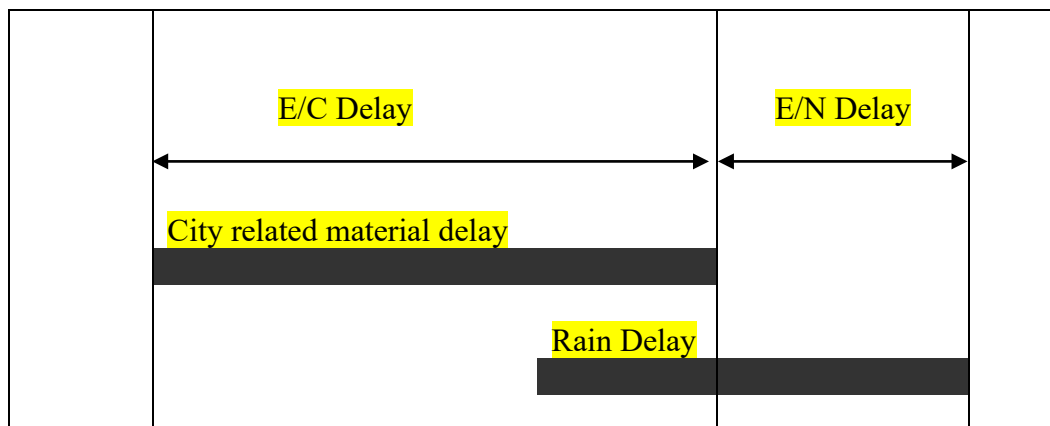
C. Non-excusable/Non-compensable Delays. Non-excusable/Non-compensable (“N/N”) Delays are delays caused by the actions or inactions of the Contractor or an officer, employee, agent, Subcontractor, Supplier or any other party for whom the Contractor is responsible. Because the Contractor has assumed responsibility for the risks associated with the events that caused the delay, the Contractor is entitled to neither time extensions nor monetary delay damages. (N/N) Delays include, but are not limited to: (i) failure to perform by the Contractor, its Subcontractors and/or Suppliers (except as noted in Section 6.6(B), above; (ii) failure to provide adequate labor, materials, and/or equipment on the Project; (iii) failure to

perform contractually-required coordination with utilities, agencies and other Contractors; (iv) failure to notify the City Engineer, in writing, of delay impacts within two working days, as required by MAG 104.2.3, or the next work day, as required by MAG 109.8.2; (iv) failure to timely submit Shop Drawings; (v) failure to pothole or otherwise visually locate utilities sufficiently ahead of the Work to allow the Engineer to direct corrective action when necessary; (vi) delays due to retesting of previously failed Work, re-inspection, and/or restaking resulting from faulty workmanship, poor quality control, or lack of compliance with Contract Specifications.

D. Concurrent Delays. When two or more delays occur simultaneously or overlap, each delay shall be analyzed separately to determine its impact on the overall project completion date. Delays may be considered Concurrent Delay only if a second delay prolongs an existing delay to the Contract Time. Only those delays which actually extend the Contract Time shall be considered as delays. By way of example, if two delays are concurrent, and one is five days long and the second is seven days long, the second concurrent delay may extend the Contract Time by two days. The portion of each concurrent delay that delays the completion of the Work is classified in the same manner as described previously for individual delays, being either E/C, E/N or N/N.

1. By way of example, a Concurrent Delay occurs where the City delays furnishing material, but unusually severe weather would have prevented the Contractor from installing the material on time. The effect of the first delaying activity (lack of furnished material) would extend for the full duration and would be controlling on the Contractor's schedule. The subsequent, Concurrent Delay would be considered to affect the project completion (if at all) once the first delaying activity has ceased to impact the project completion. In the forgoing example, if the unusually severe weather continued and delayed the Work after the material was delivered, the first portion of the delay would be classified E/C (delay for material) and the second as E/N (delay due to unusually severe weather). Using the procedure set forth above, the entire concurrent portion would be considered E/C as shown in the chart which follows.

Example of a Concurrent Delay:



E. Delays Analysis Documentation. The Contractor shall provide all documents required or requested by the City Engineer to analyze all alleged delays. The Engineer will accept delay analyses in CPM format, as these may demonstrate to his/her satisfaction whether or not Project Completion has been impacted by a specific event. If the Contractor chooses not to use CPM scheduling procedures, then the burden will be on the Contractor to prove to the Engineer's satisfaction that the Project Completion has been impacted. The procedures below assume that the Contractor is using CPM scheduling methods. As a minimum the Contractor shall provide the following materials to the Engineer:

F. As-Planned Schedules. The initial construction schedule, required by the Contract Documents, shall be considered the baseline schedule. The as-planned (baseline) schedule shall be as detailed as possible in order for delays, as they occur, to be incorporated into the schedule in representative locations. The Contractor shall also use a computer software program to generate the schedule. Updated schedules are required monthly by the Contract Documents and updated schedules are required to support delays and requests for additional compensation for delays. The as-planned (baseline) schedule shall be presented in network format which clearly shows the interrelationships of the activities. The Contractor shall also provide a printout of the activities showing early start, early finish, late start, late finish, duration and float. The activity list printout shall also indicate predecessor and successor activities.

G. As-Built Schedules. The as-planned (baseline) schedule shall be updated with complete progress-to-date information (actualized) up to the date of the start of the alleged delay. Each updated schedule will serve as the as-built schedule for analyzing the alleged delay and provide a new baseline as-planned schedule for the next delay. This process shall be repeated for each alleged delay as it occurs. In no event shall the Contractor submit an actualized updated schedule later than 60 days after the occurrence of the alleged delay becomes known. In updating the baseline schedule, the alleged delay shall be treated as an activity and inserted into the schedule as a predecessor to the impacted activity(ies). For schedules which incorporate a timeline (or data date), the delay activity shall be inserted at the time it actually occurred. The updated schedule shall also be accompanied by a listing of activities as with the baseline schedule. The activities list shall contain the alleged delay as an activity showing the duration and the activities which are predecessors and successors to it. When computer generated schedules are used, the Contractor shall provide, in electronic media format, the complete data files for the updated schedule that included the delay activity, preferably either in Microsoft Project or other format approved by the City. Each electronic media shall contain a label identifying the Project name, Contractor's name, program name and version number, data date and project finish date.

H. Other Documents. In order to determine the amount of the alleged delay and if it is compensable, the Contractor shall provide all backup documentation germane to the issue and as required by the Engineer. This documentation shall include copies of such items as: purchase orders; delivery schedules; correspondence; memoranda of telephone calls; force account daily worksheets (initialed by the Inspector); payroll data; estimating (bid) worksheets; and any other materials which may be requested by the Engineer.

I. Delays Analysis Procedure. Following receipt of all required documentation, the Engineer shall analyze each alleged delay and determine if it is supported or refuted. The amount of time the Engineer will require to analyze the alleged delay(s) will depend upon the Engineer's workload, the complexity of the delay analysis, availability of supporting data, extent of cooperation by the Contractor, and other factors beyond the Engineer's control. It is entirely possible other delay(s) may occur while the Engineer is analyzing particular claim for delay(s). The Engineer's failure to respond to the Contractor in a set period of time shall not be used as the basis for a further delay claim or as justification for extending and existing delay claim. The time required for delay analysis by the Engineer shall not be counted against the time allotted for processing Final Payment as required by (MAG Section 109.7(B)) or the release of retention and Final Payment as prescribed by A.R.S. Arizona Revised Statutes §34-221. The Engineer's conclusions shall be final. If supported, the Engineer will determine if it is excusable or non-excusable, compensable or non-compensable and shall respond, as follows:

1. If the Engineer determines that the delay did not affect the Project Completion, the as-planned schedule, which has been updated to the date of the alleged delay, shall be revised to indicate this.

2. If the Engineer determines the delay did occur but was N/N, then no time extension shall be granted.

3. If the Engineer determines the delay did occur and was excusable, but is non-compensable, the Engineer will determine the length of the E/N Delay and prepare a Change Order to add that time to the Contract.

4. If the Engineer determines the delay was excusable and compensable, the Engineer shall determine the length of the E/C Delay and proceed to review the Contractor's damage calculations. The Engineer will check the Contractor's calculations, review the backup documentation provided, and prepare a Change Order to cover both the additional compensation and the time extension.

5. If the issue involves a Concurrent Delay, the Engineer will analyze available data to determine the portions which are E/C, E/N, and/or N/N as described above. The Engineer will proceed to determine the length of E/C Delay and verify the Contractor's delay damage calculations, if provided. Upon completion of this review, the Engineer will prepare a Change Order for the Contractor's review and signature.

H. Monetary Damages Analysis Procedure. Additional compensation for delay, when authorized by the Engineer, will be calculated in accordance with MAG Section 109.5 ACTUAL COST WORK with the following exceptions:

1. No additional compensation or other monetary damages shall be awarded or paid for any loss of anticipated profits by the Contractor, Subcontractors or Suppliers.

2. No additional compensation or other monetary damages shall be awarded for home office overhead or non-project general conditions of the Contractor, Subcontractors or Suppliers.

3. Equipment:

- a. Contractor-owned equipment rate calculations shall be computed in accordance with Section 109.04(D)(3), Arizona Department of Transportation “Standard Specifications for Road and Bridge Construction,” 2008 or latest edition and as modified herein. Year and regional adjustment factors shall be based on the most recent publications of the Rental Rate Blue Book for Construction Equipment, published by the Equipment Guide-Book Company, San Jose, CA, same as provided by ADOT and in print as of the date of alleged delay. In no event shall the compensation for Contractor-owned equipment exceed the purchase price, including tax, paid by the Contractor for the equipment. Compensation shall not be allowed for small tools or equipment that show a daily equipment rental rate of less than \$5.00 per day or for unlisted equipment that has a value of less than four hundred dollars (\$400.00).
- b. For leased and rented equipment or equipment not otherwise listed in the Blue Book, rental contracts, or other supporting data will be used to establish the hourly rate. No hourly operating expense shall be allowed for delay on standby equipment. In no case will equipment be considered for rental which exceeds the hourly rate for the first eight hours and the daily rate divided by eight for all additional hours as compared with similar equipment listed in the Blue Book. The hourly standby rate shall be computed as the lesser of:
 - i. Dividing the monthly invoice or rental value by 176 hours per month when the equipment is utilized by the Contractor for more than three weeks;
 - ii. Dividing the monthly invoice or rental value by 40 hours per week when the equipment is utilized by the Contractor for more than three days. In no event shall compensation be paid for delays at more than 8 hours per day or 40 hours per week.

- c. Except for vehicles used by supervisory personnel, all equipment shall be paid at the “standby” rate during the delay period.
- d. Equipment brought solely to mitigate the delay (such as pumps, light plants, etc.) may be paid in accordance with ADOT section 109.04(D) (3).
- e. The Blue Book regional adjustment shall apply in determining rental rates.

4. Material. Allowable material charges may include material used to mitigate the delay such as barricades, plates, shoring, cold mix, etc. Except in emergencies, the Contractor shall not employ such material without the prior written approval of the Engineer.

5. Labor.

- a. Except for Supervisory Personnel (Superintendent, Project Engineer, and Foremen), labor wages shall not be paid after the first one-half day of claimed delay or impact. It is expected the Contractor will reassign or layoff unneeded employees.
- b. For Foreman wages to be included, that Foreman must have been actively employed on the project prior to the commencement of the delay and be directly responsible for the activity being delayed.
- c. Labor burden shall be actual amounts incurred but shall not exceed the ADOT approved rate.

I. Documentation Required for Monetary Damages Analysis. All costs (equipment, material, and labor) shall be substantiated by the City of Mesa’s Daily Work Reports. As applicable, the Contractor shall provide the following information in support of its claims:

- a. Labor:
 - i. For each employee, laborer, and foreman, for which compensation is requested: Name, classification, dates of Work performed, daily hours worked, total hours worked, labor rates, labor burden rates, overtime or premium time charges. Further, the Contractor shall make available for inspection and copying to the Engineer the following listed documentation.

1. Certified payroll reports for the period of Work claimed.
2. Accounting of Fringe Benefits – certified by a CPA.
3. Contractor’s and Subcontractor’s daily field reports and daily diaries.

b. **Materials:**

i. For all materials for which compensation is requested, the total quantities of materials, prices, extensions and transportation costs shall be provided on a daily basis. Further, the Contractor shall make available for inspection and copying to the Engineer the following listed documentation:

1. Invoices for all materials incorporated.
2. Weigh tickets.
3. Purchase orders.
4. Delivery schedules.
5. Quotes or proposals from manufacturers or suppliers.
6. Freight bills, Bills of Lading, or other documentation to show transportation costs.
7. Restocking charges-invoices from vendor.

c. **Equipment:**

i. For all equipment, the Contractor shall provide the Engineer with the designation, dates and hours of usage, dates and hours of standby, if any, daily hours, total hours, rental rates and extension for each unit of equipment and machinery. Rental rates shall be as established in Section 6.6(H)(3). Further, the Contractor shall make available for inspection and copying to the Engineer the following listed documentation:

1. For owned equipment:
 - a. Purchase contracts(s).
 - b. Depreciation schedule(s).
 - c. Invoices for fuel, lube, repairs and other operating costs.
- ii. For leased equipment:
 1. Lease agreement with hourly rate, overtime rate, double shift rate, etc.
 2. Invoices or other documentation showing hours worked on a daily basis.
- d. Subcontractors and Owner-operators:
 - i. In the event the Contractor submits a claim which includes requests for compensation for Subcontractors of Owner-Operators, the same information requested of the Contractor shall be provided by the Subcontractor/Owner-Operator. Further, the Contractor shall make available for inspection and copying to the Engineer the following listed documentation:
 1. Bid/Estimate work sheets and/or spreadsheets.
 2. Subcontract Agreements or Agreements with Owner-Operator.
 3. All invoices and billing statements received from the Subcontractor/Owner-Operator which relates to the amount requested.
- e. Miscellaneous. The Contractor shall also make the following available to the City Engineer for inspection:
 - i. Evidence of payment for bonds and insurance premiums (MAG 109.5.6).

- ii. Documentation of Work-related taxes paid. Unless the Contractor can show otherwise, taxes are reimbursable at 65% of the total cost (less bonds and insurance).

J. Time Limit on Submission of Claims for Delay or Monetary Damages:

No claims for delay or impact damages shall be considered or allowed more than 45 days after the event or occurrence which the Contractor claims gives rise to the delay or impact. In no event will a claim for delay or impact damages be considered after submission by the Contractor of the Final Payment Request.

6.9 Liquidated Damages and Waivers.

A. Established. Contractor acknowledges and agrees that if Contractor fails to achieve Final Acceptance of the Work in accordance with Section 4.15, City will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, City and Contractor agree that if Contractor fails to achieve Final Acceptance of the Work within the time set forth in Section 4.15 above, City shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the following per diem amounts commencing from the Final Acceptance Date required under the Contract until the actual date of Final Acceptance:

\$ (to be added by PM if applicable) per calendar day.

B. Final Acceptance Liquidated Damages. For the same reasons set forth in Section 6.9(A) above, City and Contractor further agree that if Contractor fails to achieve Final Acceptance of the Work within the time set forth in Section 4.15 above, City shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the following per diem amounts commencing from the actual date of Final Acceptance or Final Acceptance as required under the Contract.

\$ (to be added by PM if applicable) per calendar day.

C. MAG Liquidated Damages. If no liquidated damages rate is specified in Sections 6.9(A) and/or (B) above, then the liquidated damages provisions in MAG § 108.9 shall apply.

D. City may deduct liquidated damages described in this Section 6.9 above from any unpaid amounts then or thereafter due Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due Contractor shall be payable to City at the demand of City, together with interest from the date of the demand at the highest lawful rate of interest payable by Contractor.

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

If liquidated damages owed exceed the unpaid amounts due to the Contractor, then the amounts due shall be payable to City at the demand of City, together with interest from the date of demand at the highest interest rate permitted by law.

ARTICLE 7 CONTRACT PRICE

7.1 Pre-construction Phase Compensation.

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

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

7.2 Construction Phase Compensation. The Guaranteed Maximum Price is composed of the Direct Construction Costs and the Construction Fee, as outlined on Exhibit [REDACTED]. The Contractor is at risk to cover any additional Project costs. To the extent the combined total of the Direct Construction Costs and the Construction Fee at the conclusion of the Project is less than the GMP, the difference shall be retained by the City.

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

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

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

ARTICLE 8 CHANGES IN THE WORK

8.1 City reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate, and any such change as set forth in a written Change Order shall be deemed a part of this Contract as if originally incorporated herein.

8.2 In the event City and Contractor cannot agree on the terms of a Change Order, or when circumstances otherwise require, the Project Manager has the authority to direct the Contractor to perform extra Work, if the Work in question is an item not provided for in the Contract as awarded. The Project Manager shall have the authority to determine, based upon factual evidence presented by the Contractor, whether the Work in question is an item not provided for in the Contract as awarded. If the Project Manager directs the Contractor to perform extra Work, the Project Manager's instructions shall include a price that the Contractor cannot exceed in charging the City for the extra Work. Upon receipt of the Project Manager's directions to perform extra Work, the Contractor shall promptly proceed with the extra Work and document the actual cost thereof. Contractor's right to payment for extra Work shall be determined under Section 8.4(d), below. The Contractor is responsible to manage the extra Work to ensure that the price limits set by the Project Manager are not exceeded. Contractor shall perform the extra Work and submit documentation for the actual cost of the extra Work to the City. A Change Order must be issued to cover this Work.

8.3 Contractor shall not be entitled to payment for extra Work unless a written Change Order, in form and content prescribed by City, has been executed by City. On all requests for Change Orders, Contractor shall specify the increased and/or decreased costs and whether it believes any extensions of time will be necessary to complete its Work as modified by the Change Order. If extra Work is performed under Section 8.2 above, a corresponding Change Order shall be prepared, approved and processed by City before payment can be made to Contractor.

8.4 In general, pricing for Change Orders shall include the same mark-up percentages that were in effect when the Contract was awarded. The cost or credit to the City resulting from a change in the Work is subject to Section 6.6, above, and shall be determined, based on the type of pricing for the Contract involved, as follows:

- a. By mutual acceptance of a lump sum properly itemized in a form acceptable to City;
- b. By unit prices stated in the Contract Documents;
- c. When the City determines that a Unit Price Book Job Order associated with a Job Order Contract requires a Change Order, by using the same Total Cost Data and CCI that are in effect when the Change Order is anticipated to be issued; or
- d. By actual cost and a percentage fee covering overhead and profit, as follows:
 - i. Contractor shall perform the extra Work and be compensated for actual cost of labor, materials, and equipment.

- ii. Contractor shall have the right to add the fee percentage applicable to the Work under the Contract, or if no such fee has been agreed to by the parties, not more than five percent (5%) to the Subcontractor's prices for authorized extra Work performed solely by Subcontractors. Such percentage shall include all of Contractor's charges for overhead, profit, administration and supervision.
- iii. Contractor or Subcontractor shall have the right to add the fee percentage applicable to Work under the Contract for self-performed extra Work, or if no such fee has been agreed to by the parties, Contractor's or Subcontractor's maximum total allowable additions for overhead, profit, administration and supervision shall not exceed ten percent (10%) of actual verifiable labor, materials and equipment for such self-performed extra Work.

8.5 Any agreement which modifies the terms of the Contract (including Change Orders) shall be approved in writing by the City Engineer. Once properly executed by both parties, these modifications to the Contract shall have the same effect as if they had been included in the original Contract.

8.6 Signature by the contracting parties shall constitute full accord and satisfaction between City and Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order of other modification of the Contract agreed to in writing.

8.7 Contractor agrees that it is responsible for submitting accurate cost and pricing data to City to support its Fixed Price, Unit Price, and/or Cost Plus Change Order Proposals or other Contract price adjustments under the Contract. Contractor further agrees to submit Change Order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the Contract with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on Change Orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a Subcontractor or a Material Supplier after receiving approval of a Change Order amount that was designated to be paid to a specific Subcontractor or Supplier for the Approved Change Order Work.

8.8 Right to Verify Change Order Pricing Information: Contractor agrees that City, through its designated representative, will have the right to examine, copy, and scan the records of the Contractor, Subcontractor or Sub-Subcontractor's records (during the Contract period and up to three years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. Contractor agrees that if City determines the cost and pricing data submitted (whether approved

or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Contract regarding pricing of Change Orders, an appropriate Contract Price adjustment will be made. Such post-approval Contract Price adjustments will apply to all levels of contractors and/or Subcontractors and to all types of Change Order proposals, specifically including Fixed Price, Unit Price, and Cost Plus Change Orders.

8.9 Requirements for Detailed Change Order Pricing Information: Contractor agrees to provide a detailed breakdown of allowable labor and labor burden cost (i.e., base wage rate of applicable classifications of workers, payroll taxes, and insurance and benefits costs). This information will be used to evaluate the potential cost of labor and labor burden related to Change Order Work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. Information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order Work. The accuracy of any such agreed upon labor rate cost components used to price Change Orders will be subject to later audit. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

8.10 Emergencies. In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract price and/or Contract Time resulting from emergency Work shall be determined as provided in this Section.

8.11 Differing Site Conditions. If either Party encounters differing site conditions, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than fourteen (14) calendar days after first observance of the conditions. City will promptly investigate such conditions and, if City determines that differing site conditions exist and they materially cause an increase in the cost of, or time required for, performance of any part of the Work, Contractor will be entitled to equitable adjustment in the Contract Price or Construction Schedule (and other time requirements), or both. If it is determined by City that the conditions at the project site are not differing site conditions and no change is justified, then City shall notify Contractor in writing, stating the reasons. Claims in opposition to such determination must be made within fourteen (14) calendar days after City has given notice of its decision. If City and Contractor cannot agree on an adjustment in the Contract price or Construction Schedule (and other time requirements), the adjustment shall be submitted to dispute resolution as provided under this Contract.

8.12 Changes in Law, Regulation, Legal Requirements, or Taxes. In the event of a material change in applicable laws, regulations, legal requirements, or taxes subsequent to the date of the Contract, Contractor may be entitled to a Change Order, in City's discretion, to the extent Contractor can document to the City's satisfaction that such change significantly increases Contractor's actual cost of performance of the Work.

ARTICLE 9 PAYMENT

9.1 Payment for the Work will be made in accordance with MAG Standard Specification § 109 as amended below. MAG Standard Specifications Section 109.7 (A) does not apply.

9.2 Progress Payments. City will make monthly progress payments during the course of the contract. The payments (estimates of Work completed) will be prepared by Contractor on form provided by City, and approved by Project Manager. The payment cycle will start with the date of the Notice to Proceed. City may process payments more frequently if requested by Contractor and agreed to in writing by City. City does not make prepayments or payments for stored materials.

A. The City will retain 10 percent of all estimates as a guarantee for complete performance of the contract in accordance with Arizona Revised Statutes Section 34-221 or 34-607, unless the Contractor elects to deposit securities in accordance with Arizona Revised Statutes Section 34-221, Paragraph C.5. or 34-607, Paragraph B.5.

B. Prior to the payment cycle date, Contractor shall send a Contractor Payment Request Form to the Project Manager. The Project Team shall review the Contractor Payment Request Form and agree upon any necessary adjustments. Contractor shall certify the final Contractor Payment Request Form by signing and returning it to the Project Manager. When approved by the Project Manager, the progress payment shall be processed for payment of any approved amounts within fourteen (14) calendar days (except final payments).

9.3 Contractor may request payment of one-half of the retention pursuant to A.R.S. § 34-609(B)(3) after construction of the Project is fifty percent (50%) completed, subject to all of City's rights to withhold or offset payments, and/or other rights of City, under the Contract. Nevertheless, City reserves the right under A.R.S. § 34-609(B)(3) to reinstate the ten percent (10%) retention if City determines that satisfactory progress is not being made. In order to receive payment of one-half of the retention, Contractor must also submit to the Project Manager a complete accounting of the Actual Reimbursable Cost of the Work to date, including all such documentation (including, without limitation, invoices, subcontract, subcontractor change orders, purchase orders, records of payment, etc.) as City may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by City, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to City. The Project Manager's determinations as to Actual Reimbursable Cost of the Work shall be the basis of payment until final Project Closeout and Final Payment under the Contract.

9.4 No payment will be made upon Final Acceptance, except for a regularly-scheduled monthly progress payment, as allowed by Section 9.2, and no further payments will be made to Contractor until Final Acceptance.

9.5 Non-Conforming Work. The City's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not

conforming to the requirements of this Agreement or the Contract Documents, nor shall it serve as a waiver of any claims, rights, or remedies of the City.

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

9.7 Offset.

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

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

9.8 Final Payment. Subject to all of City's rights to withhold or offset payment, and other rights under the Contract, Final Payment including remaining retainage shall be paid only after Contractor submits a complete final accounting of the Actual Reimbursable Cost of the Work, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as City may require, to establish whether the payments made to Contractor equal, exceed, or are less than the Actual Reimbursable Cost of the Work to date. Any excess payments by City, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to City. Final Payment shall also be subject to the following conditions precedent:

A. Fully Completed Work. The Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by City;

1. Delivery of all necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, acceptable sewer video results (if applicable), and complete "as-built" drawings (including the Building Information Model, if required by the Contract Documents)

2. Full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Contractor.

3. All conditions and requirements imposed by City or any financing entity for the corresponding disbursement have been met;

4. Contractor submits a signed copy of the Contractor's Affidavit Regard Settlement of Claims; and

5. Contractor delivers to City a Contractor Payment Request Form requesting Final Payment.

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

9.10 City's Right to Withhold Payment. City may withhold payment to such extent as may be necessary in City's opinion to protect City from loss for which Contractor is responsible, including, without limitation, if any of the following conditions exist:

- A. Defective Work not remedied;
- B. Third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to City is provided by Contractor.
- C. Failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- D. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- E. Damage to City or another Contractor;
- F. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- G. Failure to carry out the Work in accordance with the Contract Documents;
or
- H. Contractor is in default of any of its other obligations under the Contract Documents.

- 9.11 Joint Checks. Payments to Contractor may be made by checks payable jointly to Contractor and its employees, agents, subcontractors and suppliers, or any of them, and when in the sole opinion of City, it is advisable, payments may be made directly to Contractor's Subcontractors and any amount so paid shall be deducted from the amounts owed to Contractor under this Contract.
- 9.12 Liens and Bond Claims. Contractor shall make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as City may require. Contractor shall pay when due all claims arising out of performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of City, or against payments due from City to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of City, against payment due from City to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) calendar days upon receiving notice or obtaining actual knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless City from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for Work performed.
- 9.13 Financial Record Keeping and City's Audit Right. Records for all Contracts between City and Contractor shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any City representative, or any outside representative engaged by City for the purpose of examining such records. City or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of five years after Final Payment or longer if required by law. City's Project Manager may (without limitation) conduct verifications such as counting employees at the Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.

B. Contractor's "records" shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to City or the Project in connection with Contractor's dealings with City or the Project (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of all of the following:

1. Compliance with all contract requirements for deliverables;
2. Compliance with approved plans and specifications;
3. Compliance with Contract provisions regarding the pricing of Change Orders;
4. Accuracy of Contractor representations regarding the pricing of invoices; and
5. Accuracy of Contractor representations related to claims submitted by Contractor or any of its employees.

C. Contractor shall require all payees (examples of payees include Subcontractors, Suppliers, Insurance Carriers, etc.) to comply with the provisions of this Section by including the requirements hereof in a written Contract Agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract included in their contracts with Contractor.

D. City's authorized representative(s) (including, without limitation, Project Manager) shall have reasonable access to Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with this Section.

E. If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges to City (of any nature) by Contractor and/or Contractor's Subcontractors in excess of \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of City's audit shall be reimbursed to City by Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.

F. City, its authorized representative, and/or the appropriate agency, reserve the right to audit Contractor's records in compliance with local, state or federal policies, statutes or at City's discretion, within three (3) years of Final Acceptance of the Work.

ARTICLE 10 INSURANCE AND INDEMNITY

10.1 Insurance Representations and Requirements. Prior to the performance of any Work, Contractor shall obtain and submit to City certificates from its insurance carriers evidencing its purchase of coverages and its limits of liability, as follows below. City accepts only the most recent version of ACORD Certificate of Liability Insurance form with additional insured endorsements. The Builder's Risk policy (if required) and the Owners and Contractors Protective Liability (OCP) policy shall remain in effect during construction through the date of project Final Acceptance. The remainder of the insurance policies shall remain in effect during construction and through the one-year warranty period that follows project Final Acceptance, unless otherwise specified in contract documents. Proof of all required coverage(s) shall be provided by the Contractor.

A. Policy Forms Must Include:

1. Premises and Operations coverage with no explosion, collapse or underground damage (XCU) exclusions.
2. Products and Completed Operations coverage. Contractor/Design Professional agrees to maintain this coverage for a minimum of 10 years following completion of the Contractor/Design Professional Work and to continue to name City as an Additional Insured for the entire 10-year period;
3. Blanket contractual coverage for the indemnity/hold harmless agreements assumed in this Subcontract and in the Prime Contract. Any Employee Exclusion will be deleted;
4. Broad Form Property Damage coverage, including completed operations or its equivalent;
5. An endorsement in a form acceptable to the City, naming City, any other party required to be named as an additional insured under the

Contract Documents, and any other parties in interest as Additional Insured(s) under the coverage specified under Comprehensive General Liability or Commercial General Liability. Any form that does not grant additional insured status for both the ongoing operations and products/completed operations coverages IS NOT ACCEPTABLE;

6. An endorsement in a form acceptable to the City, stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and except for any builder's risk property insurance coverage that may be purchased and maintained by City in connection with the Project, any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy;"
7. Coverage SHALL BE on an "Occurrence" form. "**Claims Made**" and "**Modified Occurrence**" forms are not acceptable;
8. Coverage to include general aggregate limits on a "per project" basis;

B. Required Coverages

1. **Workers' Compensation:**

Coverage A. Statutory Benefits

Coverage B. Employer's Liability

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

2. **Commercial Auto Coverage:**

Auto Liability limits of not less than \$1,000,000 Combined Single Limit (Each Accident), combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for "Any Auto, All Owned, Scheduled, Hired, or Non-Owned."

If the Contract Documents require Contractor/Design Professional to remove and haul hazardous waste from the Project site, or if the Project involves such similar environmental exposure, pollution liability coverage equivalent to that provided under the ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

3. Commercial General Liability:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
General Aggregate Limit (other than Products/Completed Operations)	\$2,000,000

4. Excess Liability:

Umbrella or Excess Liability may be used to satisfy the above Auto and General Liability coverage requirements and limits to reach a total combined limit of:

- Auto Amount sufficient to cover difference in limits when compared to minimum coverage required.
- Each Occurrence Amount sufficient to cover difference in limits when compared to minimum coverage required.
- Aggregate Amount sufficient to cover difference in limits when compared to minimum coverage required.

5. Professional Liability:

Coverage provided must have no exclusion for design-build projects. Contractor/Design Professional must provide evidence of coverage for three (3) years beyond completion of the Project.

Coverage Amount: \$1,000,000 per claim/\$2,000,000 aggregate, unless higher coverage limits are required under the Contract Documents, in which case such higher limits shall apply.

6. Pollution Legal Liability:

\$1,000,000 per Occurrence
\$1,000,000 Aggregate Limit

Contractor shall maintain insurance covering losses caused by pollution conditions (including mold) that arise from the Work.

7. Builders Risk (if required, will be required for Contractors only):

Contractor shall include in its Cost Proposal the cost to obtain builders risk or “all risk” or equivalent policy form coverage in the amount of the initial Contract Price. This required insurance coverage is required on projects that are typically outside the public rights-of-way whereby the City is constructing or modifying a public building. The City may, at the

City's sole option, purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builders risk "all-risk" or equivalent policy form in the amount of the initial Contract Price, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. This insurance shall include interests of the City, Contractor and its subcontractors in the Project, and shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements. City shall bear the responsibility for the deductible for such coverage when a loss affects the Work, provided, however, to the extent such loss is attributable to the negligent or wrongful acts or omissions of Contractor or someone for whom Contractor is responsible, Contractor shall bear the responsibility of the deductible. Such property insurance will not cover any tools or equipment owned or rented by Contractor that will not be incorporated into the Project, including trailers, excavators, scaffoldings, or forms. Contractor is responsible for providing insurance coverage for such items.

8. Owners and Contractors Liability Policy (OCP):

Owners and Contractors Liability Policy: Prior to the execution of the Contract the Contractor shall provide a separate policy of insurance in the amount of \$2,000,000, per occurrence, at its sole cost and expense, naming the City of Mesa, a Municipal Corporation and all its agents, representatives, officers, directors, officials and employees as the insured. The Policy shall be primary and not contributory to any insurance maintained by the City of Mesa and shall remain in effect through date of Final Acceptance.

C. Other Insurance Requirements:

1. All policies must be written by insurance companies whose rating, in the most recent AM Best's Rating Guide, is no less than A-. All coverage forms must be acceptable to City.
2. Contractor's certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements set forth in the Contract Documents, including Exhibit B of the Contract.

3. ACORD® Certificate of Liability Insurance form with the required endorsements evidencing the required coverages must be PROVIDED to the City prior to commencement of any Work. Failure of City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's/Design Professional's obligation to maintain such insurance. City shall have the right, but not the obligation, to prohibit Contractor/Design Professional or any of its subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by City.
4. The policies shall provide waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay for the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The following policies shall include Waiver of Subrogation endorsements:
 - a. Workers' Compensation
 - b. Commercial Auto Coverage
 - c. Commercial General Liability
 - d. Pollution Legal Liability
5. The following policies shall include Additional Insured endorsements:
 - a. Commercial Auto Coverage
 - b. Commercial General Liability
 - c. Excess Liability
 - d. Builders Risk
6. Contractor shall be responsible for satisfying any deductible or self-insured retention with respect to any of the coverages required by the Contract Documents.
7. City reserves the right, in its sole discretion, to require higher limits of liability coverage if, in City's opinion, operations by or on behalf of Contractor create higher than normal hazards and, to require Contractor to name additional parties in interest to be Additional Insureds.

8. In the event that rental of equipment is undertaken by Contractor or any Subcontractor to complete and/or perform the Work, Contractor agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to protection against theft, fire, vandalism and use by unauthorized persons.
9. In the event that materials or any other type of personal property ("personal property") is acquired for the Project or delivered to the Project site, Contractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to protection against theft, fire, vandalism and use by unauthorized persons.
10. If City elects to utilize an Owner Controlled Insurance Program ("OCIP") which provides coverage for the Work, the Contractor shall comply with all provisions of any such OCIP.
11. If a policy does expire, a renewal certificate of the required coverage shall be sent to the City of Mesa not less than seven (7) calendar days prior to the expiration date or, if a policy is to be cancelled, changed or not renewed, a proper notice of such action shall be sent to the City not less than fourteen (14) calendar days prior to any such action by the insurance company.

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

10.3 Survival of Indemnity. If court of law determines that Section 10.2 is void under A.R.S. § 34-226 because a word, words, or phrase in this section makes this section void under A.R.S. § 34-226, then such word, words, or phrase (as applicable) shall be deemed to be stricken to the extent necessary so that this section is not void under A.R.S. § 34-226 and the remaining obligations shall remain in full force and effect; and the language of this section shall be retroactively reformed to the extent reasonably possible in such a manner so that the reformed

language provides essentially the same rights and benefits to the fullest extent permitted by A.R.S. § 34-226(B).

ARTICLE 11 BONDS

11.1 Prior to execution of the Contract, Contractor shall provide a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Contract Price. Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two (2) years prior to the execution of this Agreement. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required.

11.2 The bonds shall be made payable and be acceptable to City. The bond forms for the performance and payment bonds shall be in the forms required under A.R.S. § 34-221, et. Seq., All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of A- or better for the prior four quarters by the latest edition of the ‘Results Best’s Key Rating Guide (Property/Casualty)’ published by the A.M. Best Company. Personal or individual bonds are not acceptable.

11.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 TERMINATION AND SUSPENSION

12.1 Termination by the Contractor. If City fails to make payment of any undisputed amounts within thirty (30) calendar days after such payment is due, then following fourteen (14) calendar days’ prior written notice to City during which time the outstanding and undisputed amount remains unpaid, Contractor may terminate the Contract and recover from City payment for Work actually executed and for actual, proven loss with respect to materials, equipment, tools, construction equipment and machinery, including any associated Contractor’s Fee, General Conditions Costs and actual damages incurred by Contractor solely as a result of such termination and not capable of mitigation. Under no circumstances shall City have any liability for any costs, expenses, overhead, or profits in relation to any Work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

12.2 Termination by the City for Cause.

A. The City may terminate the Contract if City determines, in its sole discretion, that Contractor has defaulted in any of the following manners:

1. Failed to begin the Work under the contract within a reasonable time,
2. Failed to perform the Work with sufficient workmen and equipment or materials to assure the prompt completion of said Work,
3. Performed the Work unsuitably or neglected or refused to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable,
4. Discontinued the prosecution of the Work,
5. Failed to resume Work which had been discontinued within a reasonable time after notice to do so,
6. At any time colluded with any party or parties,
7. Allowed any final judgment to stand against him unsatisfied for a period of 14 calendar days,
8. Failed to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors
9. Disregarded laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or
10. For any reason failed to carry on the Work in an acceptable manner, including any unreasonable delay, neglect, or uncured default.

B. Where any justification for termination listed above exists, City may send Contractor a formal notice to cure specifying the deficiencies in its performance of the Contract. Contractor shall respond within 14 calendar days identifying a timeline for correction of the deficiencies, which shall be subject to review, adjustment and comment by the City Engineer or designee. The conditions to cure such deficiencies must be satisfied in the opinion of the City Engineer, or designee, to bring the Contract into compliance. Failure to meet the conditions and deadlines in a notice to cure shall result in termination of the Contract.

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

Agreement by giving three Days' written notice to the Contractor unless the Contractor or the trustee does all of the following:

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

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

12.3 Termination by the City for Convenience. The City may, upon 7 Days' written notice to the Contractor, terminate this Agreement, in whole or in part, for the convenience of the City, without prejudice to any right or remedy otherwise available to the City. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the City, the Contractor's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Contractor shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination of convenience by the City.

12.4 Set Off. Upon any termination of the Contract, no further payments shall be due from City to Contractor unless and until Contractor has delivered to City any and all documentation required to be maintained by Contractor or provided by Contractor to City and all Confidential Information related to the Project. Under no circumstances shall City have any liability for any costs, expenses, overhead, or profits in relation to any Work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

12.5 Suspension by the City for Convenience.

A. Procedure. The City may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the City may

determine to be appropriate for its convenience, but not in abrogation of the rights given Contractor in Section 12.1 above.

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

ARTICLE 13 DISPUTE RESOLUTION

13.1 Scope. Should a dispute arise between Contractor and City concerning this Agreement, the Parties must complete the Dispute Resolution Process (“DRP”) set forth in this Article prior to filing litigation. This Article does not, however, preclude the use of legal remedies in the event of claims or litigation brought by third parties. The City and Contractor may, by mutual consent, extend any of the deadlines described in the DRP. The DRP is a two-step process requiring both notification and administrative review. The failure of the Contractor to comply with the requirements of this Article shall constitute a waiver of additional compensation and/or time extensions.

13.2 Initial Notification of Dispute Resolution. If at any time the Contractor believes that a decision, action, or inaction of the City, is inconsistent with the Contract, or if the City rejects a proposed Change Order that the Contractor believes is justified, then the Contractor must immediately notify the City’s Project Manager. If the identified issue is not resolved within 2 Days, then Contractor shall provide a written Initial Notice to the Assistant City Engineer. At a minimum, the Initial Notice shall provide a description of the nature of the issue, the time and date the problem was discovered, and if appropriate, the location of the issue.

13.3 Initial Notice Supporting Material. No sooner than 10 Days of the date of the Initial Notice, the Contractor must take the following steps if it wishes to initiate the DRP formally:

A. The Contractor shall provide the following Supporting Material about the dispute to the Assistant City Engineer in writing. If known, a cost analysis may be included with the information:

1. The date of occurrence and the nature and circumstances of the issue for which initial notice was given.
2. Name, title, and activity of each City representative or other persons knowledgeable of the issue.
3. Identity of any documents and the substance of any oral communication related to the issue.
4. Basis for an assertion that the Work required is a change from the

original Work or Project Schedule.

5. Identity of particular elements of Contract performance for which a change in compensation and/or time may be sought, including:
 - i. Pay item(s) that have been or may be affected by the issue and any adjustments
 - ii. Labor and/or materials that will be added, deleted, or wasted by the problem and what equipment will be idled or required;
 - iii. Delay and disruption in the manner and sequence of performance that has been or will be caused;
 - iv. Adjustments to delivery Schedule(s), staging, and Contract time due to the dispute.
6. Any other items or information germane to the dispute.
7. The Contractor's written certification, attesting to the following:
 - i. The request is made in good faith;
 - ii. Supportive data is accurate and complete to the Contractor's best knowledge and belief and;
 - iii. When provided, the amount requested accurately reflects the Contractor's actual cost incurred. In complying with this request, the Contractor shall use the City's Certification Form, to be provided upon request.

B. No later than 10 Days following the Contractor's submission of the described in 13.3(A), the City Engineer or designee shall respond in writing to the Contractor to:

1. Confirm that a Change Order is necessary and, when necessary, give appropriate direction for further performance, or
2. Deny that the Contract needs to be revised and, when necessary, direct the Contractor to proceed with the contract Work, or
3. Advise the Contractor that adequate information has not been submitted to decide whether (1) or (2) applies and specify the information that is needed for further review. The City Engineer or designee may set a deadline for the submission of additional information, and the City must respond to the submission of additional information within 10 Days of receipt from the Contractor.

13.4 Administrative Process of Dispute Resolution. If the Contractor rejects the initial decision of the City Engineer made pursuant to 13.3(B), above, then the Contractor may initiate the Administrative Process for Dispute Resolution (“APDR”).

A. The APDR is sequential, and consideration of the Contractor’s claims may be reviewed and escalated across three levels of City administration, as follows:

- Level I Review: Deputy Engineer
- Level II Review: Assistant City Engineer
- Level III Review: City Engineer

Unless specifically waived by the City, the Contractor’s submission of additional information at any level of the review process shall cause the process to revert back to Level I review.

B. To begin the APDR, the Contractor shall address a letter to the Level I Representative, which shall, at a minimum, contain the information described in Section 13.3(A). The Level I Representative will not take formal action until the supporting information is received in writing. The documentation provided to the Level I Representative shall serve as the basis for evaluating the Contractor’s position regarding the dispute throughout the ADRP. If any of the following topics are applicable to the dispute, then the Contractor shall supplement that information, as follows:

1. If the Contractor is seeking additional compensation, the Contractor shall submit the exact amount broken down into the following categories:

- (i) Labor;
- (ii) Equipment;
- (iii) Materials;
- (iv) Subcontractor’s Work (broken down as 1, 2, and 3 above)
- (v) Labor burden, if applicable;
- (vi) Overhead and profit and
- (vii) Other categories as specified by the Contractor.

2. If the Contractor is seeking additional time, the Contractor shall provide a comprehensive time impact analysis showing the delay(s) and how they affect the Critical Path. The time impact analysis must include both the original and as-built Critical Path Schedules and must be supported by documentation such as delivery schedules, invoices, correspondence, email, payroll data, daily work schedules, etc.

C. The City’s Level I Representative will render a written decision regarding the matter in dispute within 10 Days of receipt of the Contractor’s supporting materials.

Upon receipt of the decision by the Level I Representative, the Contractor shall either accept or reject the decision in writing. If the Contractor does not reject the Level I Representative's decision within 10 Days of its receipt, the decision will be deemed to have been accepted by the Contractor and the dispute will be considered withdrawn from the ADPR. There will be no further remedy.

If the Contractor rejects the decision of the Level I Representative, the dispute will be forwarded to the Level II Representative. The Level II Representative will schedule and hold a meeting to review the dispute with the Contractor within 10 Days. This time limit may be extended by consent of the Parties. The Level II Representative will issue a written decision with justification within 10 Days following the meeting with Contractor.

Upon receipt of the decision by the Level II Representative, the Contractor shall either accept or reject the decision in writing. If the Contractor does not reject the Level II Representative's decision within 10 Days of its receipt, the decision will be deemed to have been accepted by the Contractor and the dispute will be considered withdrawn from the ADPR. There will be no further remedy.

If the Contractor rejects the decision of the Level II Representative, the Level II Representative will forward the dispute to the Level III Representative. The Level III Representative will schedule and hold a meeting to review the dispute with the Contractor within 10 Days. This time limit may be extended by consent of the Parties. The Level III Representative will, issue a written decision with justification within 10 Days following the meeting with the Contractor.

Upon receipt of the decision by the Level II Representative, the Contractor shall either accept or reject the decision in writing. If the Contractor does not reject the Level II Representative's decision within 10 Days of its receipt, the decision will be deemed to have been accepted by the Contractor and the dispute will be considered withdrawn from the ADPR. There will be no further remedy.

If the Contractor rejects the decision of the Level III Representative, there will be no further administrative review of the dispute.

13.5 Mediation. Prior to filing litigation, the Contractor may request non-binding mediation by filing a request for mediation in writing with the Assistant City Engineer. If agreeable, the Engineer will then arrange for a mutually agreeable mediator. Such request for mediation shall be made within 30 Days from the date of the Level III Representative's decision. Each party shall bear its own costs, attorney's fees, and expert fees in connection with any mediation. Any fees and expenses assessed by the mediator shall be borne equally by the parties.

13.6 Final Documentation and Payment. If at any step in the process a dispute is resolved, the Contractor must sign a supplemental agreement documenting the resolution of the dispute, including an unconditional release as to any and all matters arising from the dispute. In addition, when the agreement results in a change in contract amount and/or time, the City shall prepare a change order for said changes, which both Parties shall sign within 30 Days from the date of the resolution. Payment of the change order will be made to the appropriate Party in

accordance with the terms of this Contract.

ARTICLE 14 ADDITIONAL PROVISIONS

14.1 Confidentiality. The Contractor shall not disclose or permit the disclosure of any confidential information except to its agents, employees and Subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Further, Contractor, for the benefit of City, hereby agrees it will not release or cause or permit to be released to the public any press notices, publicity (oral or written) or advertising promotion relating to, any statement regarding, or any other public announcement or disclosure or cause or permit to be publicly announced or disclosed, in any manner whatsoever, the specific terms and conditions of this Agreement or any comment relating to the Project or the site. Notwithstanding the foregoing, Contractor shall be entitled to disclose the terms of the Agreement to the extent required by law or in the course of enforcing or defending a claim or action hereunder. Contractor shall give City reasonably prompt notice of any disclosure or statement made pursuant to this provision.

14.2 Limitation and Assignment. The City and the Contractor each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the City nor the Contractor shall assign or transfer its interest in this Agreement without the written consent of the other, except that the Contractor may assign accounts receivable to a commercial bank for securing loans without approval of the City. Nothing contained in this Section shall prevent the Contractor from employing such consultants, associates or Subcontractors as the Contractor may deem appropriate to assist in performance of the Services hereunder.

14.3 Entire Agreement. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Contractor. Nothing contained in this Agreement is intended to benefit any third party. Subcontractors, if any, and the Project Designers are not intended third-party beneficiaries of this Agreement. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party in the form of a Change Order.

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

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

14.6 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail,

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

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

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

14.14 Records and Audit Rights. Contractor's and its Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its Subcontractors' employees who perform any Work or Services pursuant to this Agreement to ensure that the Contractor and its Subcontractors are complying with the warranty under Subsection 14.15 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Contractor's and its Subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of Work under this Agreement and (B) evaluation of the Contractor's and its Subcontractors' compliance with the Arizona employer sanctions laws referenced in Subsection 14.15 below. To the extent necessary for the City to audit Records as set forth in this Subsection, Contractor and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its Subcontractors' facilities, from the effective date of this Agreement for the duration of the Work and until three years after the date of final payment by the City to Contractor pursuant to this Agreement. Contractor and its Subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Subsection. The City shall give Contractor or its Subcontractors reasonable advance notice of intended audits. Contractor shall require its Subcontractors to comply with the provisions of this Subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

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

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

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

14.18 Conflict of Interest. Contractor agrees to disclose any financial or economic interest with the Project property, or any property affected by the Project, existing prior to the execution of the Contract. Further, Contractor agrees to disclose any financial or economic interest with the Project property, or any property affected by the Project, if Contractor gains such interest during the course of this Contract. If Contractor gains financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract. Any decision to terminate the Contract shall be at the sole discretion of City. Contractor shall not engage the services on this Contract of any present or former City employee who was involved as a decision maker in the selection or approval processes, or who negotiated and/or approved billings or Contract Modifications for this Contract. Furthermore, Contractor agrees that it shall not perform services on this Project for a Contractor, Subcontractor, or any Supplier, not covered under this Contract.

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

14.20 Non-Discrimination. Contractor understands and acknowledges that it is the policy of the City of Mesa to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity and expression, veterans' status, marital status, or familial status, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Contractor and Contractor's personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), Mesa City Code, Section 6, Chapter 14, and any other applicable non-discrimination laws and rules.

14.21 Drug Free Workplace Program. City has adopted a policy establishing a drug free workplace for itself and as a requirement for Contractors doing business with City, to ensure the safety and health of employees working on City Projects. This program applies to all Contracts with Contract amount of \$25,000.00 or more. Contractor shall require a drug free workplace for all employees working under the Contract. Specifically, all employees of Contractor who are working under a Contract with City shall be notified, in writing, by Contractor that they are

prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace. Failure to require a drug free workplace in accordance with the City's policy may result in termination of the Contract and possible debarment from bidding on future City projects.

14.22 Contractor Evaluation. Contractor is hereby advised that City has a Contractor Evaluation Program. To determine which Contractors are meeting their construction obligations, the evaluation may include the following items: Quality of Construction; Quality of Project Supervision; Adherence to Contract Time, and Construction Schedule; Cooperation and Coordination with City Forces and Other Contractors Working in Project Areas; Use and Coordination of qualified Subcontractors and Suppliers. Copies of City's evaluation form are available for review at the Engineering Department.

14.23 Contract Documents, Order of Precedence.

A. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

B. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence as follows from highest to lowest: Change Orders, Addenda, Contract, Project Specific Provisions, General Conditions, Specifications, Drawings, Mesa Amendments to MAG Standard Specifications and Mesa Standard Details, and MAG Uniform Standard Specifications and Details for Public Works Construction.

C. On the drawings, given dimensions shall take precedence over scaled measurements and large scale drawings over small-scale drawings.

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

indebtedness of the City. Contractor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City’s termination of this Agreement pursuant to this Section.

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

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

“City”

CITY OF MESA,
an Arizona municipal corporation

_____, Deputy City Manager

ATTEST:

_____, City Engineer

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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

[Construction Documents]

See following pages.

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

[Amendments]

See following pages.

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

[Federal Requirements]

See following pages.

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

[GMP Proposals]

See following pages.

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

[Project Schedule]

See following pages.

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

[The City's RFP]

See following pages.

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

[Subcontractor Selection Program]

Choose one of the following and delete the other:

See following pages.

or

Intentionally left blank. Subcontractor Selection Program is included in Exhibit F.

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

[Construction Sequencing]

See following pages.

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

[Pre-Construction Cost Summary]

See following pages.

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

[Performance Bond]

See following page.

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34
CHAPTER 6, ARTICLE 1, OF THE ARIZONA REVISED STATUTES

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

KNOW ALL MEN BY THESE PRESENTS:

That, **“Contractor Name”** (hereinafter called the Principal), as Principal, and **“Bond Company”**, a corporation organized and existing under the laws of the State of _____ and duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona, with its principal office in the City of _____ (hereinafter called the Surety) as Surety, are held and firmly bound unto the City of Mesa (hereinafter called the Obligee) in the amount of **“Currency Text”** (**“Contract Amount”**) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the _____ day of _____, 20__, to construct **“Project Title.”** **“Project Number.”** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, Article 1, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, of Title 34, Chapter 6, Article 1, Arizona Revised Statutes to the extent as if it were copied at length in this Agreement.

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

Witness our hands this _____ day of _____, 20__.

“Contractor Name”
PRINCIPAL SEAL

AGENCY OF RECORD

By

AGENCY ADDRESS/PHONE/FAX

“Bond Company”

SURETY

By _____

EXHIBIT K
TO
DESIGN - BUILD AGREEMENT
BETWEEN
CITY OF MESA
ANDs

[Payment Bond]

See following page.

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34
CHAPTER 6, ARTICLE 1, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond Must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, “Contractor Name” (hereinafter called the Principal), as Principal, and “Bond Company”, a corporation organized and existing under the laws of the State of _____ and duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona, with its principal office in the City of _____ (hereinafter called the Surety) as Surety, are held and firmly bound unto the City of Mesa (hereinafter called the Obligee) in the amount of “Currency Text” (“Contract Amount”) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the _____ day of _____, 20__, to construct “Project Title,” “Project Number,” which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the procession of the work provided for in the contract, this obligation is void, otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, Article 1, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 6, Article 1, Arizona Revised Statutes to the same extent as if they were copied at length in this Agreement.

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

Witness our hands this _____ day of _____, 20__.

“Contractor Name”
PRINCIPAL SEAL

AGENCY OF RECORD

By _____

AGENCY ADDRESS/PHONE/FAX

“Bond Company”

SURETY

By _____