

CITY COUNCIL REPORT



Meeting Date: May 19, 2026
General Plan Element: ***Community Mobility***
General Plan Goal: ***Promote Regional diversity and connectivity of mobility choices.***

ACTION

Job Order Contracting (JOC) for Citywide Civil Site Work. Adopt Resolution No. 13673, authorizing Job Order Contract (JOC) Contract No. 2026-070-COS with DBA Construction, Inc., Contract No. 2026-071-COS with Hunter Contracting Co., and Contract No. 2026-072-COS with J. Banicki Construction, Inc., each in an amount not to exceed \$12,000,000 for the initial two-year term of each contract for Citywide Civil Site Work construction services throughout the City on an as-needed basis.

BACKGROUND

The purpose of this action is to award three (3) job order contracts (JOCs) for Citywide Civil Site Work construction services throughout the City on an as-needed basis.

The initial term of each JOC will be for two (2) years and have a maximum contract term amount of \$12,000,000 and an individual Job Order maximum amount of \$4,000,000. Each JOC may be renewed for up to three (3) additional one-year terms, each with a maximum contract term amount of \$7,500,000. Renewal of these JOCs will be based on the successful performance by the JOC contractor and the needs of the City. The contract maximum may be increased at the time the option is exercised, or at another time deemed prudent, by the mutual written agreement of both parties.

For each individual job order, the JOC contractor will be available to work with Transportation and Infrastructure staff throughout project design development, providing input on value engineering, cost estimates, and construction schedules.

ANALYSIS & ASSESSMENT

Recent Staff Action

On February 28, 2026, staff posted a Request for Qualifications for a proposed JOC on the City's website. Nineteen responses were received on March 30, 2026. A selection panel of City staff members and an outside contractor thoroughly evaluated all responses. After comprehensive review, the panel selected DBA Construction, Inc., Hunter Contracting Co., and J. Banicki Construction, Inc.

Community Involvement

Staff will continue to use the same community involvement and notification procedures for job orders issued under this contract that are used when projects are constructed using other procurement methods.

Community involvement for each individual job order will be coordinated with the sponsoring Division as design progresses.

RESOURCE IMPACTS

Available funding

Authorization of these JOCs commits no funding. Funding for each individual job order will be provided by the individual CIP project or operating center associated with the scope of the task and will be encumbered once negotiations are completed.

Staffing, Workload Impact

Existing Transportation and Infrastructure staff resources are available to provide design and construction contract administration, construction management and inspection services for these projects. Mike Anaya, Project Coordinator in the Transportation and Infrastructure Department, is the contract administrator for these contracts.

Future Budget Implications

Combined construction cost for all projects will not exceed \$12,000,000 per JOC for the initial two-year term of each respective JOC. There is no additional operating budget required as a result of these contracts.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach:

Adopt Resolution No. 13673, authorizing Job Order Contract (JOC) Contract No. 2026-070-COS with DBA Construction, Inc., Contract No. 2026-071-COS with Hunter Contracting Co., and Contract No. 2026-072-COS with J. Banicki Construction, Inc., each in an amount not to exceed \$12,000,000 for the initial two-year term of each contract for Citywide Civil Site Work construction services throughout the City on an as-needed basis.

Proposed Next Steps:

Following approval of the contracts, DBA Construction Inc., Hunter Contracting Co., and J. Banicki Construction, Inc. will be available for citywide civil site work construction projects throughout the City on an as needed basis.

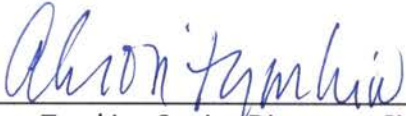
RESPONSIBLE DEPARTMENT(S)

Transportation and Infrastructure

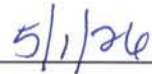
STAFF CONTACTS (S)

Mike Anaya, Project Coordinator, manaya@scottsdaleaz.gov (480) 312-7847

APPROVED BY



Alison Tymkiw, Senior Director - City Engineer,
Transportation and Infrastructure
480-312-7760, ATymkiw@scottsdaleaz.gov



Date

ATTACHMENTS

1. Resolution No. 13673
2. Evaluation Matrix
3. Contract No. 2026-070-COS
4. Contract No. 2026-071-COS
5. Contract No. 2026-072-COS

RESOLUTION NO. 13673

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING CONTRACT NO. 2026-070-COS WITH DBA CONSTRUCTION, INC., CONTRACT NO. 2026-071-COS WITH HUNTER CONTRACTING CO. AND CONTRACT NO. 2026-072-COS WITH J. BANICKI CONSTRUCTION, INC. EACH FOR A TWO-YEAR JOB ORDER CONTRACT FOR CITYWIDE CIVIL/SITE WORK SERVICES IN AN AMOUNT NOT TO EXCEED TWELVE MILLION DOLLARS (\$12,000,000) PER CONTRACT.

WHEREAS, the City desires to enter into Job Order Contracts for civil/site work projects located throughout the City on an "as-needed" basis, including earthwork, paving, concrete, bikeways, and storm drains, not to exceed Four Million Dollars (\$4,000,000) per Job Order; and

WHEREAS, the Contracts are for an initial term of two (2) years in an amount not to exceed Twelve Million Dollars (\$12,000,000) per Contract, with the option for three (3) additional one (1) year extensions in an amount not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) per Contract after expiration of the initial term; and

WHEREAS, DBA Construction, Inc., Hunter Contracting Co. and J. Banicki Construction, Inc. have been selected through a competitive process (Solicitation 26RFSQ061) and are each qualified to render the services desired by the City.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona as follows:

Section 1. The Mayor is hereby authorized and directed to execute Contract No. 2026-070-COS with DBA Construction, Inc., Contract No. 2026-071-COS with Hunter Contracting Co. and Contract No. 2026-072-COS with J. Banicki Construction, Inc. for job order contracting services with a contract amount not to exceed Twelve Million Dollars (\$12,000,000) for the initial two (2) year term of each respective Contract.

Section 2. The City Manager or designee is hereby authorized to execute such other documents and take such other actions as necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 2026.

ATTEST:

CITY OF SCOTTSDALE, an
Arizona municipal corporation

By: _____
Ben Lane, City Clerk

By: _____
Lisa Borowsky, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY



Luis E. Santaella, City Attorney
By: Lydia Tulin, Assistant City Attorney

SOLICITATION FOR JOC CITYWIDE CIVIL SITE WORK 26RFSQ061
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Company	Rank
VSS INTERNATIONAL, INC.	
COMBS CONSTRUCTION COMPANY, LLC.	
DBA CONSTRUCTION, INC.	2
J. BANICKI CONSTRUCTION, INC.	3
JUD CO LLC	
PRIMAVERA GRADING AND PAVING, LLC	
ARROWMARK, LLC	
HAWK CONTRCTING LLC	
LOENBRO, LLC	
SS PAVING CONSTRUCTION, INC.	
RUMMEL CONSTRUCTION, INC.	
M.R. TANNER CONSTRUCTION	
AMES CONSTRUCTION	
NESBITT CONTRACTING CO., LLC.	
ACHEN-GARDNER CONSTRUCTION	
HUNTER CONTRACTING CO, INC.	1
HAYDON COMPANIES, LLC	
CACTUS TRANSPORT II	
BF CONTRACTING, INC.	



CITY OF SCOTTSDALE

JOB ORDER CONTRACT (JOC) FOR CITYWIDE CIVIL SITE WORK

SOLICITATION NO. 26RFSQ061

CONTRACT NO. 2026-070-COS

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**CITY OF SCOTTSDALE
SOLICITATION NO. 26RFSQ061
CONTRACT NO. 2026-070-COS**

THIS CONTRACT, ("Contract") is entered into this ____ day of _____, 2026, ("Effective Date") between the City of Scottsdale, an Arizona municipal corporation (the "City") and DBA Construction, Inc., an Arizona corporation (the "Contractor").

RECITALS

- A.** The Mayor of the City of Scottsdale, Arizona, is authorized and empowered by the provisions of the City Charter to execute contracts for construction and related services.
- B.** The City intends to contract for construction and related services with Contractor for one or more individual Job Orders.
- C.** Contractor has represented to the City the ability to provide or procure the required construction and related services and, based on this representation, the City engages Contractor for these services.

FOR AND IN CONSIDERATION of the mutual covenants and considerations contained in this Contract, it is agreed by the City and Contractor as follows:

ARTICLE 1 - CONTRACTOR'S SERVICES AND RESPONSIBILITIES

1.1. GENERAL SERVICES

- A.** Contractor will furnish any and all labor, materials, equipment, transportation, utilities, services and facilities specified in the individual Job Order for which it is issued a Job Order Notice-to-Proceed for Work in accordance with this Contract. The City may determine it is in its best interest to furnish materials and equipment for an individual Job Order in accordance with the Job Order.
- B.** The Work will be performed in a good, workmanlike and substantial manner and to the satisfaction of the City Engineer and under the monitoring of the City Engineer, or designee, with the care and skill of a qualified contractor in Scottsdale, Arizona.
 - 1.** Minor design services may be required for some Job Orders. For those Job Orders that may require minor design services, Contractor will seek the services of an Arizona registered architect or engineering professional to prepare plans for permitting. The procurement of minor design services will be in accordance with the City's procurement procedures and code. If the services of a design professional are used, the design professional must maintain at least \$1,000,000 Professional Liability Coverage.
 - 2.** All documents prepared by Contractor are subject to review by the City. Review by the City is for the benefit of the City only, is not intended to be for the benefit of any other person and does not relieve Contractor from the professional liability associated with the documents they have prepared.

3. Contractor's Representative shall be reasonably available to the City and will have the necessary expertise and experience required to supervise the Contract Services. A Contractor's Representative will be assigned for each Job Order. Contractor's Representative will communicate regularly with the City and will be vested with the authority to act on behalf of Contractor.
- C. The City is a member of \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, Maricopa County, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under \$AVE Cooperative Purchasing Agreement, and with the concurrence of successful Respondents under this solicitation, a member of \$AVE may access a contract resulting from this solicitation issued by the City. By signing the JOC Contract, Contractor agrees to allow other \$AVE members the ability to purchase their needs and "use" this contract for JOC requirements.

1.2. GOVERNMENT APPROVALS AND PERMITS

- A. Unless otherwise provided, Contractor will obtain or assist the City in obtaining 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. Contractor is responsible for obtaining payment for the necessary environmental permits or file the necessary environmental notices.
- B. Copies of these permits and notices must be provided to the City's Representative before starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of the permit or notice requirements.
- C. The City is responsible for the City of Scottsdale review and permit(s) fees for building and demolition permits. The City will pay City review fees for grading and drainage, water, sewer, storm water management, and landscaping. The City will also pay for City utility design fees for permanent services.
- D. Contractor is responsible for all other permits and review fees not specifically listed in Article 1.2(C) above.
- E. Contractor is responsible for the cost of construction-related water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water will be Contractor's responsibility. Construction water does not include "test water" required to complete new water line pressure tests.
- F. The M.A.G. Standard Specification 107.12 is modified to read as follows: "Contractor, at its own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage, maintenance, and refuse haul-off as indicated upon the plans, which are required in addition to existing easements or rights-of-way secured by the City."

1.3. PRE-CONSTRUCTION CONFERENCE

- A. After issuance of a Job Order and before the commencement of any Work on any individual Job Order, a pre-construction conference may be scheduled.
- B. The purpose of this conference is to establish a working relationship between Contractor, design firms, utility firms, and various City departments. The agenda will include critical elements of the work schedule, submittal schedule, level of Record Drawings required, cost breakdown of major lump sum items, payment application and processing, coordination with the utility firms involved, and emergency telephone numbers for all representatives involved in the course of construction.
- C. At a minimum, attendees will include Contractor Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and Contractor's safety officer.
- D. The Job Order Notice-to-Proceed date will be established.
- E. Contractor will provide a Baseline Project Schedule indicating duration, manpower and equipment resources required to complete all major Work activities. The City and Design Team will review and comment on the Baseline Project Schedule. Contractor will revise the Baseline Project Schedule to the satisfaction of the City's Representative. No work will begin until the City accepts the Baseline Project Schedule.
- F. Contractor will submit a Schedule of Values based on the work and bids accepted from selected Subcontractors. These values will reflect the actual labor time, materials, profit and overhead for the Work or in accordance with Contractor's price book.

1.4. CONTROL OF THE WORK

Contractor will properly guard and protect all partially finished work and will be responsible for the Work until the entire Job Order is completed and accepted by the City. Any payment for completed portions of the Work will not release Contractor from this responsibility; however, it will turn over the entire Work in full compliance with the specifications or Job Order before final settlement is made. In case of suspension of the Work for any cause whatever, Contractor is responsible for the Project and will take all precautions necessary to prevent damage to the Project and will erect any necessary temporary structures, signs, or other facilities at no cost to the City.

- A. After all Work under the Job Order is completed, Contractor will remove all loose concrete, lumber, wire, reinforcing, debris and other materials not incorporated in the Work from the site of the Project.
- B. Unless the Job Order states that it is the responsibility of the City or a separate contractor, Contractor will provide through itself or its Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, other temporary facilities, temporary fencing, roll-offs, and dust control to permit Contractor to complete the Work consistent with

the Job Order.

- C. Contractor will perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Job Order. Contractor will at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- D. Survey stakes and marks required for the completion of the construction shown on the plans and described in the specifications will be furnished by Contractor.
- E. Contractor, its designee or Contractor's Superintendent will be present at the Work at all times that construction activities are taking place.
 - 1. All elements of the Work, such as concrete work, pipe work, etc., will be under the direct supervision of a foreman or his/her designated representative on the Site who will have the authority to take actions required to properly carry out that particular element of the Work.
 - 2. In the event of noncompliance with Article 5.1, the City may require Contractor to stop or suspend the Work in whole or in part.
- F. Where the Job Order requires that a particular product be installed or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for that portion of the Work is pre-approved by the manufacturer.
- G. Before ordering materials for or doing the Work, Contractor and each Subcontractor will verify measurements at the Site and will be responsible for the correctness of these measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, will be submitted to the City for resolution before proceeding with the Work.
- H. Contractor will take field measurements and verify field conditions and carefully compare these field measurements, conditions and other information known to Contractor with the Job Order before starting activities. Errors, inconsistencies or omissions discovered will be immediately reported to the City.
- I. Contractor will establish and maintain all building and construction grades, lines, levels, and benchmarks, and will be responsible for the accuracy and protection of these items. This portion of the Work will be performed or supervised by an Arizona licensed civil engineer or surveyor.
- J. Any person employed by Contractor or any Subcontractor who, in the opinion of the City, does not perform his/her portion of the Work in a proper, skillful and safe manner or is intemperate or disorderly will, at the written request of the City, be removed from the Work by Contractor or Subcontractor employing this person, and will not be employed again in any portion of the Work without the written approval of the City. Contractor or Subcontractor will hold the City harmless from damages or claims, which may occur in the enforcement of this Article.

- K. Contractor assumes responsibility for the proper performance of the Work of Subcontractors and any acts and omissions in connection with this performance. Nothing in the Contract Documents is intended or considered to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- L. Contractor will coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- M. On a daily basis, Contractor will prepare a Contractor's Daily Report. The City's CPM Project Inspector or the Public Works Project Coordinator will provide a sample report format to Contractor. The report will detail the activities that took place during the course of the day, all equipment utilized and the number of hours operated, and all personnel on the Site including Subcontractors. Unless otherwise arranged, the Daily Reports will be submitted on a daily basis to the City's CPM Inspector or the Public Work's Project Coordinator. The Daily Reports will also be made available to the City's Representative upon request. Failure to provide Daily Reports as arranged or requested above will result in the retention of monthly progress payments until the Reports are brought up to date.
- N. In the event of noncompliance with this Article 1.4, the City may require Contractor to stop or suspend the construction in whole or in part. Any suspension due to Contractor's noncompliance will not be considered a basis for an increase in the Job Order Price or extension of the Job Order Time.

1.5. CONTROL OF THE WORK SITE

- A. Throughout all phases of construction, including any suspension of the Work, Contractor will keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor will remove all debris, trash, construction waste, materials, equipment, machinery and tools arising from the Work or applicable portions of it to permit the City to occupy the Project or a portion of the Project for its intended use.
- B. Dust Control. Contractor will take whatever steps, procedures or means required to prevent abnormal dust conditions due to his construction operations in connection with this Contract. The dust control measures will be maintained at all times during construction of the Project(s) to the satisfaction of the City in accordance with the requirements of the Maricopa County Health Department Air Pollution Control Regulations and City of Scottsdale Supplement to M.A.G. Standard Specifications together with applicable provisions of Federal and State Law.
- C. Dust Control Coordinator. Subject to the requirements or exemptions contained A.R.S. §49-474.05, as amended, Contractor shall comply with the training, permitting, and Dust Control Coordinator requirements applicable to the Site and

the Project. The Dust Control Coordinator must have full authority to ensure that dust control measures are implemented at the Site, including authority to conduct inspections, deploy dust suppression resources, and modify or shutdown activities as needed to control dust. The Dust Control Coordinator must be responsible for managing dust prevention and dust control on the Site, including the use of leaf blowers and street sweeping equipment. The Dust Control Coordinator must have a valid Dust Training Certification Identification Card readily accessible on the Site while acting as the Dust Control Coordinator.

A Subcontractor who is engaged in dust generating operations at a Site that is subject to a Dust Control Permit issued by a County Control Officer and that requires the control of PM-10 emissions from dust generating operations must register with the County Control Officer. The Subcontractor must have its registration number readily accessible on the Site while conducting any dust generating operations.

- D. Storage on Site. Only materials and equipment, which are to be used directly in the Work, will be brought to and stored on the Site by Contractor. When equipment is no longer required for the Work, it will be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of Contractor.
- E. Waste Products. Contractor is responsible for the cost to dispose of all waste products including excess earth material which will not be incorporated into the Work under this Contract. The waste product referred to will become the property of Contractor. Contractor will provide for the legal disposal at an appropriate off-site location for all waste products, debris, etc., and will make necessary arrangements for its disposal. Any disposal/dumping of waste products or unused materials will conform to applicable Federal, State and Local Regulations.
- F. Contractor will supervise and direct the Work. Contractor will be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor will employ and maintain on the Site a qualified supervisor or superintendent who will have been designated in writing by Contractor as Contractor's Representative. The Contractor's Representative will have full authority to act on behalf of Contractor and all communications given to the Representative will be as binding as if given to Contractor. The Representative will be present on the Site at all times as required to perform adequate supervision and coordination of the Work. Where appropriate all Provisions of M.A.G., Section 105.5, will be applicable.
- G. Abnormal Weather. In the event of abnormal weather conditions, such as windstorms, rainstorms, etc., Contractor will immediately inspect the Work and Site and take all necessary actions to insure public access and safety are maintained.
- H. Damage to Property at the Site. Contractor will be responsible for any and all damage or loss to property at the Site, except to the extent caused by the acts or omissions of the City or its representatives, employees or agents and not covered by insurance. The costs and expenses incurred by Contractor under this Article will be paid as a Cost of the Work to the extent that these costs and expenses are in excess of or are not covered by required insurance, and to the extent of any

deductibles, but they will not increase the Job Order Price.

- I. Damage to Property of Others. Contractor will avoid damage, as a result of Contractor's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of separate contractors and the property of the City. Contractor will repair any damage caused by the operations of Contractor, and these costs will be paid as a Cost of the Work to the extent that the costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible, but they will not increase the Job Order Price.
- J. Failure of Contractor to Repair Damage. Within ten (10) days written notice to Contractor by the City, if Contractor fails to commence the repair of damage to property as provided in Articles 1.5(H) and 1.5(I), and diligently pursue the repair, then the City may elect to repair the damages at its own expense and to deduct from payments due or to become due to Contractor, amounts paid or incurred by the City in correcting the damage (provided Contractor has not commenced such repair during the 10 day notice period).

1.6. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- A. 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 Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Contractor will review, approve and verify that all submittals meet the intent of the Contract Documents.
- B. Three (3) copies of each Shop Drawing, Product Data, Sample, and similar submittals required by the Contract Documents will be delivered to the City in compliance with the approved schedule so as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by Contractor, which are not required by the Contract Documents, may be returned without action.
- C. Contractor will 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 City. All Work will be in compliance with approved submittals. Contractor will not be relieved of responsibility for any errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval. Deviation from the original specifications will be specifically noted on the submittal to the City and the City will be allowed seven (7) days to approve or reject any deviations.
- D. By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements and field construction criteria, or will do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Job Order.
- E. Contractor will not be relieved of responsibility for deviations from requirements of the Job Order by the City's approval of Shop Drawings, Product Data, Samples or

similar submittals unless Contractor has specifically informed the City in writing of the deviation at the time of submittal and the City has given written approval to the specific deviation. Contractor will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval.

- F. Contractor will direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City on previous submittals.
- G. Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.
- H. When professional certification of performance criteria of materials, systems or equipment is required by the Job Order, the City will be entitled to rely upon the accuracy and completeness of the calculations and certifications.

1.7. QUALITY CONTROL, TESTING AND INSPECTION

- A. Inspection. The City's Inspectors may be stationed on the Site to report to the City's Representative, or designee, as to the progress of the Work. The City's Representative, or designee, may also report as to the manner in which the Work is being performed and report whenever it appears that material furnished or Work performed by Contractor falls to fulfill the requirements of the specifications, this Contract or the Job Order. The Inspector may direct the attention of Contractor to any failure or infringement but this inspection will not relieve Contractor from any obligation to furnish acceptable materials or to provide completed construction that complies with the Contract or the Job Order in every way. The Inspector is for the purpose of assisting the City's Representative and should not be confused with an Inspector with a City regulatory agency or with an inspector from a laboratory under Article 1.8.
- B. In case of any dispute arising between the Inspector and Contractor as to material furnished or the manner of performing the Work, the Inspector will have the authority to reject materials or suspend the Work until the question and issue can be referred to and decided by the City. Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the specifications. Inspectors will in no case act as foremen or perform other duties for Contractor or interfere with the management of the Work by Contractor.
- C. Inspection or supervision by the City's Representative, or designee, will not be considered as direct control of an individual worker or the Work. The direct control will be solely the responsibility of Contractor.
- D. The furnishing of these services for the City will not make the City responsible for or give the City control over construction means, methods, techniques, sequenced procedures or for safety precautions or programs or responsibility for Contractor's failure to perform the Work in compliance with the Contract Documents.

1.8. MATERIALS TESTING

All materials used in the Work will be new and unused, unless otherwise noted, and will meet all quality requirements of the Job Order.

- A. All construction materials to be used on 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 of the City. Any materials rejected by the City will be removed immediately and replaced in a manner acceptable to the City without increasing the Job Order Price.
- B. The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and tests will be made in compliance with the following: The City of Scottsdale Minimum Sampling Frequency Guide, the City of Scottsdale Material Testing Manual and the standard methods of AASHTO or ASTM, DSPM and MAG supplements.
- C. The City will select a pre-qualified City or Independent Testing Laboratory and will pay for initial City Acceptance Testing.
 - 1. When the first and subsequent tests indicate noncompliance with the Job Order, the cost associated with that noncompliance will be incurred by Contractor without increasing the Job Order Price.
 - 2. When the first and subsequent tests indicate noncompliance with the Job Order, all retesting will be performed by the same testing agency. The cost associated with the noncompliance will be incurred by Contractor without increasing the Job Order Price.
 - 3. Contractor will cooperate with the selected testing laboratory and all others responsible for the testing and inspecting of the Work and will provide them access to the Work at all times.
- D. At the option of the City, materials may be approved at the source of supply before delivery is started.
- E. Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, will be incurred by Contractor without increasing the Job Order Price, unless otherwise provided in the Job Order.
- F. Contractor's convenience and quality control testing and inspections will be the sole responsibility of Contractor and incurred by Contractor without increasing the Job Order Price.
- G. All soils and materials testing will be performed and paid for by the City. The City will order tests and distribute test results for all construction areas. The City will be responsible for ordering testing and will distribute test results within 24 hours of receipt.

1.9. PROJECT RECORD DOCUMENT/AS BUILTS

A. During the construction period, Contractor will maintain at the Site a set of Blueline or Blackline Prints of the Construction Document drawings and Shop Drawings for Project Record Document purposes.

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

- Dimensional changes to the drawings;
- Revisions to details shown on drawings;
- Depths of foundations below first floor;
- Locations and depths of underground utilities;
- Revisions to routing of piping and conduits;
- Revisions to electrical circuitry;
- Actual equipment locations;
- Duct size and routing;
- Locations of concealed internal utilities;
- Changes made by Adjustment; and
- Details not on original Contract Drawings.

2. Contractor will mark completely and accurately Project Record Documents, prints of Construction 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 location.

3. Contractor will mark sets of Project Record Drawings Prints with red erasable colored pencil.

4. Contractor will note Request for Information (RFI) Numbers, American Standards Institute (ASI) Numbers and Adjustment Numbers, etc., as required to identify the source of the change to the Construction Documents.

5. Contractor will at the time of Substantial Completion, submit Project Record Drawing Prints and Shop Drawings to the City or its representative for review and comment.

B. Immediately upon receipt of the reviewed Project Record Drawings from the City, Contractor will correct any deficiencies or omissions to the drawings and prepare the following for submission to the City:

1. A complete set of PDF electronic files of all Project Record Drawing prepared in Microstation format compatible with City of Scottsdale CADD requirements. If a Design Professional is contracted with, the Design Professional will provide files of the original Construction Documents to

Contractor for use in preparing these final Project Record Documents, or Contractor may contract with the Design Professional to revise and update the electronic drawing files. Each drawing will be clearly marked with "As-Built Document" and shall be certified by an Arizona Registered Land Surveyor.

2. A complete set of As-Built reproducible mylars from the final Microstation drawings and an electronic pdf file on CD are required.
3. The original copy of the Project Record Drawings with redline mark-ups.

1.10. PROJECT SAFETY

- A. The Occupational Safety and Health Act (OSHA) and the City of Scottsdale loss control procedures are the minimum standard for safety and environmental protection and must be fully complied with at all times. All Work will be performed in compliance with all applicable federal, state and local laws, ordinances, statutes, rules and regulations including ADOSH policies and procedures. Contractor may be required to attend a City safety briefing session at the pre-construction meeting. The session will be attended by the Contract Administrator, the designated Risk Management staff, and a Contractor's Representative. Contractors that violate the aforementioned rules and regulations may be subject to job shutdown and or removal from City facilities.
- B. The Risk Management Division makes available a packet which contains the City's OSHA compliance guidelines, emergency evacuation, the City's safety and health plan, and other safety information.
- C. Contractor will conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.
- D. Contractor will contact the City's Representative and the Risk Management Division within twenty-four (24) hours of the occurrence of an accident or injury arising out of Contractor's Work under this Contract.
- E. Contractor employees are encouraged to abate or remedy any unsafe act or condition, which may arise in the course of Contractor's Work under this Contract.
- F. The City reserves the right to conduct safety audits at the Site and stop unsafe acts at any time. In addition, the City will be notified within four (4) hours should any OSHA inspection occur at a Site.
- G. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to:
 1. All individuals at the Site, whether working or visiting;
 2. The Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and
 3. All other property at the Site or adjacent to the Site.

- H. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- I. Contractor will, before commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Contractor's Safety Representative will be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.
- J. Contractor must provide OSHA 300A Summary log information including total recordable cases, total case rates, and lost workday incident rates for the past two (2) calendar years. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable.
- K. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-governmental authorities having jurisdiction over safety-related matters involving the Project or the Work.
- L. Contractor's responsibility for safety under this Article 1.10 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for:
 - 1. Complying with all Legal Requirements, including those related to health and safety matters; and
 - 2. Taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
- M. Contractor and Subcontractors must agree to provide Material Safety Data Sheets for all substances that are delivered to the City of Scottsdale, that come under the Occupational Safety and Health Administration Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication (reference Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazardous Communication Standard).

All Contractors and all Subcontractors using chemicals on City of Scottsdale property shall use only the safest chemicals, with the least harmful ingredients. These chemicals shall be approved for use by a City of Scottsdale representative before bringing them on the property.

Contractor and all Subcontractors shall make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation will be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication, Contractor and Subcontractors are informed of the presence of (or possible presence of) chemicals in the area where the Work requested will be performed. It is the responsibility of Contractor or all selected Subcontractors to contact the City of Scottsdale for specific information relative to the type of chemicals present and location of appropriate Material Safety Data Sheets.

Unless Included in the Work, if Contractor encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, it will immediately stop Work and report the condition to the City.

If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, Contractor will not resume Work in the affected area until the material has been abated or rendered harmless. Contractor and the City may agree, in writing, to continue Work in non-affected areas onsite. An extension of the Contract Time may be granted as provided in Article 5.

1.11. WARRANTY

- A. Contractor warrants that any material or service supplied to the City shall fully conform to all requirements of this Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by this Contract. The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contractor shall maintain all applicable licenses and permits.
- B. The provisions of M.A.G., Section 108.8 will apply with the following additional requirements:
 - 1. Should Contractor fail to begin repairs or corrective work within fourteen (14) calendar days after receipt of written notice from the City, the City may perform the necessary work and Contractor agrees to reimburse the City for the actual cost.
 - 2. The warranty period on any part of the Work repaired or replaced will be extended for a period of one (1) year from the date of the repair or replacement.
 - 3. This warranty will not apply to damage caused by normal wear and tear or by acts beyond Contractor's control.
- C. 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 liable.
- D. Contractor's warranty obligation will be for one (1) year.

- E. Nothing in this warranty is intended to limit any manufacturer's warranty which provides the City with greater warranty rights than those found in this Article 1.11 or the Contract Documents. Contractor will provide the City with all manufacturers' warranties upon Substantial Completion of each Job Order.

1.12. CORRECTION OF DEFECTIVE WORK

- A. Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Article 1.11 above, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within any longer period to the extent required by the Contract Documents. All removal/replacement work, as directed by the City to Contractor, in compliance with this Contract, MAG standards and City codes will have cost determinations by the City and be issued as a Job Order Adjustment to the Project. A Progress Payment, or partial or entire use or occupancy of the Project by the City will not constitute acceptance of Work not in accordance with the Contract Documents.

During the Work, Contractor shall take meaningful steps to begin correction of any nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Contractor fails to begin the necessary steps during the Work, the City, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that the City will commence correction of any nonconforming Work, at its discretion, through its employees, agents or other third parties.

Contractor shall take meaningful steps to begin correction of nonconforming Work subject to Article 1.11 above. These measures include but are not limited to timely correction of the Work. If Contractor fails to initiate necessary measures for this Work within seven (7) days of receipt of written notice from the City, the City, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that the City will begin correction of the nonconforming Work, at its discretion, through its employees, agents or other third parties.

- B. If the City does perform this corrective Work, Contractor will be responsible for all reasonable costs incurred by the City in performing the correction without increasing the Job Order Price.
- C. Contractor shall immediately respond to any nonconforming Work that creates an emergency.
- D. The one (1) year period referenced in Article 1.11 above applies only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding Contractor's other obligations under the Contract Documents.

1.13. SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- A. Contractor shall select major Subcontractors and major Suppliers, subject to first obtaining the City's approval. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors must not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of Contractor, but the City must approve in writing the selection of all Subcontractors. In any case, Contractor is solely responsible for the performance of the selected Subcontractors/Suppliers.

Contractor shall prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval or Contractor may use the City's plan as described in Article 1.13(B). This Subcontractor selection plan will identify those Subcontractor trades anticipated to be selected by qualifications only as provided in Article 1.13(B) and those Subcontractor trades anticipated to be selected by qualifications and competitive bid as provided in Article 1.13(C). This plan will also identify those Subcontractors that will not be selected through a formalized qualifications-based selection process. The Subcontractor selection plan must be consistent with the selection requirements included in this Contract.

- B. **Selection by qualifications only** - The City may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when Contractor can demonstrate it is in the best interest of the Project.

1. Contractor will apply the Subcontractor selection plan approved by the City in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation. The selection plan will be Contractor's own selection plan approved by the City or the City's selection plan as provided in this Article 1.13(B).
2. Contractor will negotiate costs for services/supplies from the Subcontractor(s)/Supplier(s) under the approved qualifications only method.

City Selection Plan:

3. Contractor may elect to comply with the following City procedures in its selection of Subcontractor(s) or Suppliers(s) based on qualifications only:
 - a. The Request for Qualifications (RFQ) will contain the best description of the services or material desired; and
 - b. A statement that only unpriced statements of qualifications will be considered; and
 - c. State the requirements for the project, such as drawings and descriptive literature; and
 - d. State the criteria for evaluating the qualifications; and
 - e. A closing date and time for receipt of a statement of qualifications

and the location where the statements should be delivered or mailed; and

- f. A statement that discussions may be held; and
 - g. A statement that only statements of qualifications determined to be acceptable will be considered for award.
- 4. The RFQ may be amended after the submission of the statements of qualifications. Any amendment will be distributed only to bidders who submitted statements of qualifications. Those bidders will be permitted to submit new unpriced statements of qualifications or to amend statements already submitted.
 - 5. Statements of Qualifications will not be opened publicly but will be opened in the presence of Contractor. The contents of unpriced statements of qualifications will not be disclosed to unauthorized persons.
 - 6. Statements of Qualifications will be evaluated solely in accordance with the criteria stated in the RFQ and will be determined to be either acceptable for further consideration or unacceptable. A determination that the statement is unacceptable shall be in writing, state the basis of the determination and be retained by Contractor. Contractor will notify the bidder of the determination and the bidder will not be given an opportunity to amend its statement of qualifications further.
 - 7. Contractor may conduct discussions with any bidder who submits an acceptable or potentially acceptable statement of qualifications. During discussions, Contractor will not disclose any information derived from any other bidder's statement of qualifications.
 - 8. Contractor will negotiate costs for services/supplies from the Subcontractor(s)/Supplier(s) selected under this method.
- C. **Selection by qualifications and competitive bid** – Contractor will apply the City's Subcontractor selection plan stated above or Contractor's selection plan, if previously approved by the City, in Contractor's evaluation of the qualifications of Subcontractor(s)/Supplier(s) and will provide the City with the selected process to prequalify prospective Subcontractors/Suppliers. Selection may not be based on price alone. All Work by major Subcontractors and major Suppliers will then be competitively bid to the prequalified Subcontractors unless a Subcontractor or Supplier was selected in accordance with Article 1.13(B) above. Contractor may elect to comply with the following procedures in step 2 of its competitive bid process.
- 1. Contractor will develop Subcontractor and Supplier interest, submit the names of a minimum of three (3) qualified Subcontractors or Suppliers for each trade in the Project and solicit bids for the various Work categories. If there are not three (3) qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances, Contractor may request approval by the City to submit less than three (3) names. Without

first giving written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.

2. If the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, Contractor will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
 3. Contractor will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors and Suppliers. Contractor will then review the price bids submitted by Subcontractors and Suppliers and make its selection based on the responsive and responsible bidder with the lowest price.
 4. If Contractor desires to self-perform certain portions of the Work, it must 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 in the Invitation for Bids. If events warrant and the City concurs that in order to insure compliance with the Project Schedule or cost, Contractor may self-perform Work without bidding or re-bidding the Work. (For horizontal construction, as defined in A.R.S. § 34-101(16), Contractor must self-perform not less than 45% of the Work as required by A.R.S. § 34-603(l)(3).)
- D. If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, Contractor will nominate a substitute Subcontractor or Supplier, preferably if this option is still available, from those who submitted Subcontractor bids for the Work affected. Once the substitute Subcontractors and Suppliers are consented to by the City, Contractor's proposed price for the Work or portion of the Work will be correspondingly adjusted to reflect any higher or lower costs from any substitution. Under no circumstances will the City's objection or comment on any Subcontractor or Supplier relieve Contractor of its sole responsibility for control over the methods, means and processes by which the Work is accomplished. The City must approve in writing the selected Subcontractor Selection Plan before work commences on any Job Order.
- E. Contractor shall incorporate by reference the terms and conditions of this Contract in any subcontract or supplier contract hereunder.

ARTICLE 2 - CITY'S SERVICES AND RESPONSIBILITIES

2.1 INFORMATION AND SERVICES

The City will furnish Contractor, at no cost to Contractor, the following information or services for this Project:

1. One copy of data pertinent to the Work. However, Contractor will be responsible for searching the records and requesting information required for the Project.
2. All available data and information relative to policies, standards, criteria,

studies, etc.

3. Project funding and budget allocations and any changes affecting the funding or budget allocations.
4. For purpose of determining the Job Order Price, any Plans and Specifications.
5. For purpose of Project Record Drawing Prints, a CADD file of the Construction Documents in Microstation format compatible with City of Scottsdale CADD requirements.

2.2 CITY'S REPRESENTATIVE

The City's Representative will be responsible for providing City-supplied information and approvals in a timely manner to permit Contractor to fulfill its obligations under the Contract Documents.

2.3 DESIGN PROFESSIONAL SERVICES

- A. The City may contract separately with one or more Design Professionals to provide architectural or engineering design of the Project in accordance with the provisions of A.R.S. §34-603.
- B. The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work:
 1. The Design Professional may provide administration of the Work. The City and Contractor will endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants will be through the Design Professional.
 2. The Design Professional may visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work.
 3. Upon Contractor's submittals, the Design Professional may review and approve or take other appropriate action on submittals as Shop Drawings, Product Data and Samples in accordance with Article 1.6.
 4. All drawings produced for projects considered to be performed under Contractor are the property of the City and are owned in whole by the City for any and all future use and considerations.

2.4 CITY'S SEPARATE CONTRACTORS

The City is responsible for all Work performed on the Project or at the Site by separate contractors under the City's control. The City will contractually require its separate

contractors to cooperate with and coordinate their activities so as not to interfere with Contractor in order to enable Contractor to timely complete the Work consistent with the Contract Documents. Contractor agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.5 FURNISHING OF SERVICES AND INFORMATION

A. The City will be responsible for the payment or waiver of the following:

1. City review and permit(s) fees for building, encroachment, and demolition permits including City, State and County.
2. City review fees for grading and drainage, water, sewer and landscaping.
3. Utility design fees or permanent services fees are paid by the City, but all submittals are the responsibility of Contractor.
4. Obtaining Nationwide 404 Permits.
5. City Development Fees.

B. Unless expressly stated to the contrary in the Contract Documents, the City will provide, at its own cost and expense, for Contractor's information the following:

1. To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
2. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, necessary to permit the proper design and construction of the Project and enable Contractor to perform the Work;
3. A legal description and street or physical address of the Site;
4. To the extent available, as-built record or historical drawings of any existing structures at the Site;
5. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including hazardous materials, in existence at the Site; and
6. To the extent available, Geotechnical studies describing subsurface conditions and other surveys describing other latent or concealed physical conditions at the Site.
7. The City will provide all City standards and guidelines, supplementary conditions and special provisions that will be included in the plans and specifications for the Project. These may include but are not limited to: disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, special quality

control testing and termite treatment requirements.

2.6 PROJECT MANAGEMENT SERVICES

- A. The City may contract separately with one or more Technical Consultants to provide project management assistance for the Project. The Technical Consultant's contract as well as contracts with other firms hired by the City will be furnished to Contractor. Contractor will not have any right, however, to limit or restrict any Project modifications that are mutually acceptable to the City and Technical Consultant.
- B. The Technical Consultant services will augment the City staffing resources to effectively manage the objectives of the City and the Project with the goal of managing the key Project communication, cost and time parameters.
- C. The Technical Consultant may provide pre-programming and design standards.
- D. The City may contract with the Technical Consultant to provide any or all of the services or functions of the City's project manager during the performance of the construction.

2.7 PERMIT REVIEW AND INSPECTIONS

For clarification, permitting activities are handled by the City of Scottsdale Developmental Services, Fire and Planning Departments. Obtaining any permits and submittals are the responsibility of the City.

2.8 UTILITY COMPANY COORDINATION

Contractor will be responsible for coordinating utility design work for permanent service to the Project and will ensure that the work takes place in a timely manner and does not impact the Project schedule. Any utility design fees for permanent services to a Job Order will be paid by the City in accordance with Article 2.6.

ARTICLE 3 - CONTRACT TIME AND JOB ORDER TIME

3.1 CONTRACT TIME

- A. The initial term of this Contract will be for two (2) years and will commence on the Effective Date, with the option to extend for three (3) additional years in one (1) year increments.
 - 1. The option to extend may be exercised based on Contractor's successful performance and the needs of the City.
 - 2. A contract modification will be processed for each extension and will commence on or about the anniversary date of the Contract. Each extension must be authorized by the Contract Administrator and Purchasing Director for the City and need not return to the City's Council for approval.
- B. The Contract will remain in full force and effect during the performance of any Job

Order.

3.2 JOB ORDER TIME

- A. Job Orders may be issued at any time during the term of this Contract.
- B. Each individual Job Order will include a Job Order Notice-to-Proceed date, Duration of the Work as determined in accordance with this Article 3.2 and a calculated Substantial Completion date.
- C. Contractor agrees that it will commence performance of the Work and achieve the approved Job Order Time.
- D. Job Order Time may be subject to adjustment in accordance with Article 5.

3.3 SUBSTANTIAL COMPLETION

- A. Substantial Completion of each Job Order is when all construction has been completed with the exception of final inspection punch list work and further defined in Article 12. The purpose of granting or acknowledging Substantial Completion is to stop Job Order Time.
- B. Before notifying the City in accordance with Article 3.3(C), Contractor will inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. Contractor will proceed promptly to complete and correct items on the list. Failure to include an item on the list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.
- C. Contractor will notify the City when it believes a Job Order, or to the extent permitted in the Contract Documents, a portion of the Job Order, is substantially complete.
- D. Within five (5) days of the City's receipt of Contractor's notice in accordance with Article 3.3(C), the City and Contractor will jointly inspect the Work to confirm Substantial Completion.
- E. Once Substantial Completion of the Work is confirmed in accordance with Article 3.3(D), the City will prepare and issue a Certificate of Substantial Completion that will state:
 - 1. The date of Substantial Completion of the Work or portion of the Work;
 - 2. The remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance;
 - 3. Provisions (to the extent not already provided in the Contract Documents) establishing the City's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance.
- F. The City, at its option, may use a portion of the Work which has been determined

to be substantially complete provided, however, that:

1. Certificate of Substantial Completion has been issued for the portion of Work addressing the items in Article 3.3(E)(2).
2. Contractor and the City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and
3. The City and Contractor agree that the City's use or occupancy will not interfere with Contractor's completion of the remaining Work required under Article 3.3(E).

3.4 PUNCH LIST PREPARATION

A minimum of seven (7) days before Substantial Completion, Contractor, in conjunction with the City, will prepare a comprehensive list of Punch List items, which the City may edit and supplement. Contractor will proceed promptly to complete and correct the Punch List items. Failure to include an item on the Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Warranties required by the Contract Documents will not commence until the date of Final Acceptance, unless otherwise provided in the Contract Documents. Seven (7) days before the City issues its Final Acceptance Letter, Contractor will deliver to the City all Operation and Maintenance Manuals necessary for the City to assume responsibility for the operation and maintenance of that portion of the Work.

3.5 FINAL ACCEPTANCE

Upon receipt of written notice that the Work or Identified portions of the Work is ready for final inspection and acceptance, the City and Contractor will jointly inspect to verify that the remaining items of Work have been completed as required under Article 3.3(E). Upon verification that the items have been satisfactorily completed, the City will issue a Final Acceptance Letter.

3.6 LIQUIDATED DAMAGES

- A. Contractor understands that if Substantial Completion is not attained within the Job Order Time, as may be adjusted for each Job Order, the City will suffer damages, based on the anticipated loss caused by the breach and the difficulty in determining and accurately specifying the damages. Contractor agrees that if Substantial Completion is not attained within the Job Order Time as adjusted, Contractor will pay the City the amount prescribed in Article 3.6(B) below as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Job Order Time as adjusted.
- B. The following will be the liquidated damages for each Job Order unless a specific amount has been determined for each individual Job Order.

LIQUIDATED DAMAGES

Original Job Order Amount		Daily Charges
From more than	To and including	Calendar Day or Fixed Date
\$00	\$25,000	\$200
25,001	50,000	250
50,001	100,000	280
100,001	500,000	430
500,001	750,000	500
750,001	1,000,000	570
1,000,001	1,250,000	610
1,250,001	1,500,000	650

ARTICLE 4- CONTRACT PRICE AND JOB ORDER PRICE**4.1 CONTRACT PRICE**

The fee for individual projects performed under this contract will be negotiated on a project-by-project basis as Job Orders. The amount paid to the Contractor under this contract for all Job Orders shall not exceed Twelve Million Dollars (\$12,000,000) for the initial two (2) year term and Seven Million Five Hundred Thousand Dollar (\$7,500,000) for any successive one (1) year contract extension. The Contractor agrees at its own cost and expense, to do all the Work as specified in the Contract Documents and any Work contingent to the Contract and necessary for the construction of the improvements. The Contractor will completely construct the Work and install the materials, free and clear of all claims, liens, and charges of any kind, in the manner and under the conditions specified within the time or times stated in each Job Order.

- A. In no event will any individual Job Order Price exceed Four Million Dollars (\$4,000,000). If the City opts to extend this Contract in accordance with Article 3.1(A), the Contract Modification may increase the maximum amount, if necessary, at that time.
- B. The Job Order Price is subject to Adjustments made in accordance with Article 5.
- C. Unless otherwise provided in the Contract Documents, the Job Order Price is considered to include all sales, use, consumer and other taxes throughout the term of this Contract, whether or not yet effective or merely scheduled to go into effect.
- D. Contractor must secure and maintain, during the life of the Contract, State of Arizona and City of Scottsdale Transaction Privilege (sales) Tax Licenses.

To obtain a State of Arizona Privilege (Sales) Tax License Application, please go to the following website:

<https://azdor.gov/transaction-privilege-tax/tpt-license/applying-tpt-license>

To obtain a City of Scottsdale Transaction (Sales) Tax License Application, please go to the following website:

<https://www.scottsdaleaz.gov/taxes/resources>

Contractor must demonstrate compliance with the E-Verify Program as provided in Article 11.33 and as required by A.R.S. §41-1080, as amended, before issuance of any License by the City.

4.2 RESPONSIBILITY FOR PRIVILEGE (SALES) TAXES

- A. Contractor is responsible for payment of all applicable State of Arizona and City of Scottsdale transaction privilege (sales) taxes due on construction income whether or not these taxes are specifically separated in the bid amount. The taxes are to be reported on either a progressive billing (accrual) basis or cash receipts basis, depending on the method chosen at the time application was made for the Privilege (sales) Tax License.

City Privilege (sales) tax exemptions/deductions may be applicable to certain projects. Contractor is advised to consider this as it prepares its bid. Please review, in detail, Sections 415, 465, and 110 of the Scottsdale Revised City Code, Appendix C to determine if exemptions/ deductions are applicable. For tax guidance, please reference the City Code and other tax resources at the following website:

<http://www.scottsdaleaz.gov/taxes/>

The State of Arizona has similar exemptions; please reference A.R.S. Title 42 at the following website:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=42>

For further questions regarding tax treatment, please contact the Arizona Department of Revenue at 602-255-2060 and the City of Scottsdale Tax & Audit Section at 480-312-2768.

ARTICLE 5 - CHANGES TO THE CONTRACT PRICE AND TIME

5.1 DELAYS TO THE WORK

- A. Delays may be compensable, concurrent, excusable or non-excusable as defined in Article 12.
- B. If Contractor is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Contractor is responsible, the Job Order Time for performance may be reasonably extended by Job Order Adjustment.
- C. Contractor must request a Job Order Adjustment by written notice, including an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay, only one request is necessary.
- D. Written notice will be received within fourteen (14) days of the commencement of the cause of the delay. If written notice is received more than fourteen (14) days after commencement of the cause of the delay, the period of delay will be considered to commence fourteen (14) days before the giving of any notice.

- E. If adverse weather conditions are the basis for a Job Order Adjustment request, the requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- F. Permitting Contractor to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights.
- G. In the event Contractor incurs expenses related to a delay for which the City is responsible pursuant to A.R.S. §34-609(E), as amended, Contractor and the City will negotiate an equitable adjustment to the Job Order Price and/or Job Order Time. This provision does not void any other section of this Contract that requires notice of delays, provides for arbitration or other procedures for settlement or provides for liquidated damages.
- H. In addition to Contractor's right to request a time extension for those events stated in this Article 5.1, Contractor may also be entitled to an appropriate adjustment of the Job Order Price provided, however, that the Job Order Price will not be adjusted for delays caused by reason of force majeure as defined in this Contract.

5.2 DIFFERING SITE CONDITIONS

- 5.2.1. If Contractor encounters a Differing Site Condition(s), Contractor may be entitled to an adjustment in the Job Order Price or Job Order Time(s) to the extent Contractor's cost or time of performance are the direct result of a Differing Site Condition(s).
- 5.2.2. Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to the City of the condition, which notice will not be later than seven (7) days after the condition has been encountered. Final costs must be submitted within thirty (30) days after notice is received by the City, unless extended by written agreement of the parties. Contractor must give the City's Contract Administrator written notice of and an opportunity to observe such condition before disturbing or altering the Differing Site conditions. The failure of Contractor to give written notice and make the Claim as required by this Article and Article 7.1.5 shall constitute a waiver by Contractor of any rights arising out of or relating to such Differing Site Conditions.
- 5.2.3. In order for Contractor to obtain any additional compensation or time extensions for Differing Site Conditions, Contractor must demonstrate that it encountered a material difference at the Site, as defined in Article 12, that required it to expend additional cost or time. Contractor will also establish that it actually and reasonably relied upon the representations found in the Contract Documents concerning the Site conditions.

5.3 APPLICATION FOR EXTENSION OF TIME

5.3.1 If performance by Contractor is delayed for a reason set forth in Article 5, Contractor may be allowed a reasonable extension of time in conformance with this Article. Before Contractor's time extension request may be considered, Contractor shall notify the City of the condition which allegedly has caused or is causing the delay, and shall submit a written application to the City identifying:

1. Liquidated damage assessment rate, as specified in the Contract;
2. Original Job Order Price;
3. Original Job Order Time;
4. Any previous Job Order Adjustments granted (number and duration); and
5. The extension of time requested.

5.3.2 In addition, the application for extension of time shall set forth in detail:

1. The nature of each alleged cause of delay in completing the Work;
2. The date upon which each such cause of delay began and ended and the number of dates attributable to each such cause;
3. A statement that Contractor waives all claims except for those delineated in the application, and the particulars of any claims which Contractor does not agree to waive. For time extensions for Substantial Completion and final completion payments, the application shall include a detailed statement of the dollar amounts of each claim item reserved; and
4. A statement indicating Contractor's understanding that the time extension is granted only for purposes of permitting continuation of Contract performance and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

5.4 ERRORS, DISCREPANCIES AND OMISSIONS

- A. If Contractor observes errors, discrepancies or omissions in the Contract Documents, it will promptly notify the City and request clarification. Contractor will provide a copy of this notice to the City's Representative.
- B. If Contractor proceeds with the Work affected by the errors, discrepancies or omissions, without receiving any clarifications, it does so at its own risk. Adjustments involving these circumstances made by Contractor before clarification by the Design Professional will be at Contractor's risk.

5.5 CITY REQUESTED CHANGE IN WORK

- A. The City reserves the right to make, at any time during the progress of the Work, any alterations as may be found necessary or desirable.
- B. These alterations and changes will not invalidate this Contract nor release the surety and Contractor agrees to perform the Work as altered, the same as if it had been a part of the original Job Order. Contractor will notify the surety of the changes and will assure that the alterations and changes are adequately covered by the surety bond.
- C. The City will request a proposal for a change in Work from Contractor, and an Adjustment to the Job Order Price or Job Order Time will be made based on a mutual agreed upon cost and time.

5.6 LEGAL REQUIREMENTS

The Job Order Price or Job Order Time will be adjusted to compensate Contractor for the effects of any changes in the Legal Requirements enacted after the date of the Contract affecting the performance of the Work.

5.7 JOB ORDER ADJUSTMENTS

- A. In accordance with the City of Scottsdale Procurement Code, and related Rules and Procedures, the City and Contractor will negotiate in good faith and as expeditiously as possible the appropriate Job Order Adjustment(s). Upon reaching an agreement, the parties will prepare and execute an appropriate Adjustment reflecting the terms of their agreement. The change in Work may or may not include an Adjustment in the Job Order Price or Job Order Time.
- B. All changes in Work authorized by Job Order Adjustments will be performed under the conditions of the Contract Documents. The decision to make an Adjustment to the Job Order rests solely with the City and any decision to make a Job Order Adjustment must be promptly complied with by Contractor, subject to the provisions of Article 5.8.
- C. The execution of a Job Order Adjustment by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, the Job Order Price, and the Job Order Time by Contractor. Contractor, by executing the Job Order Adjustment, waives and forever releases any claim against the City for any additional time or compensation for matters relating to, arising out of, or resulting from the Work included within or affected by the executed Job Order Adjustment of which Contractor knew or should have known.

5.8 UNILATERAL DETERMINATION OF JOB ORDER VALUE

If no mutual agreement occurs between the City and Contractor, the change in Job Order Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions to the Work. Such reasonable actual costs or savings shall include a component for direct job site overhead and profit but shall not include home-office overhead or other indirect costs and components. The calculation

of actual costs shall conform to the markup schedule in Article 5.12 below. Any such costs or savings shall be documented in the format and with such content and detail as the City requires. Contractor shall promptly submit such documentation and other backup as the City may require in evaluating the actual costs incurred.

5.9 ADDITIONAL JOB ORDER COST REQUIREMENTS

Contractor's or Subcontractor's submittals shall include the cost of materials, sales tax, and the cost of all transport. The cost of items listed shall be directly related to the Job Order Adjustment. Indirect costs not specifically related to the Job Order Adjustment shall not be considered. Contractor's or Subcontractor's Direct Labor Costs shall be limited to the hourly rate of directly involved workmen, employer contributions toward Contractor standard benefits, pensions, unemployment or social security (if any), and employer costs for paid sick and annual leave. Contractor's or Subcontractor's Overhead shall include license fees, bond premiums, supervision, wages of timekeepers and clerks, incidentals, home and field office expense, and vehicle expense directly related to the Project, and all other direct Project expenses not included in Contractor's material, direct labor, and equipment costs.

5.9.1 The allowance for overhead and profit shall be limited to the following schedule:

1. For Contractor, for any work performed by Contractor's own forces, fifteen (15%) percent of the Subtotal of Costs to Contractor.
2. For Contractor, for any work performed by its Subcontractor, six (6%) percent of the amount due to the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved, for any work performed by their own forces, fifteen (15%) of their materials and direct labor costs.
4. For each Subcontractor, for work performed by its Sub-Subcontractor(s), six (6%) percent of the amount due to the Sub-subcontractor.

5.10 LIMITATION OF COMPENSABLE ITEMS

5.10.1 For Job Order Adjustment, the total cost or credit to the City shall be based on the following schedule:

1. Contractor's Materials Costs.
2. Contractor's Direct Labor Costs.
3. Contractor's Equipment Costs (includes owned/rented equipment).
4. Applicable Subcontractor Costs.
5. Subtotal of Costs to Contractor.
6. Contractor's Overhead and Profit.

7. Total Cost or Credit to the City.

5.11 FIELD ORDERS

- A. The City has authority to initiate Field Orders that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Field Orders will be made by written order and will be binding on the City and Contractor. Contractor will carry out any written Field Orders promptly.
- B. Field Orders will not involve an adjustment in the Job Order Price or Job Order Times unless or until it becomes a Job Order Adjustment.
- C. Contractor may make minor changes in the Work, provided, however that Contractor will promptly inform the City, in writing, of any changes and record the changes, if appropriate, on the Project Record Documents maintained by Contractor.

5.12 JOB ORDER PRICE ADJUSTMENTS

- A. The increase or decrease in Job Order Price resulting from a change in the Work will be determined by one or more of the following methods:
 - 1. Unit prices stated in the Contract or as subsequently agreed to between the parties;
 - 2. A mutually agreed upon accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the City; and
 - 3. Costs, fees and any other markups.
- B. If an increase or decrease cannot be agreed to as stated in Article 5.7(A), the cost of the change of the Work will be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be stated in the Contract Documents. Contractor will maintain a documented, itemized accounting, evidencing the expenses and savings associated with these changes.
- C. If unit prices are stated in the Contract Documents, or are later agreed to by the parties, but application of the unit prices will cause substantial inequity to the City or Contractor because of differences in the character or quantity of the unit items as originally contemplated, the unit prices will be equitably adjusted.
- D. If the City and Contractor disagree upon whether Contractor is entitled to be paid for any services required by the City, the amount to be paid, other disagreements over the Scope of Work, proposed changes to the Work, or the time required to complete the Work, the City and Contractor will resolve the disagreements in accordance with Article 7.
 - 1. As part of the negotiation process, Contractor will furnish the City with a

good faith estimate of the costs to perform the disputed services, or the additional time required in accordance with the City's interpretations.

2. If the parties are unable to agree and the City expects Contractor to perform the services in accordance with the City's interpretations, Contractor will proceed to perform the disputed services, conditioned upon the City issuing a written order to Contractor:

- (a) directing Contractor to proceed; and

- (b) specifying the City's interpretation of the services that are to be performed.

- E. Emergencies. In any emergency affecting the safety of persons or property, Contractor will act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Job Order Price or Job Order Time(s) resulting from emergency work will be determined as provided in this Article 5.

ARTICLE 6- PROCEDURE FOR PAYMENT

6.1 JOB ORDER PAYMENT REQUEST

- A. At the pre-construction conference prescribed in Article 1.3, Contractor will submit for the City's review and approval a Schedule of Values. The Schedule of Values will include values for all items comprising the Job Order Price and will serve as the basis for monthly progress payments made to Contractor throughout the Work.
- B. At least five (5) working days before the date established for a progress payment, Contractor will meet with the City's Representative to review the progress of the Work, as it will be reflected on the Contractor Payment Request.
- C. The Contractor Payment Request will constitute Contractor's representation that the Work has been performed consistent with the Job Order including any Adjustment(s), has progressed to the point indicated in the Contractor Payment Request, and that title to all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

6.2 PARTIAL PAYMENTS

- A. Partial progress payment will be made for Job Orders with Job Order Time greater than 30 Days and may be made if the Job Order Time is less than 30 Days.
- B. The Contractor Payment Request may request payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.
- C. For equipment and materials suitably stored at the Site, the equipment and materials will be protected by suitable insurance and the City will receive the equipment and materials free and clear of all liens and encumbrances.

1. For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Maricopa County and be accessible for the City's inspection. Title to the materials and equipment will include applicable insurance, bonding, storage and transportation to the Site..
2. The City will be named as an Additional Insured on all insurance and bonds required for all stored materials or equipment

6.3 PAYMENT OF JOB ORDER PRICE

- A. Payments should be provided on the City format for a Pay Application which is based on the agreed upon Schedule of Values. Payment will be made no later than fourteen (14) days after the Contractor Payment Request is certified and approved, but in each case less the total of payments previously made.
- B. The Contractor Payment Request shall be deemed approved and certified for payment seven (7) days after the date of submission to the City by Contractor unless before that time the City prepares and issues a specific written finding setting forth those items in detail in the Contractor Payment Request that are not approved for payment under the Contract. The finding will indicate the specific amounts the City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Contractor must take to rectify the City's concerns. The City may withhold an amount from the progress payment sufficient to pay the expenses the City reasonably expects to incur in correcting the deficiency set forth in the written finding. Contractor and the City will attempt to resolve the City's concerns. If the parties cannot resolve the concerns, Contractor may pursue its rights under the Contract Documents, including those under Article 7.

6.4 RETENTION ON JOB ORDER PAYMENTS

In compliance with A.R.S. §34-609, as amended, there is no retention for job-order-contracting construction services contracts.

6.5 FINAL PAYMENT

- A. After receipt of a final Contractor Payment Request, the City will make final payment as required by this Article 6.5, provided that Contractor has completed all of the Work in conformance with the Job Order and Contract Documents and a Final Acceptance Letter has been issued by the City.
- B. At the time of submission of its final Contractor Payment Request, Contractor will provide the following information:
 1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect the City's interests; and
 2. A general release executed by Contractor waiving, upon receipt of final

payment by Contractor, all claims, except those claims previously made in writing to the City and remaining unsettled at the time of final payment.

6.6 PAYMENTS TO SUBCONTRACTORS OR SUPPLIERS

- A. Contractor will pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. Contractor will pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. No Contract between Contractor and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment as provided in this Contract.
- B. If Contractor fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and Contractor agrees that the City may take these actions:
 - 1. To hold Contractor in default under this Contract;
 - 2. Withhold future payments until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
 - 3. Reject all future offers to perform work for the City for a period not to exceed one (1) year from the Substantial Completion date of the Job Order at issue; or
 - 4. Terminate this Contract for cause.
- C. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Article, the failure or delay will not be considered a waiver, release, or modification of the requirements of this Article or of any of the terms or provisions of this Contract.
- D. Contractor will include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Contract.

6.7 AUDIT AND INSPECTION

- A. Records of Contractor's direct personnel payroll, reimbursable expenses related to each Job Order and records of accounts between the City and Contractor will be kept on a generally recognized accounting basis and will be available for three (3) years after completion of the Project.

From the effective date of this Contract and until three (3) years after the date of final payment by the City of Scottsdale to Contractor, the City, its authorized representative, or the appropriate federal or state agencies, reserve the right to audit Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate the Contract Documents. The City of Scottsdale or its authorized representative will have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and will be provided adequate and appropriate workspace, in order to conduct audits in compliance

with the provisions of this Article. The City of Scottsdale will give Contractor or Subcontractor reasonable advance notice of intended audits.

- B. The City reserves the right to decrease Job Order Price or payments made on this Contract if, upon audit of Contractor's records, the audit discloses Contractor has provided false, misleading, or inaccurate cost and pricing data.
- C. Contractor will include a similar provision in all of its contracts with Suppliers, Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, or the appropriate federal or state agency, has access to the Supplier, Subconsultant and Subcontractor records to verify the accuracy of cost and pricing data.
- D. The City reserves the right to decrease Job Order Price or payments made on this Contract if the above provision is not included in Supplier, Subconsultant and Subcontractor contracts, and one or more Suppliers, Subconsultants or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.
- E. If an audit in accordance with this Article, discloses overcharges of any nature by Contractor to the City in excess of 1% of the total contract billings, the actual cost of the City's audit will be reimbursed to the City by Contractor. Any adjustments or payments which must be made as a result of any audit or inspection of Contractor's invoices or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City's findings.
- F. This audit provision includes the right to inspect personnel records as required by Section 11.33.
- G. City may, at reasonable times, inspect the place of business of Contractor or its Subcontractor(s) that is related to the performance of this Contract.

ARTICLE 7- CLAIMS AND DISPUTES

7.1 REQUESTS FOR CONTRACT ADJUSTMENTS AND RELIEF

- 7.1.1 If either Contractor or the City believes that it is entitled to relief against the other for any event arising out of or related to the Work, that party will provide written notice to the other party of the basis for its claim for relief. The claims shall set forth in detail all known facts and circumstances supporting the claim; final costs associated with any claim upon which notice has been given must be submitted in writing to the City within thirty (30) days after notice has been received.
- 7.1.2 This notice will, if possible, be made before incurring any cost or expense and in accordance with any specific notice requirements contained in applicable articles of the Contract.
- 7.1.3 In the absence of any specific notice requirement, written notice will be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

- 7.1.4 This notice will include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of the request. ANY NOTICE OF CLAIM NOT FILED WITH THE CITY WITHIN SUCH TIME AND IN COMPLIANCE WITH THE PRECEEDING PROVISIONS SHALL BE CONSIDERED TO HAVE BEEN WAIVED AND SHALL BE DISMISSED.
- 7.1.5 In the event Contractor seeks to make a claim for an increase in the Job Order Price, as a condition precedent to any liability of the City therefore, unless emergency conditions exist, Contractor shall strictly comply with the requirements of this section and such claim shall be made by Contractor before proceeding to execute any Work for which a claim is made. Failure to comply with this condition precedent shall constitute a waiver by Contractor of any claims for compensation.
- 7.1.6 Contractor must continue its performance under this Contract regardless of the existence of any claims by Contractor.
- 7.1.7 In a claim by Contractor against the City for compensation in excess of the Job Order Price, any liability of the City to Contractor shall be strictly limited and computed in accordance with the Contract Documents and shall in no event include indirect costs, such as home office overheads or consequential damages of Contractor or any estimated costs or damages.

7.2 DISPUTE AVOIDANCE AND RESOLUTION

- 7.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the Contractor and the City each commit to resolving the disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 7.2.2 The Contractor and the City will first attempt to resolve disputes or disagreements at the field level through discussions between the Contractor's Representative(s) and the City's Representative(s) as described in Article 7.4.
- 7.2.3 If a dispute or disagreement cannot be resolved pursuant to Article 7.2.2, upon the request of either party, the parties' Representatives as described in Article 7.4 will meet as soon as conveniently possible, but in no case later than thirty (30) days after the request is made, to attempt to resolve the dispute or disagreement. Before any meetings between the parties Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 7.2.4 In the event Contractor incurs expenses related to a delay for which the City is responsible pursuant to A.R.S. §34 609(E), as amended, Contractor and the City will negotiate an equitable adjustment to the Job Order Price and/or Job Order Time. This provision does not void any other section of this Contract that

requires notice of delays, provides for arbitration or other procedures for settlement or provides for liquidated damages.

7.3 DUTY TO CONTINUE PERFORMANCE

Unless provided to the contrary in the Contract Documents, Contractor will continue to perform the Work and the City will continue to satisfy its payment obligations to Contractor, until final resolution of any dispute or disagreement between Contractor and the City.

7.4 REPRESENTATIVES OF THE PARTIES

A. City's Representatives

1. The City designates the individual listed below as the City's Senior Representative. This individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2.3:

City of Scottsdale
Attn: Alison Tymkiw
7447 E Indian School Road, Ste 205
Scottsdale, AZ 85251
(480) 312-7760

2. The City will designate an individual for each Job Order as the City's Representative. This person will manage the Job Order.

B. Contractor's Representatives

1. Contractor designates the individual listed below as Contractor's Senior Representative. This individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2.3:

DBA Construction, Inc.
Attn: Tom Drysdale
4720 E. Cotton Gin Loop, Suite 240
Phoenix, AZ 85040
(602) 708-2899

2. Contractor will designate an individual for each Job Order as Contractor's Representative.

ARTICLE 8 – SUSPENSION, TERMINATION AND CANCELLATION

8.1 CITY'S RIGHT TO STOP JOB ORDER SERVICES

- A. The City may, at its discretion and without cause, order Contractor in writing to stop and suspend any Job Order. Immediately after receiving this notice, Contractor will discontinue advancing the Job Order. The suspension will not exceed one hundred eighty (180) consecutive days. If the City suspends the Job

Order for one hundred eighty-one (181) consecutive days or more, the suspension will be considered a termination for convenience.

- B. Contractor may seek an adjustment of the Job Order Price or Job Order Time if its cost or time to perform the Contract Services has been adversely impacted by any suspension or stoppage of the Work by the City.

8.2 TERMINATION FOR CONVENIENCE

- A. The City reserves the right to terminate this Contract, in whole or in part, or abandon any portion of any Job Order for which services have not been performed by Contractor, at its sole convenience and discretion, upon written notice given pursuant to this Contract.

- 1. Contractor will estimate the value of the Work it has completed and submit its appraisal to the City for evaluation. The City will have the right to inspect the Work, to appraise the Work completed.

Contractor shall be entitled to receive just and equitable compensation for the percentage of Work actually completed and materials accepted before the effective date of the termination. This compensation will be an amount mutually agreed upon by Contractor and the City based on the Job Order and Scope of Work. If there is no mutual agreement, the final determination will be made in accordance with this Article.

- 2. The City will make the final payment within 60 days after Contractor has delivered the last of the partially completed items and the final fee has been agreed upon.

If the City terminates this Contract in compliance with this Article and proceeds to complete the Job Order through its employees, agents or other third parties, the City's rights to use the Work product will be as stated in Article 8.4.

- B. Upon termination of construction services during any Job Order, Contractor will proceed with the following obligations:

- 1. Stop Work as stated in the notice;
 - 2. Place no further subcontracts or orders;
 - 3. Terminate all subcontracts to the extent they relate to the Work terminated;
 - 4. Assign to the City all right, title and interest of Contractor under the subcontracts terminated; in which case the City will have the right to settle or to pay any termination settlement proposal arising out of those terminations;
 - 5. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of Contractor and which the City has or may acquire an interest; and

6. Comply with the requirements of Article 6.5(B).
- C. Contractor will submit complete termination inventory schedules no later than sixty (60) days from the date of the notice of termination.
- D. The City will pay Contractor the following:
 1. The direct value of its completed Work and materials supplied as of the date of termination;
 2. The reasonable costs and expenses attributable to the termination;
 3. Contractor will be entitled to profit and overhead on completed Work but will not be entitled to anticipated profit or anticipated overhead. If it appears Contractor would have sustained a loss on the entire Work had the Job Order been completed, Contractor will not be allowed profit and the City will reduce the settlement to reflect the indicated rate of loss;
 4. Contractor will maintain all records and documents for three (3) years after final settlement. These records will be maintained and subject to auditing as required in Article 6.7; and
 5. Take any action that may be necessary for the protection and preservation of the property related to the Job Order(s) that is in the possession of Contractor and in which the City has or may acquire an interest.

8.3 CANCELLATION FOR CAUSE

The City may also cancel this Contract or any part of it with seven (7) days notice for cause in the event of any default by Contractor, or if Contractor fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance, despite a reasonable opportunity to cure as judged by the City's Representative and failure to provide the City, upon request, with adequate assurances of future performance will all be causes allowing the City to cancel this Contract for cause. In the event of cancellation for cause, the City will not be liable to Contractor for any amount as damages, and Contractor will be liable to the City for any and all damages sustained as a result of the default that caused the cancellation.

8.4 CITY'S RIGHT TO PERFORM AND CANCEL FOR CAUSE

- A. If Contractor persistently fails to:
 1. Provide a sufficient number of skilled workers;
 2. Supply the materials required by the Contract Documents or Job Order(s);
 3. Comply with applicable Legal Requirements;
 4. Timely pay, without cause, Subconsultants or Subcontractors;
 5. Perform the Contract Services with promptness and diligence to ensure

that a Job Order is completed by the Job Order Time, as the times may be adjusted; or

6. Perform other material obligations under the Contract Documents and/or Individual Job Orders;

Then the City, in addition to any other rights and remedies provided in the Contract Documents or by law, will have the rights stated in Articles 8.2 and 8.3.

In the event the City cancels this Contract or any part of the services under any Job Order, the City will notify Contractor in writing, and immediately upon receiving this notice, Contractor will discontinue advancing the Work under this Contract or the Job Order and proceed to close all operations of any affected Job Order or this Contract.

- B. If the City provides Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and Contractor fails to comply in a time frame specified, the City may have the Work accomplished by other sources at Contractor's expense and without an increase to the Job Order Price
- C. Upon the occurrence of an event stated in Article 8.4(B), the City may provide written notice to Contractor that it intends to cancel the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Contractor's receipt of notice.
 1. If Contractor fails to cure, or reasonably commence to cure, the problem, then the City may give a second written notice to Contractor of its intent to cancel within an additional seven (7) day period.
 2. If Contractor, within this second seven (7) day period, fails to cure, or reasonably commence to cure the problem, then the City may declare the Contract cancelled for default by providing written notice to Contractor of this declaration.
- D. Upon declaring the Contract cancelled in accordance with Article 8.4(C), and for the purpose of completing the Work, the City may for all Job Orders enter upon the premises and take possession of all materials, equipment, scaffolds, tools, appliances and other items, which have been purchased or provided for the performance of the Work, all of which Contractor now transfers, assigns and sets over to the City for this purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- E. If through any cause, Contractor fails to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor violates any of the covenants, Contracts, or stipulations of this Contract, the City may withhold any payments to Contractor for the purpose of setoff until the exact amount of damages due the City from Contractor is determined by a court of competent jurisdiction.
- F. In the event of a cancellation, Contractor will not be entitled to receive any further

payments under the Contract Documents until the Work on all Job Orders is completed in accordance with the Contract Documents. At that time, Contractor will only be entitled to be paid for Work performed and accepted by the City before its default.

- G. If the City's cost and expense of completing the Work exceeds the unpaid balance of a Job Order Price, then Contractor will be obligated to pay the difference to the City. These costs and expenses will include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the City in connection with the procurement and defense of claims arising from Contractor's default.
- H. If the City cancels this Contract for cause and the cancellation is determined to have been without legal right, the cancellation for cause will be considered to have been a termination for convenience in accordance with the provisions of Article 8.2.

ARTICLE 9 - INSURANCE AND BONDS

9.1 INSURANCE REQUIREMENTS

- A. At the same time as execution of this Contract, Contractor will furnish the City of Scottsdale a Certificate of Insurance on a standard insurance industry ACORD form. The ACORD form will be issued by an insurance company authorized to transact business in the State of Arizona or one that is named on the List of Qualified Unauthorized Insurers maintained by the Arizona Department of Insurance.
- B. Contractor, Subcontractors and Subconsultants must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the Work by Contractor, its agents, representatives, employees, or Subcontractors.
- C. The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
- D. The City in no way warrants that the minimum limits contained in this Contract are sufficient to protect Contractor from liabilities that might arise out of the performance of the Contract Services under this Contract by Contractor, its agents, representatives, employees, Subcontractors or Subconsultants and Contractor is free to purchase any additional insurance as may be determined necessary. The City will not pay for higher limits, but if Contractor pays for insurance with higher limits, Contractor will name the City as an additional insured on any additional insurance.
- E. Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract,

and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

- F. Deductibles and Self-Insured Retentions. The policies stated in this Article may provide coverage which contains deductibles or self-insured retention amounts. Any deductibles or self-insured retention are not applicable to the policy limits provided to the City. Contractor is solely responsible for any deductible or self-insured retention amount. The City, at its option, may require Contractor to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit. Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

9.2 MINIMUM SCOPE AND LIMITS OF INSURANCE

Contractor must provide coverage at least as broad and with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expenses (Any one person)	OPTIONAL

Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 operations, independent contractors, products completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

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

Combined Single Limit Per Accident	\$1,000,000
For Bodily Injury and Property Damage	

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

coverage scope than underlying insurance.

C. Workers Compensation and Employers Liability

Workers' Compensation	Statutory
Employers Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$1,000,000

Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes applicable to Contractor's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance. The insurer must agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from Work performed by Contractor for the City.

D. Coverage Terms and Required Endorsements

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City of Scottsdale, its officers, officials, agents, and employees are to be named as additional insureds with respect to liability arising out of activities performed by, or on behalf of, Contractor including the City's general supervision of Contractor, products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
2. Except for Contractors Professional Liability and Workers Compensation Insurance, for all insurance policies required under this Contract, the City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by Contractor even if those limits of liability are in excess of those required by this Contract.
3. Except for Contractors Professional Liability and Workers Compensation insurance, all insurance policies required under this Contract, including any excess insurance policies, must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees will be in excess of the coverage provided by Contractor and must not contribute to it.
4. For all insurance policies required under this Contract, insurance coverage must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. For all insurance policies required under this Contract, insurance coverage must not be limited to the liability assumed under the indemnification provisions of this Contract.
6. All insurance policies required under this Contract, must contain a waiver of subrogation against the City, its officers, officials, agents, and

employees, for losses arising from Work performed by Contractor for the City.

7. For all insurance policies required under this Contract, if Contractor receives notice that any of the required policies of Insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the Contract Administrator for the City, unless such coverage is immediately replaced with similar policies.
8. Contractor, its successors or assigns, is required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of three (3) years following completion and acceptance of the Work. Contractor must submit Certificates of Insurance evidencing the Commercial General Liability insurance during this three (3) year period containing all the insurance requirements stated in this Contract including naming the City of Scottsdale, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
9. The Commercial General Liability policy will be at least as broad as the Insurance Service Office, Inc.'s CG 0 0 01 07 98.

9.3 OTHER INSURANCE REQUIREMENTS

The policies are to contain, or be endorsed to contain, the following provisions:

- A. Contractors Professional Liability: Contractor must carry Contractors Professional Liability insurance to cover the residual, contingent, and passive design exposures of Contractor.
- B. Contractors Professional Limits of Liability: Contractor must carry limits of \$1,000,000 each Project and \$2,000,000 in the Aggregate under a stand-alone policy or included by endorsement under the Commercial General Liability policy. Contractor, its successors and or assigns, is required to maintain this Professional Liability insurance as specified in this Contract for a minimum period of three (3) years following completion and acceptance of the Work. Certificates of Insurance citing that applicable coverage is in force and contains the provisions required by this Contract must be submitted for the three (3) year period. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage will extend for three (3) years past completion and acceptance of the work or services, and Contractor, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a three (3) year period. If there is no Professional Liability work or service as a part of this Contract, the City will waive the Professional Liability insurance requirement in writing.
- C. Builders Risk-Installation Insurance (Course of Construction)

Builders Risk-Installation and/or Boiler and Machinery Insurance coverage to be provided by Contractor as determined necessary by the City prior to the start of

construction.

Contractor bears all responsibility for loss to all Work being performed and to buildings under construction. Unless waived in writing by the City of Scottsdale, Contractor will purchase and maintain in force Builders Risk-Installation insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss or Open Perils policy form, for the completed value, at replacement cost equal to each Job Order contract price and all subsequent modifications.

This Builders Risk-Installation insurance must cover the entire Work including reasonable compensation for architects and Contractor's services and expenses and other "soft costs" made necessary by an insured loss. Builders Risk-Installation insurance must provide coverage from the time any covered property comes under Contractor's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.

Contractor must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders Risk-Installation insurance stated above if the Work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law and or testing requirements in the performance of this Contract.

Contractor will be responsible for any and all deductibles and the City must also be named as a Loss Payee under these policies. Contractor's insurance must be primary and not contributory; and waive all rights of subrogation against the City of Scottsdale, its officer, officials and employees. Contractor's insurance must name the City of Scottsdale, Contractor and all tiers of Subcontractors as insureds as respects their insurable interest at the time of loss. It must contain a provision that this insurance will not be canceled or materially altered without at least thirty (30) days advance notice to the City. Contractor is also required to give the City thirty (30) days advance written notice of the coverage termination for the Project.

The Builders Risk-Installation insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City. Builders Risk-Installation Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.

9.4 SUBCONSULTANT'S AND SUBCONTRACTOR'S INSURANCE

Unless Contractor's Subconsultants and Subcontractors can provide the same level of coverage as detailed in Article 9.2 and name the City and Contractor as Additional Insureds, Contractor's certificates must include all Subcontractors and Subconsultants as insureds under its policies or Contractor must maintain separate certificates and

endorsements for each Subcontractor and Subconsultant. All coverage for Subcontractors and Subconsultants must be in the amounts shown in Article 9.2, except for the General Liability Each Occurrence limit which shall be \$1,000,000. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least thirty (30) days advance notice to the City.

9.5 NOTICE OF CANCELLATION

If Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the City's Contract Administrator, unless such coverage is immediately replaced with similar policies. Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided, canceled by either party, reduced in coverage or in limits until thirty (30) days written notice has first been given in accordance with Article 11.24, herein.

9.6 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or approved to conduct business in the State of Arizona and with an A. M. Best rating of no less than B++6. The City in no way warrants that the above required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency. Failure to maintain insurance as required may result in termination of this Contract at the City's sole discretion.

9.7 VERIFICATION OF COVERAGE

- A. Contractor must furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverages must be clearly noted on the Certificate of Insurance.
- B. All certificates and endorsements are to be received and approved by the City before Contract Services commence except for Builders Risk-Installation Insurance. Each insurance policy required by this Contract must be in effect at or before the earlier of commencement of Work under the Contract Documents or the signing of this Contract, except for Builders Risk-Installation Insurance which, if required by the City, must be in effect before commencement of the Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- C. All Certificates of Insurance required by this Contract must be sent directly to the City of Scottsdale, Attn: Capital Project Management Office. **The project number and project description must be included on the Certificates of Insurance.** The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. Failure to provide a Certificate of Insurance with the appropriate verbiage will result in rejection of Contractor's Certificate and delay in contract execution. Additional Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and

returned or discarded.

9.8 APPROVAL

Any variation from the insurance requirements in this Article 9 must be approved by the City's Risk Management Division, whose decision will be final. Said variation will not require a formal contract amendment but may be made by administrative action.

9.9 BONDS AND OTHER PERFORMANCE SECURITY

- A. Before execution of each individual Job Order, Contractor must provide a performance bond and a payment bond for all construction services, each in an amount equal to the full amount of the agreed upon cost for that Job Order. Contractor may, at its own option, provide Payment and Performance Bonds for the entire Contract Price amount, but there shall be no obligation for the City to reimburse Contractor for bond costs incurred, except on an actual cost basis as each individual Job Order is issued. Bonds must be submitted in accordance with Title 34, Chapter 6 of the Arizona Revised Statutes and must be in substantially the same form as Exhibits A and B, attached to this Contract.
- B. Each bond must 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 must accompany the bonds. The Certificate must have been issued or updated within two (2) years before the execution of this Contract.
- C. The bonds must be made payable and acceptable to the City of Scottsdale.
- D. The bonds must be written or countersigned by an authorized representative of the surety and the bonds must have attached a certified copy of the Power of Attorney of the signing official.
 - 1. If one Power of Attorney is submitted, it must be for twice the total Job Order Price.
 - 2. If two Powers of Attorney are submitted, each must be for the total Job Order Price. Personal or individual bonds are not acceptable.
 - 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 must promptly furnish a copy of the bonds or must permit a copy to be made.
- E. All bonds submitted for this Project must be provided by a company which has been rated "A or better" by the A.M. Best Company.

ARTICLE 10 - INDEMNIFICATION

10.1 CONTRACTOR'S GENERAL INDEMNIFICATION

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation, for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any acts, omissions, negligence, recklessness, or intentional wrongful conduct to the extent caused by Contractor or any of its owners, officers, directors, agents or employees performing Work or Services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of Contractor employees. This indemnity includes any claim or amount arising out of, or recovered under, the Worker's Compensation Law or arising out of the failure of Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, Contractor agrees to waive all rights of subrogation against the City, its officers, agents, representatives, directors, officials, and employees for losses arising from the work performed by Contractor for the City.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this Article and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. Nothing in this paragraph shall limit the responsibility of Contractor's insurer to pay the City for valid claims that are covered by Contractor's insurance policy. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

10.2 INTELLECTUAL PROPERTY

- A. Contractor must pay all royalties and license fees associated with its performance of services.
- B. To the extent permitted by law, Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the City of materials furnished or Work performed under this Contract.
- C. Contractor must defend any action or proceeding brought against the City based on any claim that the Work, or any part of the Work, or the operation or use of the Work or any part of it, constitutes infringement of any United States patent or copyright, now or subsequently issued. The City will give prompt written notice to

Contractor of any action or proceeding and will reasonably provide authority, information and assistance in the defense of the action. Contractor shall indemnify and hold harmless the City from and against all damages, expenses, losses, royalties, profits and costs, including but not limited to attorneys' fees and expenses awarded against the City or Contractor in any action or proceeding. Contractor agrees to keep the City informed of all developments in the defense of these actions. The City may be represented by, and actively participate through, its own counsel in any suit or proceedings if it so desires.

- D. If the City is enjoined from the operation or use of the Work, or any part of the Work, as the result of any patent or copyright suit, claim, or proceeding, Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Contractor cannot procure this right within a reasonable time, Contractor will promptly, at Contractor's option and at Contractor's expense, without an increase to the Job Order Price, (i) modify the Work so as to avoid infringement of any patent or copyright or (ii) replace the Work with Work that does not infringe or violate any patent or copyright.
- E. Articles 10.2(C) and 10.2(D) will not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright:
 - 1. Relating solely to a particular process or product of a particular manufacturer specified by the City and not offered or recommended by Contractor to the City; or
 - 2. Arising from modifications to the Work by the City or its agents after acceptance of the Work; or
 - 3. Relating to the copyrights of any specification, drawings, or any Design Documents provided by the City, the Design Professional, any consultant retained by the City, or by a Subcontractor or Supplier.
- F. The obligations stated in this Article 10.2 will constitute the sole Contract between the parties relating to liability for infringement or violation of any patent or copyright.

ARTICLE 11 – GENERAL PROVISIONS

11.1 MARSHALING AREA

Contractor shall contact the City of Scottsdale, Development Services to determine the requirements for obtaining a permit for marshaling areas it proposes to use. Marshaling areas must be fenced. Contractor will obtain written approval from the property owner for marshaling area use. This approval must contain any requirements, which are a condition of this approval. Marshaling yard requirements according to M.A.G. Subsection 107.6.1 and the City of Scottsdale Supplemental Specifications will apply.

11.2 CONTRACT DOCUMENTS

- A. Contract Documents are as defined in Article 12.
- B. The Contract Documents form the entire Contract between the City and

Contractor. No oral representations or other Contracts have been made by the parties except as specifically stated in the Contract Documents. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated herein.

- C. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents will take precedence in the order in which they are listed in the definition of Contract Documents in Article 12. As to drawings and plans, given dimensions will take precedence over scaled measurements, and large-scale plans over small-scale plans. Contract specifications will take precedence over contract plans.
- D. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the times and prices agreed upon for each Job Order. 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.
- E. This Contract, the Plans, Standard Specifications and Details, Special Provisions, Performance Bond, Payment Bond, Certificates of Insurance, Job Orders and Job Order Adjustments (if any) are by reference made a part of this Contract to the same extent as if set forth in full.
- F. Work Product
 - 1. All Work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared or procured in the performance of this Contract (collectively referred to as documents) are to be and remain the property of the City and are to be delivered to the City before the final payment is made to Contractor. In the event these documents are altered, modified or adapted without the written consent of Contractor or the Subconsultants, which consent Contractor or the Subconsultants will not unreasonably withhold, the City agrees to hold Contractor and the Subconsultants harmless to the extent permitted by law from the legal liability arising out of the City's alteration, modification or adoption of the documents.
 - 2. The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed, created by Contractor, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to Contractor.

11.3 MODIFICATIONS

The Contract Documents may not be changed, altered, or amended in any way except as consistent with the City of Scottsdale Procurement Code, as amended.

11.4 TIME IS OF THE ESSENCE

Time is of the essence with respect to the dates and times stated in the Contract Documents.

11.5 COOPERATION AND FURTHER DOCUMENTATION

Contractor agrees to provide the City any other duly executed documents, as will be reasonably requested by the City, to implement the intent of the Contract Documents.

11.6 ASSIGNMENT

Neither Contractor nor the City will, without the written consent of the other, assign, transfer or sublet any portion of this Contract or part of the Work or the obligations required by the Contract Documents.

11.7 FORCE MAJEURE

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

11.8 FUNDS APPROPRIATION

Multiterm contracts for job-order-contracting construction services are subject to A.R.S. §34-607, as amended. If the City Council does not appropriate funds to continue this Contract and pay for charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice to Contractor at least thirty (30) days before the end of its current fiscal period and will pay Contractor for all approved charges incurred through the end of the period.

11.9 CONSTRUCTION METHODS

If the City provides Contractor with a written order to provide adequate maintenance of traffic, clean-up, dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and Contractor fails to comply in the time frame specified, the City may have Work accomplished by other sources at Contractor's expense, without an increase in the Job Order Price.

11.10 UTILITY RELOCATIONS FOR CONSTRUCTION METHODS

If any utility is relocated or rebuilt to accommodate Contractor's construction methods and available equipment, the expense will be borne by Contractor and will be replaced to the original location before completion of the Job Order at the request of the City's

Project Coordinator at Contractor's sole expense, without an increase in the Job Order Price.

11.11 DAMAGED UTILITIES DURING CONSTRUCTION

Any utilities damaged during construction shall be replaced at Contractor's expense, without an increase in the Job Order Price, as per the requirements of the M.A.G. Standard Specifications.

11.12 SUCCESSORS AND ASSIGNS

This Contract will extend to and be binding upon Contractor, its successors and assigns, including any individual, company, partnership, or other entity with or into which Contractor will merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which Contractor will sell its assets, except that services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

11.13 CONFLICT IN LANGUAGE

All services and Work performed will conform to all applicable City of Scottsdale codes, ordinances and requirements as outlined in the Contract Documents. If there is a conflict in interpretation between provisions in this Contract and those in exhibits, the provisions in this Contract will prevail.

11.14 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and Contractor, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and Contractor and not for the benefit of any other or third party.

11.15 GOVERNING LAW AND VENUE

This Contract and all Contract Documents will be considered to be made under and will be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions. Any action to enforce any provision of this Contract or to obtain any remedy with respect to this Contract shall be brought in the Superior Court of Maricopa County, Arizona, and for this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of that Court and waives the right to have such action removed to Federal District Court.

11.16 SEVERABILITY

If any provision of the Contract Documents or their application to any person or circumstance is invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application of the Contract Documents will not be affected and will be enforceable to the fullest extent permitted by law. In accordance with the provisions of A.R.S. § 41-194.01, as amended, should the Attorney General give notice to the City that any provision of the Contract Documents violates state law or the Arizona

Constitution, or that it may violate a state statute or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from the Contract Documents and the City and Contractor shall, within ten (10) days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s).

11.17 LEGAL REQUIREMENTS

Contractor shall perform all Contract Services in accordance with all Legal Requirements and will provide all notices applicable to the Contract Services as required by the Legal Requirements.

11.18 INDEPENDENT CONTRACTOR

The services the Contractor provides to the City are that of an Independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract. Upon request, the Contractor shall provide the required I.R.S. Form W-9 which is available from the IRS website at www.IRS.gov under its forms section.

Any provisions in the Contract Documents that may appear to give the City the right to direct Contractor as to the details of accomplishing the Work or to exercise a measure of control over the Work means that Contractor will follow the wishes of the City as to the results of the Work only. These results will comply with all applicable laws and ordinances.

11.19 CITY'S RIGHT OF CANCELLATION

Pursuant to A.R.S. § 38-511, as amended, the City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a contractor to any other party to the contract with respect to the contract's subject matter. The cancellation will be effective when all other parties to the contract receive the City's written notice unless the notice specifies a later time.

11.20 SURVIVAL

Except as expressly agreed herein, all warranties, representations and indemnifications by Contractor shall survive the completion, expiration, and/or termination of this Contract.

11.21 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of the City Council, or any employee of the City of Scottsdale has any interest, financially, or otherwise, in the firm. For breach or violation of this warranty, the City will have the right to annul this Contract without

liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of any commission, percentage, brokerage, or contingent fee.

11.22 NO WAIVER

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

11.23 HEADINGS

The headings used in this Contract, or any other Contract Documents, are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.

11.24 NOTICE

All notices or demands required by this Contract must be given to the other party in writing, delivered by hand or by registered or certified mail at the addresses stated below, or to any other address the parties may substitute by giving written notice as required by this section. Notice by electronic mail or facsimile will not be considered notice.

To City:	City of Scottsdale Attn: Alison Tymkiw 7447 E Indian School Road, Ste 205 Scottsdale, AZ 85251
To JOC Contractor:	DBA Construction, Inc. Attn: Tom Drysdale 4720 E. Cotton Gin Loop, Suite 240 Phoenix, AZ 85040

11.25 ADDITIONAL CITY RIGHTS REGARDING SECURITY INQUIRIES

Projects may be completed in both secure and non-secure City facilities. All Contractor and Subcontractor employees may be required to pass mandatory background checks prior to the start of any Work and be issued access badges by City of Scottsdale Municipal Security. In addition to the foregoing, the City reserves the right to: (1) have an employee/prospective employee of Contractor be required to provide fingerprints and execute any other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not that information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contractor's employees or prospective employees; and, (4) object, at any time and for any reason, to an employee of Contractor performing Work (including supervision and oversight) under this Contract.

- A. Provisions Applicable to all Contractor Contracts and Subcontracts. Contractor will include the terms of this provision for employee background and security checks

and screening in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

- B. Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Contract, as stated above, are material to the City's entry into this Contract and any breach by Contractor may, at the City's sole option and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Contract. Termination will subject Contractor to liability for its breach of contract.

11.26 HAZARDOUS MATERIALS

- A. Upon discovery of hazardous materials Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.
- B. Unless included in the Work, if Contractor encounters onsite, or as material to be incorporated in the Work, any material which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by public health laws, it will immediately stop work and report the condition to the City.
- C. If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by public health laws, Contractor will not resume Work in the affected area until the material has been abated or rendered harmless. Contractor and the City may agree, in writing, to continue Work in non-affected areas onsite.
- D. An extension of Job Order Time may be granted in accordance with Article 5.
- E. Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- F. Despite the provisions of this Article 11.26, the City is not responsible for hazardous conditions or materials introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable. Contractor will indemnify, defend and hold harmless the City and the City's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous conditions or materials introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable.

11.27 TRAFFIC CONTROL

- A. Complete street closures will not be permitted unless specified in the Special Provisions or approved by the City. The timing and sequence of street closures will be approved by the Traffic Engineering Director, or designee, at least fourteen (14) days before the closure. This approval is necessary to provide coordination with other roadway projects and special events.
- B. Adequate barricades and lighted warning signs must be installed and maintained by Contractor throughout the duration of any Project. All traffic control must be in accordance with the current version of the City of Scottsdale Supplement to MAG

Uniform Standard Specifications Section 401 or as required by the approved barricade plan unless otherwise specified in the Special Provisions.

- C. Contractor will submit a construction schedule and a barricade plan to the City Traffic Engineering Director, or designee, for approval or modification at least seventy-two (72) hours before construction is initiated, and must wait to commence construction until the plan is signed as accepted by the City Traffic Engineering Director, or designee.

11.28 MATERIAL SOURCE

No material source has been designated by the City for use under this Contract. MAG Specification, Section 106 will apply as will ADOT Standard Specifications 1982, Section 106.1, 106.2, 106.7 & 106.8, which outline controls and Section 1001-1, -2, & -4 concerning approval of Contractor-Furnished Source and supplemental Contracts in regards to environmental analysis and the liability for materials testing costs.

Contractor and Subcontractor furnished material sources situated in the 100-year flood plain of any stream or watercourse will not be allowed if located within 1.0 mile upstream and 2.0 miles downstream of any highway structure or surfaced roadway crossing.

A Contractor and Subcontractor-furnished source will be defined as a material source, which is neither an ADOT furnished source nor a commercial source, as defined in this Contract.

A commercial source will be defined as a material source in which the owner or producer has been regularly engaged for at least one (1) year during regular business hours on a regular basis in the processing and selling of sand, rock, ready mixed Portland cement concrete, asphaltic concrete and other similar products normally produced and sold to all parties. The company must have an Arizona retail sales tax license.

The location of any new material source or existing non-commercial material source proposed for use under this Contract must be reviewed by the appropriate agency having flood plain management jurisdiction over the area of proposed source location. Contractor and Subcontractor will obtain a letter from the agency addressed to the Contract Administrator certifying that the proposed source location conforms to the required conditions and the applicable Standard Specifications. Contractor will familiarize himself with the nature and extent of the Contract Documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

11.29 FAMILIARIZATION WITH APPLICABLE LAWS

Contractor will familiarize itself with the nature and extent of the Contract Documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. Contractor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations.

11.30 NATIVE PLANTS

Contractor agrees it will take whatever steps, procedures or means necessary to remove, move, displace and save all native plants within the contract work area in accordance with the City of Scottsdale Revised Code, as amended, and all applicable state and county statutes, ordinances, codes and other policy requirements and recognized methods, procedures, techniques and equipment for protection, salvage, and handling of all plants to be moved from the construction area. This is not a pay item unless specified upon the Schedule of Bid Items.

11.31 ENDANGERED HARDWOODS

Contractor agrees any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions will not use endangered tropical hardwood unless an exemption is granted by the Director of the State of Arizona, Department of Administration.

11.32 CONSTRUCTION ACTIVITY

Contractor agrees that all construction activity occurring on Site shall conform to the hour and noise requirements of the City of Scottsdale Revised Code, as amended.

11.33 COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

- A. Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989, Fair Labor Standards Act, Age Discrimination in Employment Act, Family and Medical Leave Act, National Labor Relations Act, Occupational Safety and Health Act, and other local, state or federal law governing Contractor's labor and employment practices. Contractor agrees to comply with these laws in performing this Contract and to permit the City to verify compliance. Contractor further agrees that any violation of provision on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

Contractor will also comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. §34-302, "Residence Requirements for Employees," as amended. Contractor will include the terms of this provision in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. §41-4401, Contractor warrants to the City that Contractor and all its Subcontractors will comply with all Federal Immigration laws and regulations that relate to its employees and that Contractor and all its Subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by Contractor or any of its Subcontractors will be considered a material breach of this Contract and may subject Contractor or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of Contractor or any Subcontractor who works on this Contract to ensure that Contractor or any

Subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of Contractor and any of its Subcontractors to ensure compliance with this warranty. Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider Contractor or any of its Subcontractors in material breach of this Contract if Contractor and its Subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A), as amended. The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract Contractor enters into with any and all of its Subcontractors who provide services under this Contractor any Subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or Subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. Contractor will take appropriate steps to assure that all Subcontractors comply with the requirements of the E-Verify Program. Contractor's failure to assure compliance by all its Subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

- B. Compliance with Americans with Disabilities Act. Contractor acknowledges that, in accordance with the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this provision on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.
- C. Equal Employment Opportunity and Discrimination. For the duration of this Contract, Contractor represents and warrants it will comply with all applicable local, state and federal laws governing equal employment opportunities, or prohibiting employment or other discrimination based on any protected characteristic including but not limited to actual or perceived race, color, religion, sex, age, disability, national origin, sexual orientation, gender identity, or U.S. military status. City of Scottsdale Revised Code, Chapter 15 mandates Contractor compliance with the policies contained therein. Contractor agrees that any violation of provision on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

Contractor will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender

identity, or national origin.

- D. No Preferential Treatment or Discrimination. In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin. To avoid the appearance of impropriety, Contractor shall not make any donation to the City, of any goods or services during the term of this Contract, unless it has specifically been approved by the City Manager or designee.
- E. Advertising. No advertising or publicity concerning the City using Contractor's services shall be undertaken without prior written approval of such advertising or publicity by the Contract Administrator and the City Attorney.

11.34 DATA CONFIDENTIALITY

- A. As used in this Contract, 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 Contractor in the performance of this Contract.
- B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with Contractor's performance of this Contract is confidential and proprietary information belonging to the City.
- C. Contractor will not divulge data to any third party without first obtaining the written consent of the City. Contractor will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided Contractor has first given the required notice to the City:
 - 1. Data, which was known to Contractor before its performance under this Contract unless the data was acquired in connection with the Work performed for the City;
 - 2. Data which was acquired by Contractor in its performance under this Contract and which was disclosed to Contractor by a third party, who to the best of Contractor's knowledge and belief, had the legal right to make disclosures and Contractor is not otherwise required to hold the data in confidence; or
 - 3. Data, which is required to be disclosed by virtue of law, regulation, or court order to which Contractor is subject.
- D. In the event Contractor is required or requested to disclose data to a third party, or any other information to which Contractor became privy as a result of any other contract with the City, Contractor will first notify the City as required in this Article of the request or demand for the data. Contractor will give the City sufficient facts

so that the City can be given an opportunity to first give its consent or take any action the City may consider appropriate to protect the data or other information from disclosure.

- E. Unless prohibited by law, within ten (10) days after completion of services for a third party on real or personal property owned or leased by the City, Contractor will promptly deliver, as stated in this Article, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Contract.
- F. 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 Article are violated by Contractor, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will be considered to cause irreparable harm that justifies injunctive relief in court.

11.35 CONFLICT OF INTEREST

- A. To evaluate and avoid potential conflicts of interest, Contractor will provide written notice to the City, as stated in this Article, of any work or services performed by Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. The notice will be given seven (7) business days before commencement of the Project by Contractor for a third party, or seven (7) business days before an adverse action as defined below. Written notice and disclosure will be sent to the City Senior Representative identified in Article 7.4.
- B. Actions that are considered to be adverse to the City under this Contract include but are not limited to:
 - 1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
 - 2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
 - 3. Using data to produce income for Contractor or its employees independently of performing the services under this Contract, without first obtaining the written consent of the City.
- C. Contractor represents that except for those persons, entities and projects identified to the City, the services to be performed by Contractor under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.
- D. Contractor's failure to provide a written notice and disclosure of the information stated in this Article on Conflicts of Interest will constitute a material breach of this Contract.
- E. This Contract is subject to cancellation by the City of Scottsdale in accordance with the provisions of A.R.S. § 38 511, as amended.

11.36 COMMENCEMENT OF STATUTORY LIMITATION PERIOD AND STATUTE OF REPOSE

- A. Before Final Completion. As to acts or failures to act occurring before the relevant date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will be considered to have accrued in any and all events not later than the date of Final Completion.
- B. Between Punch List Preparation and Final Completion. As to acts or failures to act occurring between the relevant date of Punch List Preparation and before Final Completion, any applicable statute of limitation will begin to run and any alleged cause of action will be considered to have accrued in any events not later than the date of Final Completion.
- C. After Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will be considered to have accrued in any and all events not later than the date of any correction of the Work or failure to correct the Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or the City, whichever occurs last.
- D. Statute of Repose. The time period for the applicable Statute of Repose will commence to run at the time specified in A.R.S. §12-552 as it is amended or renumbered from time to time.

11.37 LOSS AND DAMAGES

Except as expressly provided in this Contract, all loss or damage arising out of the nature of the Work to be done or from the action of the elements, or from any unforeseen circumstances, in the prosecution of the same, or from any unusual obstructions or difficulties which may be encountered in or during the prosecution of the Work, or from any casualty whatsoever of every description, will be sustained and borne by Contractor at its sole cost and expense. By signing this Contract, all rights of subrogation are waived against the City, its officers, officials, agents and employees.

11.38 RIGHTS-OF-WAY

The M.A.G. Standard Specification 107.12 is modified to read as follows: "Contractor, at its own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage and maintenance purposes, which are required in addition to existing easements or rights of way secured by the City as indicated upon the plans."

11.39 EXISTING TRAFFIC AND STREET SIGNS AND TRAFFIC SIGNAL EQUIPMENT

Contractor will use due care when excavating at or near intersections where traffic signal underground conduit is located. Contractor will notify the Transportation Maintenance Traffic Signal Division (tel. 480.312.5620) at least forty-eight (48) hours in advance of any work at the intersections. Contractor will be responsible for the installation and maintenance of temporary overhead traffic signal cable as specified by the

Transportation Department when underground conduit is to be severed by excavations at the intersection. The Transportation Department will have all underground traffic conduit located and will provide the necessary City Technicians to assist Contractor in identifying wiring phases and direction of conduit runs upon twenty-four (24) hours' notice from Contractor and at least one (1) day before Contractor's scheduled wiring and installation of temporary cables. Contractor will be responsible for the wiring and connection of all temporary cable within the pull boxes and terminal compartments. The Transportation Department will provide a City technician to assist Contractor with connecting field wiring within the traffic signal control cabinet. Contractor will provide, at its expense, at least one off-duty uniformed Police Officer as may be required to direct traffic while the traffic signal is turned off and the wiring is transferred. Contractor will be responsible as specified by the Traffic Department for the repair and restoration of all traffic signal overhead and underground items that have been damaged or modified. The City does not permit the splicing of Magnetic Detector Loops.

11.40 CERTIFICATION OF USE OF BENCHMARKS

In compliance with the City's Design Standards & Policies Manual (DS&PM), Sections 9-1.1 and 9-1.301, it is the City's intent that Contractor must use both horizontal and vertical benchmarks with City of Scottsdale published values for any survey on all public works projects. These published values are available for public use at the following website: <https://eservices.scottsdaleaz.gov/maps/benchmarks>. AT LEAST 1 HORIZONTAL AND 1 VERTICAL BENCHMARK MUST MATCH THE NORTHING, EASTING OR ELEVATION VALUES PUBLISHED ON THE CITY'S WEBSITE. If required by the City, Contractor must sign and submit with this Contract, the Certificate of Use attached and by reference made a part of this Contract.

11.41 TAX INDEMNIFICATION

The fee listed in this Contract includes any and all taxes applicable to the activities under this Contract. The City will have no obligation to pay additional amounts for taxes of any type. Contractor, its Subcontractors, Subconsultants and Suppliers, shall pay all Federal, state and local taxes applicable to its operation and any persons employed by Contractor, its Subcontractors, Subconsultants and Suppliers, except as may be otherwise provided in this Contract. Contractor shall, and also require its Subcontractors, Subconsultants and Suppliers to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

11.42 ISRAEL BOYCOTT/FORCED LABOR PROVISIONS

By executing this contract, Contractor certifies that it is not currently engaged in and will not for the duration of this Contract engage in boycott activity proscribed by A.R.S. § 35-393 *et seq.*, as amended.

Pursuant to A.R.S. § 35-394, as amended, Contractor warrants and certifies that it does not currently, and agrees for the duration of this Contract that it will not use:

- 1) The forced labor of ethnic Uyghurs in the People's Republic of China.

- 2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 3) Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Contractor becomes aware during the term of this Contract that Contractor is not in compliance with this Article, Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. Failure of Contractor to provide a written certification that Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the City of its noncompliance will result in automatic termination of this Contract, unless an earlier contract termination, cancellation, or expiration date applies.

ARTICLE 12 – DEFINITIONS

"Allowance" means an agreed amount by the City and Contractor for items which may be required to complete the scope of work.

"As-built Document" – "As-built In construction is equivalent to "as-is." Drawings deemed "as-built" are final drawings that include all changes made during the actual construction process. These drawings represent the actual existing constructed conditions as opposed to designs or a proposed condition. The As-built Documents should be per A.R.S. § 32-152.

"Blueline or Blackline Prints" – Prints that allows comparison of document versions to show what has been revised.

"City" means the City of Scottsdale, Arizona, an Arizona municipal corporation. Regulatory activities handled by the City of Scottsdale Development Services, Planning and Fire Departments or any other City department are not subject to the responsibilities of the City under this Contract.

"City's Representative" means the person designated in Article 7.4(A)(2).

"City's Senior Representative" means the person designated in Article 7.4(A)(1).

"Construction Coordinator" means a City employee who coordinates the daily construction activities with Contractor, and with their inspection staff that performs quality control inspections, enforces project plans and specifications and adopted City codes and ordinances.

"Construction Documents" means the plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements and incorporating addenda and approved Job Order Adjustments.

"Construction Fee" means Contractor's home office overhead and profit, whether at Contractor's principal or branch offices. This includes the home office costs and any limitations or exclusions that may be included in the General Conditions for the construction phase.

"Contract" or "Job Order Contract" means this fully executed Contract between the City and Contractor.

"Contract Administrator" means the person designated in Article 7.4(A) or designee. The Contract Administrator will serve as Contractor's primary point of contact with the City, monitor Contractor's performance, review and approve invoices, establish delivery schedules, and in conjunction with Purchasing ensure Certificates of Insurance are current, conform to the requirements of this Contract, and are in the City's possession. Contractor will direct any reports and/or special requests to the Contract Administrator.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and Contractor: (1) Change Orders; (2) Job Order Adjustments; (3) Contract Modifications; (4) Job Orders; (5) this Contract including all exhibits and attachments; (6) Contractor's Proposal (if any); (7) Contractor Statement of Qualifications.

"Contract Modification" means a specific written concurrence between the City and Contractor for changes to this Contract consistent with the City of Scottsdale Procurement Code, as amended.

"Contract Price" means the amount or amounts stated in Article 4 subject to any Contract Modifications.

"Contract Services" means the services required by the Contract Documents.

"Contract Time(s)" means the time stated in Article 3, subject to Contract Modifications as permitted by this Contract.

"Contractor" is Contractor selected by the City to provide or procure construction services as detailed in this Job Order Contract.

"Contractor Payment Request" means the City form used by Contractor to request progress payments for Job Orders in accordance with Article 6.

"Contractor's Representative" means the person described in Article 7.4(B)(2).

"Contractor's Senior Representative" means the person described in Article 7.4(B)(1).

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

"Delay" means an unanticipated event or interference with the progress of a critical path work activity being performed at the time that causes the completion date of the project to be extended. Delays may be caused by the City, Contractor, third parties or Force Majeure events. Delays may be excusable, compensable, non-compensable or concurrent.

"Delay, Compensable" means delay that results from the City's actions or inactions that entitle Contractor to both a time extension and delay damages.

"Delay, Concurrent" means two (2) or more delays, within the same timeframe, both of which would independently impact the Project Schedule. If one delay is caused by the City and the other by Contractor, Contractor will generally be entitled to an excusable, non-compensable time extension, to the degree the delays may "overlap."

"Delay, Excusable" means an unforeseeable delay caused by an event beyond the control and without the fault or negligence of Contractor (including its Suppliers and Subcontractors). Excusable delays may be compensable or non-compensable, depending upon whether the terms

of the Contract or the law allows recovery of delay costs. Unless otherwise shown, it will generally be presumed that these delays are non-compensable.

"Delay, Non-Excusable" means a delay within the control of Contractor, its Suppliers and Subcontractors, or a delay resulting from a risk taken by Contractor under the terms of the Contract. Contractor will not be due any time extension or delay damages, and may be responsible for paying to the City, actual or liquidated damages for the delay.

"Deliverables" means the work products prepared by Contractor in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by Contractor may include, but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, Subcontractor procurement plan, Subcontractor Contracts, Subcontractor bid packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

"Design Professional" means a qualified, licensed design professional who furnishes design or construction administration services.

"Differing Site Conditions" comply with M.A.G. Standard Specifications, Subsection 102.4.

"Effective Date" means the date specified in this Contract on which the Contract becomes effective, but if no date is specified, the date on which the City executes this Contract.

"Field Order" means a written field directive prepared and signed by the City, directing a change in work that may or may not include an adjustment in contract price or contract time.

"Final Acceptance" means the completion of a Job Order as prescribed in Article 3.5.

"Hazardous Substance" - means:

- (a) Any substance designated pursuant to sections 311(b) (2) (A) and 307(a) of the clean water act.
- (b) Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA.
- (c) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.
- (d) Any hazardous air pollutant listed under section 112 of the federal clean air act (42 United States Code section 7412).
- (e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the federal toxic substances control act (15 United States Code section 2606).
- (f) Any substance which the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.

"Informational Submittals" – Submittals are required (common with construction projects) for the architect and engineer to verify that the correct products and quantities will be installed on a project.

"Job Order" or "Project" means a specific scope of Contract Services done pursuant to an individual Job Order and includes a specific written Contract between the City and Contractor for a Job Order including a Scope of Work, a Job Order Price, a Job Order Time and any special conditions that may apply to be performed under this Contract. The Job Order includes the plans, technical specifications, special provisions and Contractor's proposal either by reference or inclusion.

"Job Order Adjustment" or "Adjustment" means a written order signed by an authorized representative of the City and which approves changes in the Work required under a Job Order, the Job Order Price, or the Job Order Time consistent with the City of Scottsdale Procurement Code, as amended.

"Job Order Notice-to-Proceed," (NTP) means a written notice given by the City to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under that individual Job Order.

"Job Order Price" means the amount negotiated between Contractor and the City for an individual Job Order that includes costs, overhead, bonding, insurance, profit and other costs as agreed to and calculated on the Unit Prices, Cost-coefficient and Special Items as prescribed in Article 4.

"Job Order Time" or "Duration of the Work" means the number of Days from a Job Order Notice-to-Proceed to Substantial Completion. The approved Job Order Time will be made part of this Contract by executing an individual Job Order for that specific Project.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over a Project or Site, the practices involved in a Project or Site, or any Work.

"Liquidated Damages" means an amount Contractor will pay in compliance with Article 3.6.

"Must" and "will" as used in this Contract are mandatory.

"Owner Agent," "City's Agent" or "Owner Representative" see "City's Senior Representative."

"Payment Request" means a monthly progress payment request that is based on a monthly estimate of the dollar value of the Work completed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

"Professional Certification" – Professional certification is a designation which indicates that a person is qualified to perform a job or task. Professional certification can be trade certification or professional designation.

"Project Record Documents" means the documents created pursuant to Article 1.9.

"Project Record Drawing Prints" – Set of current design drawings used by construction contractor for reference during construction. These drawings are typically marked up during the construction process and are used to develop the subsequent "as-built" drawings.

"Punch List" means those minor items of Work to be completed before Final Acceptance which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a Certificate of Occupancy.

"Samples" means physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Values (SOV)" means the Document specified in the construction phase, which divides the Job Order Price into pay items, such that the sum of all pay items equals the Job Order Price for the construction phase Work, or for any portion of the Work having a separate specified Job Order Price. The SOV may or may not be output from the Progress Schedule depending on whether the Progress Schedule is cost-loaded or not.

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

"Site" means the land or premises on which a Job Order is located. Contractor will require all Subcontractors to include the street address of the Job Order in their contracts.

"Specifications" means those sections 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 applicable administrative details.

"Subcontractor" or "Subconsultant" means any person or entity retained by Contractor as an independent contractor to perform a portion of the Contract Services and must include material men and suppliers. All Subcontractors must be selected in accordance with the selection plan stated in Article 1.13.

"Substantial Completion" means when the Work, or when an agreed upon portion of the Work is sufficiently complete so that the City can occupy and use the Project or a portion of it for its intended purposes. This may include, but is not limited to: (1) approval by the City Fire Marshall and local authorities (Certificate of Occupancy); (2) issuance of elevator permit; (3) demonstration to the City that all systems are in place, functional, and displayed to the City or its representative; (4) installation of all materials and equipment; (5) City review and acceptance of all systems; (6) City review and acceptance of draft O&M manuals and record documents; (7) City operation and maintenance training completed; (8) HVAC test and balance completed [provide minimum 30 days before projected substantial completion]; (9) completed landscaping and site work; and (10) final cleaning.

"Supplier" means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with Contractor or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase work by Contractor or any Subcontractor.

"Work" means the entire completed construction or the various separately identifiable parts of the construction, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

[END OF TEXT- SIGNATURE PAGE TO FOLLOW]

CITY OF SCOTTSDALE, ARIZONA

CONTRACT NO. 2026-070-COS

CONTRACT

This Contract has been properly executed by the parties above named, on the date and year written above, to be retained by the City Clerk.

Contractor agrees that this Contract, as awarded, is for the stated Work and understands that payment for the Work will be made on the basis of the indicated amount, per the terms and conditions of this Contract.

CITY OF SCOTTSDALE, an
Arizona municipal corporation

CONTRACTOR: DBA Construction, Inc.,
an Arizona corporation

By: _____
Lisa Borowsky, Mayor

By: _____

Name: _____

ATTEST:

Title: _____

Ben Lane, City Clerk

RECOMMENDED:

Jenn Myers, MPA, CPPO, NIGP-CPP, CPPB
Purchasing Director

Alison Tymkiw, Senior Director - City Engineer

George Woods
Safety & Risk Management Director

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Luis E. Santaella, City Attorney
By: Lydia Tulin, Assistant City Attorney

EXHIBIT A

**STATUTORY PERFORMANCE BOND
PURSUANT TO TITLE 34, CHAPTER 6,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract Amount)**

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal) as Principal, and _____, a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Scottsdale, County of Maricopa, State of Arizona in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City of Scottsdale, dated the _____ day of _____, 2026, for Bid No. (bid number), Project No. (project number), (project name), which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and Contracts 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 Contracts 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, Arizona Revised Statutes, and all liabilities on this Bond will be determined in accordance with the provisions of Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this Contract. The prevailing party in a suit on this bond will recover as part of the judgment reasonable attorney fees that may be fixed by a Judge of the Court. The performance under this bond is limited to the construction to be performed under the contract and does not include any design services, preconstruction services, financial services, maintenance services, operations services or any other related services included in the contract.

WITNESS our hands the _____ day of _____, 2026.

PRINCIPAL

BY:

SURETY (SEAL)

AGENCY OF RECORD

AGENCY ADDRESS

EXHIBIT B

STATUTORY PAYMENT BOND

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

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

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and _____ a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Scottsdale, County of Maricopa, State of Arizona, in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City of Scottsdale dated the _____ day of _____, 2026, for Bid No. (bid number), Project No. (project number), (project name), which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

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

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

WITNESS our hands the _____ day of _____, 2026.

PRINCIPAL

BY:

SURETY (SEAL)

AGENCY OF RECORD

AGENCY ADDRESS



CITY OF SCOTTSDALE

JOB ORDER CONTRACT (JOC) FOR CITYWIDE CIVIL SITE WORK

SOLICITATION NO. 26RFSQ061

CONTRACT NO. 2026-071-COS

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**CITY OF SCOTTSDALE
SOLICITATION NO. 26RFSQ061
CONTRACT NO. 2026-071-COS**

THIS CONTRACT, ("Contract") is entered into this ____ day of _____, 2026, ("Effective Date") between the City of Scottsdale, an Arizona municipal corporation (the "City") and Hunter Contracting Co., an Arizona corporation (the "Contractor").

RECITALS

- A.** The Mayor of the City of Scottsdale, Arizona, is authorized and empowered by the provisions of the City Charter to execute contracts for construction and related services.
- B.** The City intends to contract for construction and related services with Contractor for one or more individual Job Orders.
- C.** Contractor has represented to the City the ability to provide or procure the required construction and related services and, based on this representation, the City engages Contractor for these services.

FOR AND IN CONSIDERATION of the mutual covenants and considerations contained in this Contract, it is agreed by the City and Contractor as follows:

ARTICLE 1 - CONTRACTOR'S SERVICES AND RESPONSIBILITIES

1.1. GENERAL SERVICES

- A.** Contractor will furnish any and all labor, materials, equipment, transportation, utilities, services and facilities specified in the individual Job Order for which it is issued a Job Order Notice-to-Proceed for Work in accordance with this Contract. The City may determine it is in its best interest to furnish materials and equipment for an individual Job Order in accordance with the Job Order.
- B.** The Work will be performed in a good, workmanlike and substantial manner and to the satisfaction of the City Engineer and under the monitoring of the City Engineer, or designee, with the care and skill of a qualified contractor in Scottsdale, Arizona.
 - 1.** Minor design services may be required for some Job Orders. For those Job Orders that may require minor design services, Contractor will seek the services of an Arizona registered architect or engineering professional to prepare plans for permitting. The procurement of minor design services will be in accordance with the City's procurement procedures and code. If the services of a design professional are used, the design professional must maintain at least \$1,000,000 Professional Liability Coverage.
 - 2.** All documents prepared by Contractor are subject to review by the City. Review by the City is for the benefit of the City only, is not intended to be for the benefit of any other person and does not relieve Contractor from the professional liability associated with the documents they have prepared.

3. Contractor's Representative shall be reasonably available to the City and will have the necessary expertise and experience required to supervise the Contract Services. A Contractor's Representative will be assigned for each Job Order. Contractor's Representative will communicate regularly with the City and will be vested with the authority to act on behalf of Contractor.
- C. The City is a member of \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, Maricopa County, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under \$AVE Cooperate Purchasing Agreement, and with the concurrence of successful Respondents under this solicitation, a member of \$AVE may access a contract resulting from this solicitation issued by the City. By signing the JOC Contract, Contractor agrees to allow other \$AVE members the ability to purchase their needs and "use" this contract for JOC requirements.

1.2. GOVERNMENT APPROVALS AND PERMITS

- A. Unless otherwise provided, Contractor will obtain or assist the City in obtaining 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. Contractor is responsible for obtaining payment for the necessary environmental permits or file the necessary environmental notices.
- B. Copies of these permits and notices must be provided to the City's Representative before starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of the permit or notice requirements.
- C. The City is responsible for the City of Scottsdale review and permit(s) fees for building and demolition permits. The City will pay City review fees for grading and drainage, water, sewer, storm water management, and landscaping. The City will also pay for City utility design fees for permanent services.
- D. Contractor is responsible for all other permits and review fees not specifically listed in Article 1.2(C) above.
- E. Contractor is responsible for the cost of construction-related water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water will be Contractor's responsibility. Construction water does not include "test water" required to complete new water line pressure tests.
- F. The M.A.G. Standard Specification 107.12 is modified to read as follows: "Contractor, at its own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage, maintenance, and refuse haul-off as indicated upon the plans, which are required in addition to existing easements or rights-of-way secured by the City."

1.3. PRE-CONSTRUCTION CONFERENCE

- A. After issuance of a Job Order and before the commencement of any Work on any individual Job Order, a pre-construction conference may be scheduled.
- B. The purpose of this conference is to establish a working relationship between Contractor, design firms, utility firms, and various City departments. The agenda will include critical elements of the work schedule, submittal schedule, level of Record Drawings required, cost breakdown of major lump sum items, payment application and processing, coordination with the utility firms involved, and emergency telephone numbers for all representatives involved in the course of construction.
- C. At a minimum, attendees will include Contractor Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and Contractor's safety officer.
- D. The Job Order Notice-to-Proceed date will be established.
- E. Contractor will provide a Baseline Project Schedule indicating duration, manpower and equipment resources required to complete all major Work activities. The City and Design Team will review and comment on the Baseline Project Schedule. Contractor will revise the Baseline Project Schedule to the satisfaction of the City's Representative. No work will begin until the City accepts the Baseline Project Schedule.
- F. Contractor will submit a Schedule of Values based on the work and bids accepted from selected Subcontractors. These values will reflect the actual labor time, materials, profit and overhead for the Work or in accordance with Contractor's price book.

1.4. CONTROL OF THE WORK

Contractor will properly guard and protect all partially finished work and will be responsible for the Work until the entire Job Order is completed and accepted by the City. Any payment for completed portions of the Work will not release Contractor from this responsibility; however, it will turn over the entire Work in full compliance with the specifications or Job Order before final settlement is made. In case of suspension of the Work for any cause whatever, Contractor is responsible for the Project and will take all precautions necessary to prevent damage to the Project and will erect any necessary temporary structures, signs, or other facilities at no cost to the City.

- A. After all Work under the Job Order is completed, Contractor will remove all loose concrete, lumber, wire, reinforcing, debris and other materials not incorporated in the Work from the site of the Project.
- B. Unless the Job Order states that it is the responsibility of the City or a separate contractor, Contractor will provide through itself or its Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, other temporary facilities, temporary fencing, roll-offs, and dust control to permit Contractor to complete the Work consistent with

the Job Order.

- C. Contractor will perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Job Order. Contractor will at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- D. Survey stakes and marks required for the completion of the construction shown on the plans and described in the specifications will be furnished by Contractor.
- E. Contractor, its designee or Contractor's Superintendent will be present at the Work at all times that construction activities are taking place.
 - 1. All elements of the Work, such as concrete work, pipe work, etc., will be under the direct supervision of a foreman or his/her designated representative on the Site who will have the authority to take actions required to properly carry out that particular element of the Work.
 - 2. In the event of noncompliance with Article 5.1, the City may require Contractor to stop or suspend the Work in whole or in part.
- F. Where the Job Order requires that a particular product be installed or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for that portion of the Work is pre-approved by the manufacturer.
- G. Before ordering materials for or doing the Work, Contractor and each Subcontractor will verify measurements at the Site and will be responsible for the correctness of these measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, will be submitted to the City for resolution before proceeding with the Work.
- H. Contractor will take field measurements and verify field conditions and carefully compare these field measurements, conditions and other information known to Contractor with the Job Order before starting activities. Errors, inconsistencies or omissions discovered will be immediately reported to the City.
- I. Contractor will establish and maintain all building and construction grades, lines, levels, and benchmarks, and will be responsible for the accuracy and protection of these items. This portion of the Work will be performed or supervised by an Arizona licensed civil engineer or surveyor.
- J. Any person employed by Contractor or any Subcontractor who, in the opinion of the City, does not perform his/her portion of the Work in a proper, skillful and safe manner or is intemperate or disorderly will, at the written request of the City, be removed from the Work by Contractor or Subcontractor employing this person, and will not be employed again in any portion of the Work without the written approval of the City. Contractor or Subcontractor will hold the City harmless from damages or claims, which may occur in the enforcement of this Article.

- K. Contractor assumes responsibility for the proper performance of the Work of Subcontractors and any acts and omissions in connection with this performance. Nothing in the Contract Documents is intended or considered to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- L. Contractor will coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- M. On a daily basis, Contractor will prepare a Contractor's Daily Report. The City's CPM Project Inspector or the Public Works Project Coordinator will provide a sample report format to Contractor. The report will detail the activities that took place during the course of the day, all equipment utilized and the number of hours operated, and all personnel on the Site including Subcontractors. Unless otherwise arranged, the Daily Reports will be submitted on a daily basis to the City's CPM Inspector or the Public Work's Project Coordinator. The Daily Reports will also be made available to the City's Representative upon request. Failure to provide Daily Reports as arranged or requested above will result in the retention of monthly progress payments until the Reports are brought up to date.
- N. In the event of noncompliance with this Article 1.4, the City may require Contractor to stop or suspend the construction in whole or in part. Any suspension due to Contractor's noncompliance will not be considered a basis for an increase in the Job Order Price or extension of the Job Order Time.

1.5. CONTROL OF THE WORK SITE

- A. Throughout all phases of construction, including any suspension of the Work, Contractor will keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor will remove all debris, trash, construction waste, materials, equipment, machinery and tools arising from the Work or applicable portions of it to permit the City to occupy the Project or a portion of the Project for its intended use.
- B. Dust Control. Contractor will take whatever steps, procedures or means required to prevent abnormal dust conditions due to his construction operations in connection with this Contract. The dust control measures will be maintained at all times during construction of the Project(s) to the satisfaction of the City in accordance with the requirements of the Maricopa County Health Department Air Pollution Control Regulations and City of Scottsdale Supplement to M.A.G. Standard Specifications together with applicable provisions of Federal and State Law.
- C. Dust Control Coordinator. Subject to the requirements or exemptions contained A.R.S. §49-474.05, as amended, Contractor shall comply with the training, permitting, and Dust Control Coordinator requirements applicable to the Site and

the Project. The Dust Control Coordinator must have full authority to ensure that dust control measures are implemented at the Site, including authority to conduct inspections, deploy dust suppression resources, and modify or shutdown activities as needed to control dust. The Dust Control Coordinator must be responsible for managing dust prevention and dust control on the Site, including the use of leaf blowers and street sweeping equipment. The Dust Control Coordinator must have a valid Dust Training Certification Identification Card readily accessible on the Site while acting as the Dust Control Coordinator.

A Subcontractor who is engaged in dust generating operations at a Site that is subject to a Dust Control Permit issued by a County Control Officer and that requires the control of PM-10 emissions from dust generating operations must register with the County Control Officer. The Subcontractor must have its registration number readily accessible on the Site while conducting any dust generating operations.

- D. Storage on Site. Only materials and equipment, which are to be used directly in the Work, will be brought to and stored on the Site by Contractor. When equipment is no longer required for the Work, it will be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of Contractor.
- E. Waste Products. Contractor is responsible for the cost to dispose of all waste products including excess earth material which will not be incorporated into the Work under this Contract. The waste product referred to will become the property of Contractor. Contractor will provide for the legal disposal at an appropriate off-site location for all waste products, debris, etc., and will make necessary arrangements for its disposal. Any disposal/dumping of waste products or unused materials will conform to applicable Federal, State and Local Regulations.
- F. Contractor will supervise and direct the Work. Contractor will be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor will employ and maintain on the Site a qualified supervisor or superintendent who will have been designated in writing by Contractor as Contractor's Representative. The Contractor's Representative will have full authority to act on behalf of Contractor and all communications given to the Representative will be as binding as if given to Contractor. The Representative will be present on the Site at all times as required to perform adequate supervision and coordination of the Work. Where appropriate all Provisions of M.A.G., Section 105.5, will be applicable.
- G. Abnormal Weather. In the event of abnormal weather conditions, such as windstorms, rainstorms, etc., Contractor will immediately inspect the Work and Site and take all necessary actions to insure public access and safety are maintained.
- H. Damage to Property at the Site. Contractor will be responsible for any and all damage or loss to property at the Site, except to the extent caused by the acts or omissions of the City or its representatives, employees or agents and not covered by insurance. The costs and expenses incurred by Contractor under this Article will be paid as a Cost of the Work to the extent that these costs and expenses are in excess of or are not covered by required insurance, and to the extent of any

deductibles, but they will not increase the Job Order Price.

- I. Damage to Property of Others. Contractor will avoid damage, as a result of Contractor's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of separate contractors and the property of the City. Contractor will repair any damage caused by the operations of Contractor, and these costs will be paid as a Cost of the Work to the extent that the costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible, but they will not increase the Job Order Price.
- J. Failure of Contractor to Repair Damage. Within ten (10) days written notice to Contractor by the City, if Contractor fails to commence the repair of damage to property as provided in Articles 1.5(H) and 1.5(I), and diligently pursue the repair, then the City may elect to repair the damages at its own expense and to deduct from payments due or to become due to Contractor, amounts paid or incurred by the City in correcting the damage (provided Contractor has not commenced such repair during the 10 day notice period).

1.6. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- A. 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 Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Contractor will review, approve and verify that all submittals meet the intent of the Contract Documents.
- B. Three (3) copies of each Shop Drawing, Product Data, Sample, and similar submittals required by the Contract Documents will be delivered to the City in compliance with the approved schedule so as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by Contractor, which are not required by the Contract Documents, may be returned without action.
- C. Contractor will 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 City. All Work will be in compliance with approved submittals. Contractor will not be relieved of responsibility for any errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval. Deviation from the original specifications will be specifically noted on the submittal to the City and the City will be allowed seven (7) days to approve or reject any deviations.
- D. By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements and field construction criteria, or will do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Job Order.
- E. Contractor will not be relieved of responsibility for deviations from requirements of the Job Order by the City's approval of Shop Drawings, Product Data, Samples or

similar submittals unless Contractor has specifically informed the City in writing of the deviation at the time of submittal and the City has given written approval to the specific deviation. Contractor will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval.

- F. Contractor will direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City on previous submittals.
- G. Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.
- H. When professional certification of performance criteria of materials, systems or equipment is required by the Job Order, the City will be entitled to rely upon the accuracy and completeness of the calculations and certifications.

1.7. QUALITY CONTROL, TESTING AND INSPECTION

- A. Inspection. The City's Inspectors may be stationed on the Site to report to the City's Representative, or designee, as to the progress of the Work. The City's Representative, or designee, may also report as to the manner in which the Work is being performed and report whenever it appears that material furnished or Work performed by Contractor fails to fulfill the requirements of the specifications, this Contract or the Job Order. The Inspector may direct the attention of Contractor to any failure or infringement but this inspection will not relieve Contractor from any obligation to furnish acceptable materials or to provide completed construction that complies with the Contract or the Job Order in every way. The Inspector is for the purpose of assisting the City's Representative and should not be confused with an Inspector with a City regulatory agency or with an inspector from a laboratory under Article 1.8.
- B. In case of any dispute arising between the Inspector and Contractor as to material furnished or the manner of performing the Work, the Inspector will have the authority to reject materials or suspend the Work until the question and issue can be referred to and decided by the City. Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the specifications. Inspectors will in no case act as foremen or perform other duties for Contractor or interfere with the management of the Work by Contractor.
- C. Inspection or supervision by the City's Representative, or designee, will not be considered as direct control of an individual worker or the Work. The direct control will be solely the responsibility of Contractor.
- D. The furnishing of these services for the City will not make the City responsible for or give the City control over construction means, methods, techniques, sequenced procedures or for safety precautions or programs or responsibility for Contractor's failure to perform the Work in compliance with the Contract Documents.

1.8. MATERIALS TESTING

All materials used in the Work will be new and unused, unless otherwise noted, and will meet all quality requirements of the Job Order.

- A. All construction materials to be used on 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 of the City. Any materials rejected by the City will be removed immediately and replaced in a manner acceptable to the City without increasing the Job Order Price.
- B. The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and tests will be made in compliance with the following: The City of Scottsdale Minimum Sampling Frequency Guide, the City of Scottsdale Material Testing Manual and the standard methods of AASHTO or ASTM, DSPM and MAG supplements.
- C. The City will select a pre-qualified City or Independent Testing Laboratory and will pay for initial City Acceptance Testing.
 - 1. When the first and subsequent tests indicate noncompliance with the Job Order, the cost associated with that noncompliance will be incurred by Contractor without increasing the Job Order Price.
 - 2. When the first and subsequent tests indicate noncompliance with the Job Order, all retesting will be performed by the same testing agency. The cost associated with the noncompliance will be incurred by Contractor without increasing the Job Order Price.
 - 3. Contractor will cooperate with the selected testing laboratory and all others responsible for the testing and inspecting of the Work and will provide them access to the Work at all times.
- D. At the option of the City, materials may be approved at the source of supply before delivery is started.
- E. Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, will be incurred by Contractor without increasing the Job Order Price, unless otherwise provided in the Job Order.
- F. Contractor's convenience and quality control testing and inspections will be the sole responsibility of Contractor and incurred by Contractor without increasing the Job Order Price.
- G. All soils and materials testing will be performed and paid for by the City. The City will order tests and distribute test results for all construction areas. The City will be responsible for ordering testing and will distribute test results within 24 hours of receipt.

1.9. PROJECT RECORD DOCUMENT/AS BUILTS

- A. During the construction period, Contractor will maintain at the Site a set of Blueline or Blackline Prints of the Construction Document drawings and Shop Drawings for Project Record Document purposes.
1. Contractor will mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. Contractor will give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
 - Dimensional changes to the drawings;
 - Revisions to details shown on drawings;
 - Depths of foundations below first floor;
 - Locations and depths of underground utilities;
 - Revisions to routing of piping and conduits;
 - Revisions to electrical circuitry;
 - Actual equipment locations;
 - Duct size and routing;
 - Locations of concealed internal utilities;
 - Changes made by Adjustment; and
 - Details not on original Contract Drawings.
 2. Contractor will mark completely and accurately Project Record Documents, prints of Construction 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 location.
 3. Contractor will mark sets of Project Record Drawings Prints with red erasable colored pencil.
 4. Contractor will note Request for Information (RFI) Numbers, American Standards Institute (ASI) Numbers and Adjustment Numbers, etc., as required to identify the source of the change to the Construction Documents.
 5. Contractor will at the time of Substantial Completion, submit Project Record Drawing Prints and Shop Drawings to the City or its representative for review and comment.
- B. Immediately upon receipt of the reviewed Project Record Drawings from the City, Contractor will correct any deficiencies or omissions to the drawings and prepare the following for submission to the City:
1. A complete set of PDF electronic files of all Project Record Drawing prepared in Microstation format compatible with City of Scottsdale CADD requirements. If a Design Professional is contracted with, the Design Professional will provide files of the original Construction Documents to

Contractor for use in preparing these final Project Record Documents, or Contractor may contract with the Design Professional to revise and update the electronic drawing files. Each drawing will be clearly marked with "As-Built Document" and shall be certified by an Arizona Registered Land Surveyor.

2. A complete set of As-Built reproducible mylars from the final Microstation drawings and an electronic pdf file on CD are required.
3. The original copy of the Project Record Drawings with redline mark-ups.

1.10. PROJECT SAFETY

- A. The Occupational Safety and Health Act (OSHA) and the City of Scottsdale loss control procedures are the minimum standard for safety and environmental protection and must be fully complied with at all times. All Work will be performed in compliance with all applicable federal, state and local laws, ordinances, statutes, rules and regulations including ADOSH policies and procedures. Contractor may be required to attend a City safety briefing session at the pre-construction meeting. The session will be attended by the Contract Administrator, the designated Risk Management staff, and a Contractor's Representative. Contractors that violate the aforementioned rules and regulations may be subject to job shutdown and or removal from City facilities.
- B. The Risk Management Division makes available a packet which contains the City's OSHA compliance guidelines, emergency evacuation, the City's safety and health plan, and other safety information.
- C. Contractor will conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.
- D. Contractor will contact the City's Representative and the Risk Management Division within twenty-four (24) hours of the occurrence of an accident or injury arising out of Contractor's Work under this Contract.
- E. Contractor employees are encouraged to abate or remedy any unsafe act or condition, which may arise in the course of Contractor's Work under this Contract.
- F. The City reserves the right to conduct safety audits at the Site and stop unsafe acts at any time. In addition, the City will be notified within four (4) hours should any OSHA inspection occur at a Site.
- G. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to:
 1. All individuals at the Site, whether working or visiting;
 2. The Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and
 3. All other property at the Site or adjacent to the Site.

- H. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- I. Contractor will, before commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Contractor's Safety Representative will be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.
- J. Contractor must provide OSHA 300A Summary log information including total recordable cases, total case rates, and lost workday incident rates for the past two (2) calendar years. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable.
- K. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-governmental authorities having jurisdiction over safety-related matters involving the Project or the Work.
- L. Contractor's responsibility for safety under this Article 1.10 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for:
 - 1. Complying with all Legal Requirements, including those related to health and safety matters; and
 - 2. Taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
- M. Contractor and Subcontractors must agree to provide Material Safety Data Sheets for all substances that are delivered to the City of Scottsdale, that come under the Occupational Safety and Health Administration Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication (reference Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazardous Communication Standard).

All Contractors and all Subcontractors using chemicals on City of Scottsdale property shall use only the safest chemicals, with the least harmful ingredients. These chemicals shall be approved for use by a City of Scottsdale representative before bringing them on the property.

Contractor and all Subcontractors shall make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation will be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication, Contractor and Subcontractors are informed of the presence of (or possible presence of) chemicals in the area where the Work requested will be performed. It is the responsibility of Contractor or all selected Subcontractors to contact the City of Scottsdale for specific information relative to the type of chemicals present and location of appropriate Material Safety Data Sheets.

Unless included in the Work, if Contractor encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, it will immediately stop Work and report the condition to the City.

If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, Contractor will not resume Work in the affected area until the material has been abated or rendered harmless. Contractor and the City may agree, in writing, to continue Work in non-affected areas onsite. An extension of the Contract Time may be granted as provided in Article 5.

1.11. WARRANTY

- A. Contractor warrants that any material or service supplied to the City shall fully conform to all requirements of this Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by this Contract. The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contractor shall maintain all applicable licenses and permits.
- B. The provisions of M.A.G., Section 108.8 will apply with the following additional requirements:
 - 1. Should Contractor fail to begin repairs or corrective work within fourteen (14) calendar days after receipt of written notice from the City, the City may perform the necessary work and Contractor agrees to reimburse the City for the actual cost.
 - 2. The warranty period on any part of the Work repaired or replaced will be extended for a period of one (1) year from the date of the repair or replacement.
 - 3. This warranty will not apply to damage caused by normal wear and tear or by acts beyond Contractor's control.
- C. 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 liable.
- D. Contractor's warranty obligation will be for one (1) year.

- E. Nothing in this warranty is intended to limit any manufacturer's warranty which provides the City with greater warranty rights than those found in this Article 1.11 or the Contract Documents. Contractor will provide the City with all manufacturers' warranties upon Substantial Completion of each Job Order.

1.12. CORRECTION OF DEFECTIVE WORK

- A. Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Article 1.11 above, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within any longer period to the extent required by the Contract Documents. All removal/replacement work, as directed by the City to Contractor, in compliance with this Contract, MAG standards and City codes will have cost determinations by the City and be issued as a Job Order Adjustment to the Project. A Progress Payment, or partial or entire use or occupancy of the Project by the City will not constitute acceptance of Work not in accordance with the Contract Documents.

During the Work, Contractor shall take meaningful steps to begin correction of any nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Contractor fails to begin the necessary steps during the Work, the City, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that the City will commence correction of any nonconforming Work, at its discretion, through its employees, agents or other third parties.

Contractor shall take meaningful steps to begin correction of nonconforming Work subject to Article 1.11 above. These measures include but are not limited to timely correction of the Work. If Contractor fails to initiate necessary measures for this Work within seven (7) days of receipt of written notice from the City, the City, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that the City will begin correction of the nonconforming Work, at its discretion, through its employees, agents or other third parties.

- B. If the City does perform this corrective Work, Contractor will be responsible for all reasonable costs incurred by the City in performing the correction without increasing the Job Order Price.
- C. Contractor shall immediately respond to any nonconforming Work that creates an emergency.
- D. The one (1) year period referenced in Article 1.11 above applies only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding Contractor's other obligations under the Contract Documents.

1.13. SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- A. Contractor shall select major Subcontractors and major Suppliers, subject to first obtaining the City's approval. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors must not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of Contractor, but the City must approve in writing the selection of all Subcontractors. In any case, Contractor is solely responsible for the performance of the selected Subcontractors/Suppliers.

Contractor shall prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval or Contractor may use the City's plan as described in Article 1.13(B). This Subcontractor selection plan will identify those Subcontractor trades anticipated to be selected by qualifications only as provided in Article 1.13(B) and those Subcontractor trades anticipated to be selected by qualifications and competitive bid as provided in Article 1.13(C). This plan will also identify those Subcontractors that will not be selected through a formalized qualifications-based selection process. The Subcontractor selection plan must be consistent with the selection requirements included in this Contract.

- B. **Selection by qualifications only** - The City may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when Contractor can demonstrate it is in the best interest of the Project.

1. Contractor will apply the Subcontractor selection plan approved by the City in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation. The selection plan will be Contractor's own selection plan approved by the City or the City's selection plan as provided in this Article 1.13(B).
2. Contractor will negotiate costs for services/supplies from the Subcontractor(s)/Supplier(s) under the approved qualifications only method.

City Selection Plan:

3. Contractor may elect to comply with the following City procedures in its selection of Subcontractor(s) or Suppliers(s) based on qualifications only:
 - a. The Request for Qualifications (RFQ) will contain the best description of the services or material desired; and
 - b. A statement that only unpriced statements of qualifications will be considered; and
 - c. State the requirements for the project, such as drawings and descriptive literature; and
 - d. State the criteria for evaluating the qualifications; and
 - e. A closing date and time for receipt of a statement of qualifications

and the location where the statements should be delivered or mailed; and

- f. A statement that discussions may be held; and
 - g. A statement that only statements of qualifications determined to be acceptable will be considered for award.
- 4. The RFQ may be amended after the submission of the statements of qualifications. Any amendment will be distributed only to bidders who submitted statements of qualifications. Those bidders will be permitted to submit new unpriced statements of qualifications or to amend statements already submitted.
 - 5. Statements of Qualifications will not be opened publicly but will be opened in the presence of Contractor. The contents of unpriced statements of qualifications will not be disclosed to unauthorized persons.
 - 6. Statements of Qualifications will be evaluated solely in accordance with the criteria stated in the RFQ and will be determined to be either acceptable for further consideration or unacceptable. A determination that the statement is unacceptable shall be in writing, state the basis of the determination and be retained by Contractor. Contractor will notify the bidder of the determination and the bidder will not be given an opportunity to amend its statement of qualifications further.
 - 7. Contractor may conduct discussions with any bidder who submits an acceptable or potentially acceptable statement of qualifications. During discussions, Contractor will not disclose any information derived from any other bidder's statement of qualifications.
 - 8. Contractor will negotiate costs for services/supplies from the Subcontractor(s)/Supplier(s) selected under this method.
- C. **Selection by qualifications and competitive bid** – Contractor will apply the City's Subcontractor selection plan stated above or Contractor's selection plan, if previously approved by the City, in Contractor's evaluation of the qualifications of Subcontractor(s)/Supplier(s) and will provide the City with the selected process to prequalify prospective Subcontractors/Suppliers. Selection may not be based on price alone. All Work by major Subcontractors and major Suppliers will then be competitively bid to the prequalified Subcontractors unless a Subcontractor or Supplier was selected in accordance with Article 1.13(B) above. Contractor may elect to comply with the following procedures in step 2 of its competitive bid process.
- 1. Contractor will develop Subcontractor and Supplier interest, submit the names of a minimum of three (3) qualified Subcontractors or Suppliers for each trade in the Project and solicit bids for the various Work categories. If there are not three (3) qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances, Contractor may request approval by the City to submit less than three (3) names. Without

first giving written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.

2. If the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, Contractor will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
 3. Contractor will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors and Suppliers. Contractor will then review the price bids submitted by Subcontractors and Suppliers and make its selection based on the responsive and responsible bidder with the lowest price.
 4. If Contractor desires to self-perform certain portions of the Work, it must 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 in the Invitation for Bids. If events warrant and the City concurs that in order to insure compliance with the Project Schedule or cost, Contractor may self-perform Work without bidding or re-bidding the Work. (For horizontal construction, as defined in A.R.S. § 34-101(16), Contractor must self-perform not less than 45% of the Work as required by A.R.S. § 34-603(l)(3).)
- D. If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, Contractor will nominate a substitute Subcontractor or Supplier, preferably if this option is still available, from those who submitted Subcontractor bids for the Work affected. Once the substitute Subcontractors and Suppliers are consented to by the City, Contractor's proposed price for the Work or portion of the Work will be correspondingly adjusted to reflect any higher or lower costs from any substitution. Under no circumstances will the City's objection or comment on any Subcontractor or Supplier relieve Contractor of its sole responsibility for control over the methods, means and processes by which the Work is accomplished. The City must approve in writing the selected Subcontractor Selection Plan before work commences on any Job Order.
- E. Contractor shall incorporate by reference the terms and conditions of this Contract in any subcontract or supplier contract hereunder.

ARTICLE 2 - CITY'S SERVICES AND RESPONSIBILITIES

2.1 INFORMATION AND SERVICES

The City will furnish Contractor, at no cost to Contractor, the following information or services for this Project:

1. One copy of data pertinent to the Work. However, Contractor will be responsible for searching the records and requesting information required for the Project.
2. All available data and information relative to policies, standards, criteria,

studies, etc.

3. Project funding and budget allocations and any changes affecting the funding or budget allocations.
4. For purpose of determining the Job Order Price, any Plans and Specifications.
5. For purpose of Project Record Drawing Prints, a CADD file of the Construction Documents in Microstation format compatible with City of Scottsdale CADD requirements.

2.2 CITY'S REPRESENTATIVE

The City's Representative will be responsible for providing City-supplied information and approvals in a timely manner to permit Contractor to fulfill its obligations under the Contract Documents.

2.3 DESIGN PROFESSIONAL SERVICES

- A. The City may contract separately with one or more Design Professionals to provide architectural or engineering design of the Project in accordance with the provisions of A.R.S. §34-603.
- B. The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work:
 1. The Design Professional may provide administration of the Work. The City and Contractor will endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants will be through the Design Professional.
 2. The Design Professional may visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work.
 3. Upon Contractor's submittals, the Design Professional may review and approve or take other appropriate action on submittals as Shop Drawings, Product Data and Samples in accordance with Article 1.6.
 4. All drawings produced for projects considered to be performed under Contractor are the property of the City and are owned in whole by the City for any and all future use and considerations.

2.4 CITY'S SEPARATE CONTRACTORS

The City is responsible for all Work performed on the Project or at the Site by separate contractors under the City's control. The City will contractually require its separate

contractors to cooperate with and coordinate their activities so as not to interfere with Contractor in order to enable Contractor to timely complete the Work consistent with the Contract Documents. Contractor agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.5 FURNISHING OF SERVICES AND INFORMATION

A. The City will be responsible for the payment or waiver of the following:

1. City review and permit(s) fees for building, encroachment, and demolition permits including City, State and County.
2. City review fees for grading and drainage, water, sewer and landscaping.
3. Utility design fees or permanent services fees are paid by the City, but all submittals are the responsibility of Contractor.
4. Obtaining Nationwide 404 Permits.
5. City Development Fees.

B. Unless expressly stated to the contrary in the Contract Documents, the City will provide, at its own cost and expense, for Contractor's information the following:

1. To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
2. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, necessary to permit the proper design and construction of the Project and enable Contractor to perform the Work;
3. A legal description and street or physical address of the Site;
4. To the extent available, as-built record or historical drawings of any existing structures at the Site;
5. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including hazardous materials, in existence at the Site; and
6. To the extent available, Geotechnical studies describing subsurface conditions and other surveys describing other latent or concealed physical conditions at the Site.
7. The City will provide all City standards and guidelines, supplementary conditions and special provisions that will be included in the plans and specifications for the Project. These may include but are not limited to: disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, special quality

control testing and termite treatment requirements.

2.6 PROJECT MANAGEMENT SERVICES

- A. The City may contract separately with one or more Technical Consultants to provide project management assistance for the Project. The Technical Consultant's contract as well as contracts with other firms hired by the City will be furnished to Contractor. Contractor will not have any right, however, to limit or restrict any Project modifications that are mutually acceptable to the City and Technical Consultant.
- B. The Technical Consultant services will augment the City staffing resources to effectively manage the objectives of the City and the Project with the goal of managing the key Project communication, cost and time parameters.
- C. The Technical Consultant may provide pre-programming and design standards.
- D. The City may contract with the Technical Consultant to provide any or all of the services or functions of the City's project manager during the performance of the construction.

2.7 PERMIT REVIEW AND INSPECTIONS

For clarification, permitting activities are handled by the City of Scottsdale Developmental Services, Fire and Planning Departments. Obtaining any permits and submittals are the responsibility of the City.

2.8 UTILITY COMPANY COORDINATION

Contractor will be responsible for coordinating utility design work for permanent service to the Project and will ensure that the work takes place in a timely manner and does not impact the Project schedule. Any utility design fees for permanent services to a Job Order will be paid by the City in accordance with Article 2.6.

ARTICLE 3 - CONTRACT TIME AND JOB ORDER TIME

3.1 CONTRACT TIME

- A. The initial term of this Contract will be for two (2) years and will commence on the Effective Date, with the option to extend for three (3) additional years in one (1) year increments.
 - 1. The option to extend may be exercised based on Contractor's successful performance and the needs of the City.
 - 2. A contract modification will be processed for each extension and will commence on or about the anniversary date of the Contract. Each extension must be authorized by the Contract Administrator and Purchasing Director for the City and need not return to the City's Council for approval.
- B. The Contract will remain in full force and effect during the performance of any Job

Order.

3.2 JOB ORDER TIME

- A. Job Orders may be issued at any time during the term of this Contract.
- B. Each individual Job Order will include a Job Order Notice-to-Proceed date, Duration of the Work as determined in accordance with this Article 3.2 and a calculated Substantial Completion date.
- C. Contractor agrees that it will commence performance of the Work and achieve the approved Job Order Time.
- D. Job Order Time may be subject to adjustment in accordance with Article 5.

3.3 SUBSTANTIAL COMPLETION

- A. Substantial Completion of each Job Order is when all construction has been completed with the exception of final inspection punch list work and further defined in Article 12. The purpose of granting or acknowledging Substantial Completion is to stop Job Order Time.
- B. Before notifying the City in accordance with Article 3.3(C), Contractor will inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. Contractor will proceed promptly to complete and correct items on the list. Failure to include an item on the list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.
- C. Contractor will notify the City when it believes a Job Order, or to the extent permitted in the Contract Documents, a portion of the Job Order, is substantially complete.
- D. Within five (5) days of the City's receipt of Contractor's notice in accordance with Article 3.3(C), the City and Contractor will jointly inspect the Work to confirm Substantial Completion.
- E. Once Substantial Completion of the Work is confirmed in accordance with Article 3.3(D), the City will prepare and issue a Certificate of Substantial Completion that will state:
 - 1. The date of Substantial Completion of the Work or portion of the Work;
 - 2. The remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance;
 - 3. Provisions (to the extent not already provided in the Contract Documents) establishing the City's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance.
- F. The City, at its option, may use a portion of the Work which has been determined

to be substantially complete provided, however, that:

1. Certificate of Substantial Completion has been issued for the portion of Work addressing the items in Article 3.3(E)(2).
2. Contractor and the City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and
3. The City and Contractor agree that the City's use or occupancy will not interfere with Contractor's completion of the remaining Work required under Article 3.3(E).

3.4 PUNCH LIST PREPARATION

A minimum of seven (7) days before Substantial Completion, Contractor, in conjunction with the City, will prepare a comprehensive list of Punch List items, which the City may edit and supplement. Contractor will proceed promptly to complete and correct the Punch List items. Failure to include an item on the Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Warranties required by the Contract Documents will not commence until the date of Final Acceptance, unless otherwise provided in the Contract Documents. Seven (7) days before the City issues its Final Acceptance Letter, Contractor will deliver to the City all Operation and Maintenance Manuals necessary for the City to assume responsibility for the operation and maintenance of that portion of the Work.

3.5 FINAL ACCEPTANCE

Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, the City and Contractor will jointly inspect to verify that the remaining items of Work have been completed as required under Article 3.3(E). Upon verification that the items have been satisfactorily completed, the City will issue a Final Acceptance Letter.

3.6 LIQUIDATED DAMAGES

- A. Contractor understands that if Substantial Completion is not attained within the Job Order Time, as may be adjusted for each Job Order, the City will suffer damages, based on the anticipated loss caused by the breach and the difficulty in determining and accurately specifying the damages. Contractor agrees that if Substantial Completion is not attained within the Job Order Time as adjusted, Contractor will pay the City the amount prescribed in Article 3.6(B) below as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Job Order Time as adjusted.
- B. The following will be the liquidated damages for each Job Order unless a specific amount has been determined for each individual Job Order.

LIQUIDATED DAMAGES

Original Job Order Amount		Daily Charges
From more than	To and including	Calendar Day or Fixed Date
\$00	\$25,000	\$200
25,001	50,000	250
50,001	100,000	280
100,001	500,000	430
500,001	750,000	500
750,001	1,000,000	570
1,000,001	1,250,000	610
1,250,001	1,500,000	650

ARTICLE 4- CONTRACT PRICE AND JOB ORDER PRICE**4.1 CONTRACT PRICE**

The fee for individual projects performed under this contract will be negotiated on a project-by-project basis as Job Orders. The amount paid to the Contractor under this contract for all Job Orders shall not exceed Twelve Million Dollars (\$12,000,000) for the initial two (2) year term and Seven Million Five Hundred Thousand Dollar (\$7,500,000) for any successive one (1) year contract extension. The Contractor agrees at its own cost and expense, to do all the Work as specified in the Contract Documents and any Work contingent to the Contract and necessary for the construction of the improvements. The Contractor will completely construct the Work and install the materials, free and clear of all claims, liens, and charges of any kind, in the manner and under the conditions specified within the time or times stated in each Job Order.

- A. In no event will any individual Job Order Price exceed Four Million Dollars (\$4,000,000). If the City opts to extend this Contract in accordance with Article 3.1(A), the Contract Modification may increase the maximum amount, if necessary, at that time.
- B. The Job Order Price is subject to Adjustments made in accordance with Article 5.
- C. Unless otherwise provided in the Contract Documents, the Job Order Price is considered to include all sales, use, consumer and other taxes throughout the term of this Contract, whether or not yet effective or merely scheduled to go into effect.
- D. Contractor must secure and maintain, during the life of the Contract, State of Arizona and City of Scottsdale Transaction Privilege (sales) Tax Licenses.

To obtain a State of Arizona Privilege (Sales) Tax License Application, please go to the following website:

<https://azdor.gov/transaction-privilege-tax/tpt-license/applying-tpt-license>

To obtain a City of Scottsdale Transaction (Sales) Tax License Application, please go to the following website:

<https://www.scottsdaleaz.gov/taxes/resources>

Contractor must demonstrate compliance with the E-Verify Program as provided in Article 11.33 and as required by A.R.S. §41-1080, as amended, before issuance of any License by the City.

4.2 RESPONSIBILITY FOR PRIVILEGE (SALES) TAXES

- A. Contractor is responsible for payment of all applicable State of Arizona and City of Scottsdale transaction privilege (sales) taxes due on construction income whether or not these taxes are specifically separated in the bid amount. The taxes are to be reported on either a progressive billing (accrual) basis or cash receipts basis, depending on the method chosen at the time application was made for the Privilege (sales) Tax License.

City Privilege (sales) tax exemptions/deductions may be applicable to certain projects. Contractor is advised to consider this as it prepares its bid. Please review, in detail, Sections 415, 465, and 110 of the Scottsdale Revised City Code, Appendix C to determine if exemptions/ deductions are applicable. For tax guidance, please reference the City Code and other tax resources at the following website:

<http://www.scottsdaleaz.gov/taxes/>

The State of Arizona has similar exemptions; please reference A.R.S. Title 42 at the following website:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=42>

For further questions regarding tax treatment, please contact the Arizona Department of Revenue at 602-255-2060 and the City of Scottsdale Tax & Audit Section at 480-312-2768.

ARTICLE 5 - CHANGES TO THE CONTRACT PRICE AND TIME

5.1 DELAYS TO THE WORK

- A. Delays may be compensable, concurrent, excusable or non-excusable as defined in Article 12.
- B. If Contractor is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Contractor is responsible, the Job Order Time for performance may be reasonably extended by Job Order Adjustment.
- C. Contractor must request a Job Order Adjustment by written notice, including an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay, only one request is necessary.
- D. Written notice will be received within fourteen (14) days of the commencement of the cause of the delay. If written notice is received more than fourteen (14) days after commencement of the cause of the delay, the period of delay will be considered to commence fourteen (14) days before the giving of any notice.

- E. If adverse weather conditions are the basis for a Job Order Adjustment request, the requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- F. Permitting Contractor to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights.
- G. In the event Contractor incurs expenses related to a delay for which the City is responsible pursuant to A.R.S. §34-609(E), as amended, Contractor and the City will negotiate an equitable adjustment to the Job Order Price and/or Job Order Time. This provision does not void any other section of this Contract that requires notice of delays, provides for arbitration or other procedures for settlement or provides for liquidated damages.
- H. In addition to Contractor's right to request a time extension for those events stated in this Article 5.1, Contractor may also be entitled to an appropriate adjustment of the Job Order Price provided, however, that the Job Order Price will not be adjusted for delays caused by reason of force majeure as defined in this Contract.

5.2 DIFFERING SITE CONDITIONS

- 5.2.1. If Contractor encounters a Differing Site Condition(s), Contractor may be entitled to an adjustment in the Job Order Price or Job Order Time(s) to the extent Contractor's cost or time of performance are the direct result of a Differing Site Condition(s).
- 5.2.2. Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to the City of the condition, which notice will not be later than seven (7) days after the condition has been encountered. Final costs must be submitted within thirty (30) days after notice is received by the City, unless extended by written agreement of the parties. Contractor must give the City's Contract Administrator written notice of and an opportunity to observe such condition before disturbing or altering the Differing Site conditions. The failure of Contractor to give written notice and make the Claim as required by this Article and Article 7.1.5 shall constitute a waiver by Contractor of any rights arising out of or relating to such Differing Site Conditions.
- 5.2.3. In order for Contractor to obtain any additional compensation or time extensions for Differing Site Conditions, Contractor must demonstrate that It encountered a material difference at the Site, as defined in Article 12, that required it to expend additional cost or time. Contractor will also establish that it actually and reasonably relied upon the representations found in the Contract Documents concerning the Site conditions.

5.3 APPLICATION FOR EXTENSION OF TIME

5.3.1 If performance by Contractor is delayed for a reason set forth in Article 5, Contractor may be allowed a reasonable extension of time in conformance with this Article. Before Contractor's time extension request may be considered, Contractor shall notify the City of the condition which allegedly has caused or is causing the delay, and shall submit a written application to the City identifying:

1. Liquidated damage assessment rate, as specified in the Contract;
2. Original Job Order Price;
3. Original Job Order Time;
4. Any previous Job Order Adjustments granted (number and duration); and
5. The extension of time requested.

5.3.2 In addition, the application for extension of time shall set forth in detail:

1. The nature of each alleged cause of delay in completing the Work;
2. The date upon which each such cause of delay began and ended and the number of dates attributable to each such cause;
3. A statement that Contractor waives all claims except for those delineated in the application, and the particulars of any claims which Contractor does not agree to waive. For time extensions for Substantial Completion and final completion payments, the application shall include a detailed statement of the dollar amounts of each claim item reserved; and
4. A statement indicating Contractor's understanding that the time extension is granted only for purposes of permitting continuation of Contract performance and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

5.4 ERRORS, DISCREPANCIES AND OMISSIONS

- A. If Contractor observes errors, discrepancies or omissions in the Contract Documents, it will promptly notify the City and request clarification. Contractor will provide a copy of this notice to the City's Representative.
- B. If Contractor proceeds with the Work affected by the errors, discrepancies or omissions, without receiving any clarifications, it does so at its own risk. Adjustments involving these circumstances made by Contractor before clarification by the Design Professional will be at Contractor's risk.

5.5 CITY REQUESTED CHANGE IN WORK

- A. The City reserves the right to make, at any time during the progress of the Work, any alterations as may be found necessary or desirable.
- B. These alterations and changes will not invalidate this Contract nor release the surety and Contractor agrees to perform the Work as altered, the same as if it had been a part of the original Job Order. Contractor will notify the surety of the changes and will assure that the alterations and changes are adequately covered by the surety bond.
- C. The City will request a proposal for a change in Work from Contractor, and an Adjustment to the Job Order Price or Job Order Time will be made based on a mutual agreed upon cost and time.

5.6 LEGAL REQUIREMENTS

The Job Order Price or Job Order Time will be adjusted to compensate Contractor for the effects of any changes in the Legal Requirements enacted after the date of the Contract affecting the performance of the Work.

5.7 JOB ORDER ADJUSTMENTS

- A. In accordance with the City of Scottsdale Procurement Code, and related Rules and Procedures, the City and Contractor will negotiate in good faith and as expeditiously as possible the appropriate Job Order Adjustment(s). Upon reaching an agreement, the parties will prepare and execute an appropriate Adjustment reflecting the terms of their agreement. The change in Work may or may not include an Adjustment in the Job Order Price or Job Order Time.
- B. All changes in Work authorized by Job Order Adjustments will be performed under the conditions of the Contract Documents. The decision to make an Adjustment to the Job Order rests solely with the City and any decision to make a Job Order Adjustment must be promptly complied with by Contractor, subject to the provisions of Article 5.8.
- C. The execution of a Job Order Adjustment by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, the Job Order Price, and the Job Order Time by Contractor. Contractor, by executing the Job Order Adjustment, waives and forever releases any claim against the City for any additional time or compensation for matters relating to, arising out of, or resulting from the Work included within or affected by the executed Job Order Adjustment of which Contractor knew or should have known.

5.8 UNILATERAL DETERMINATION OF JOB ORDER VALUE

If no mutual agreement occurs between the City and Contractor, the change in Job Order Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions to the Work. Such reasonable actual costs or savings shall include a component for direct job site overhead and profit but shall not include home-office overhead or other indirect costs and components. The calculation

of actual costs shall conform to the markup schedule in Article 5.12 below. Any such costs or savings shall be documented in the format and with such content and detail as the City requires. Contractor shall promptly submit such documentation and other backup as the City may require in evaluating the actual costs incurred.

5.9 ADDITIONAL JOB ORDER COST REQUIREMENTS

Contractor's or Subcontractor's submittals shall include the cost of materials, sales tax, and the cost of all transport. The cost of items listed shall be directly related to the Job Order Adjustment. Indirect costs not specifically related to the Job Order Adjustment shall not be considered. Contractor's or Subcontractor's Direct Labor Costs shall be limited to the hourly rate of directly involved workmen, employer contributions toward Contractor standard benefits, pensions, unemployment or social security (if any), and employer costs for paid sick and annual leave. Contractor's or Subcontractor's Overhead shall include license fees, bond premiums, supervision, wages of timekeepers and clerks, incidentals, home and field office expense, and vehicle expense directly related to the Project, and all other direct Project expenses not included in Contractor's material, direct labor, and equipment costs.

5.9.1 The allowance for overhead and profit shall be limited to the following schedule:

1. For Contractor, for any work performed by Contractor's own forces, fifteen (15%) percent of the Subtotal of Costs to Contractor.
2. For Contractor, for any work performed by its Subcontractor, six (6%) percent of the amount due to the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved, for any work performed by their own forces, fifteen (15%) of their materials and direct labor costs.
4. For each Subcontractor, for work performed by its Sub-Subcontractor(s), six (6%) percent of the amount due to the Sub-subcontractor.

5.10 LIMITATION OF COMPENSABLE ITEMS

5.10.1 For Job Order Adjustment, the total cost or credit to the City shall be based on the following schedule:

1. Contractor's Materials Costs.
2. Contractor's Direct Labor Costs.
3. Contractor's Equipment Costs (includes owned/rented equipment).
4. Applicable Subcontractor Costs.
5. Subtotal of Costs to Contractor.
6. Contractor's Overhead and Profit.

7. Total Cost or Credit to the City.

5.11 FIELD ORDERS

- A. The City has authority to initiate Field Orders that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Field Orders will be made by written order and will be binding on the City and Contractor. Contractor will carry out any written Field Orders promptly.
- B. Field Orders will not involve an adjustment in the Job Order Price or Job Order Times unless or until it becomes a Job Order Adjustment.
- C. Contractor may make minor changes in the Work, provided, however that Contractor will promptly inform the City, in writing, of any changes and record the changes, if appropriate, on the Project Record Documents maintained by Contractor.

5.12 JOB ORDER PRICE ADJUSTMENTS

- A. The increase or decrease in Job Order Price resulting from a change in the Work will be determined by one or more of the following methods:
 - 1. Unit prices stated in the Contract or as subsequently agreed to between the parties;
 - 2. A mutually agreed upon accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the City; and
 - 3. Costs, fees and any other markups.
- B. If an increase or decrease cannot be agreed to as stated in Article 5.7(A), the cost of the change of the Work will be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be stated in the Contract Documents. Contractor will maintain a documented, itemized accounting, evidencing the expenses and savings associated with these changes.
- C. If unit prices are stated in the Contract Documents, or are later agreed to by the parties, but application of the unit prices will cause substantial inequity to the City or Contractor because of differences in the character or quantity of the unit items as originally contemplated, the unit prices will be equitably adjusted.
- D. If the City and Contractor disagree upon whether Contractor is entitled to be paid for any services required by the City, the amount to be paid, other disagreements over the Scope of Work, proposed changes to the Work, or the time required to complete the Work, the City and Contractor will resolve the disagreements in accordance with Article 7.

- 1. As part of the negotiation process, Contractor will furnish the City with a

good faith estimate of the costs to perform the disputed services, or the additional time required in accordance with the City's interpretations.

2. If the parties are unable to agree and the City expects Contractor to perform the services in accordance with the City's interpretations, Contractor will proceed to perform the disputed services, conditioned upon the City issuing a written order to Contractor:

(a) directing Contractor to proceed; and

(b) specifying the City's interpretation of the services that are to be performed.

- E. Emergencies. In any emergency affecting the safety of persons or property, Contractor will act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Job Order Price or Job Order Time(s) resulting from emergency work will be determined as provided in this Article 5.

ARTICLE 6- PROCEDURE FOR PAYMENT

6.1 JOB ORDER PAYMENT REQUEST

- A. At the pre-construction conference prescribed in Article 1.3, Contractor will submit for the City's review and approval a Schedule of Values. The Schedule of Values will include values for all items comprising the Job Order Price and will serve as the basis for monthly progress payments made to Contractor throughout the Work.
- B. At least five (5) working days before the date established for a progress payment, Contractor will meet with the City's Representative to review the progress of the Work, as it will be reflected on the Contractor Payment Request.
- C. The Contractor Payment Request will constitute Contractor's representation that the Work has been performed consistent with the Job Order including any Adjustment(s), has progressed to the point indicated in the Contractor Payment Request, and that title to all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

6.2 PARTIAL PAYMENTS

- A. Partial progress payment will be made for Job Orders with Job Order Time greater than 30 Days and may be made if the Job Order Time is less than 30 Days.
- B. The Contractor Payment Request may request payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.
- C. For equipment and materials suitably stored at the Site, the equipment and materials will be protected by suitable insurance and the City will receive the equipment and materials free and clear of all liens and encumbrances.

1. For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Maricopa County and be accessible for the City's inspection. Title to the materials and equipment will include applicable insurance, bonding, storage and transportation to the Site..
2. The City will be named as an Additional Insured on all insurance and bonds required for all stored materials or equipment

6.3 PAYMENT OF JOB ORDER PRICE

- A. Payments should be provided on the City format for a Pay Application which is based on the agreed upon Schedule of Values. Payment will be made no later than fourteen (14) days after the Contractor Payment Request is certified and approved, but in each case less the total of payments previously made.
- B. The Contractor Payment Request shall be deemed approved and certified for payment seven (7) days after the date of submission to the City by Contractor unless before that time the City prepares and issues a specific written finding setting forth those items in detail in the Contractor Payment Request that are not approved for payment under the Contract. The finding will indicate the specific amounts the City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Contractor must take to rectify the City's concerns. The City may withhold an amount from the progress payment sufficient to pay the expenses the City reasonably expects to incur in correcting the deficiency set forth in the written finding. Contractor and the City will attempt to resolve the City's concerns. If the parties cannot resolve the concerns, Contractor may pursue its rights under the Contract Documents, including those under Article 7.

6.4 RETENTION ON JOB ORDER PAYMENTS

In compliance with A.R.S. §34-609, as amended, there is no retention for job-order-contracting construction services contracts.

6.5 FINAL PAYMENT

- A. After receipt of a final Contractor Payment Request, the City will make final payment as required by this Article 6.5, provided that Contractor has completed all of the Work in conformance with the Job Order and Contract Documents and a Final Acceptance Letter has been issued by the City.
- B. At the time of submission of its final Contractor Payment Request, Contractor will provide the following information:
 1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect the City's interests; and
 2. A general release executed by Contractor waiving, upon receipt of final

payment by Contractor, all claims, except those claims previously made in writing to the City and remaining unsettled at the time of final payment.

6.6 PAYMENTS TO SUBCONTRACTORS OR SUPPLIERS

- A. Contractor will pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. Contractor will pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. No Contract between Contractor and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment as provided in this Contract.
- B. If Contractor fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and Contractor agrees that the City may take these actions:
 - 1. To hold Contractor in default under this Contract;
 - 2. Withhold future payments until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
 - 3. Reject all future offers to perform work for the City for a period not to exceed one (1) year from the Substantial Completion date of the Job Order at issue; or
 - 4. Terminate this Contract for cause.
- C. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Article, the failure or delay will not be considered a waiver, release, or modification of the requirements of this Article or of any of the terms or provisions of this Contract.
- D. Contractor will include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Contract.

6.7 AUDIT AND INSPECTION

- A. Records of Contractor's direct personnel payroll, reimbursable expenses related to each Job Order and records of accounts between the City and Contractor will be kept on a generally recognized accounting basis and will be available for three (3) years after completion of the Project.

From the effective date of this Contract and until three (3) years after the date of final payment by the City of Scottsdale to Contractor, the City, its authorized representative, or the appropriate federal or state agencies, reserve the right to audit Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate the Contract Documents. The City of Scottsdale or its authorized representative will have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and will be provided adequate and appropriate workspace, in order to conduct audits in compliance

with the provisions of this Article. The City of Scottsdale will give Contractor or Subcontractor reasonable advance notice of intended audits.

- B. The City reserves the right to decrease Job Order Price or payments made on this Contract if, upon audit of Contractor's records, the audit discloses Contractor has provided false, misleading, or inaccurate cost and pricing data.
- C. Contractor will include a similar provision in all of its contracts with Suppliers, Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, or the appropriate federal or state agency, has access to the Supplier, Subconsultant and Subcontractor records to verify the accuracy of cost and pricing data.
- D. The City reserves the right to decrease Job Order Price or payments made on this Contract if the above provision is not included in Supplier, Subconsultant and Subcontractor contracts, and one or more Suppliers, Subconsultants or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.
- E. If an audit in accordance with this Article, discloses overcharges of any nature by Contractor to the City in excess of 1% of the total contract billings, the actual cost of the City's audit will be reimbursed to the City by Contractor. Any adjustments or payments which must be made as a result of any audit or inspection of Contractor's invoices or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City's findings.
- F. This audit provision includes the right to inspect personnel records as required by Section 11.33.
- G. City may, at reasonable times, inspect the place of business of Contractor or its Subcontractor(s) that is related to the performance of this Contract.

ARTICLE 7- CLAIMS AND DISPUTES

7.1 REQUESTS FOR CONTRACT ADJUSTMENTS AND RELIEF

- 7.1.1 If either Contractor or the City believes that it is entitled to relief against the other for any event arising out of or related to the Work, that party will provide written notice to the other party of the basis for its claim for relief. The claims shall set forth in detail all known facts and circumstances supporting the claim; final costs associated with any claim upon which notice has been given must be submitted in writing to the City within thirty (30) days after notice has been received.
- 7.1.2 This notice will, if possible, be made before incurring any cost or expense and in accordance with any specific notice requirements contained in applicable articles of the Contract.
- 7.1.3 In the absence of any specific notice requirement, written notice will be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

- 7.1.4** This notice will include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of the request. ANY NOTICE OF CLAIM NOT FILED WITH THE CITY WITHIN SUCH TIME AND IN COMPLIANCE WITH THE PRECEEDING PROVISIONS SHALL BE CONSIDERED TO HAVE BEEN WAIVED AND SHALL BE DISMISSED.
- 7.1.5** In the event Contractor seeks to make a claim for an increase in the Job Order Price, as a condition precedent to any liability of the City therefore, unless emergency conditions exist, Contractor shall strictly comply with the requirements of this section and such claim shall be made by Contractor before proceeding to execute any Work for which a claim is made. Failure to comply with this condition precedent shall constitute a waiver by Contractor of any claims for compensation.
- 7.1.6** Contractor must continue its performance under this Contract regardless of the existence of any claims by Contractor.
- 7.1.7** In a claim by Contractor against the City for compensation in excess of the Job Order Price, any liability of the City to Contractor shall be strictly limited and computed in accordance with the Contract Documents and shall in no event include indirect costs, such as home office overheads or consequential damages of Contractor or any estimated costs or damages.

7.2 DISPUTE AVOIDANCE AND RESOLUTION

- 7.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the Contractor and the City each commit to resolving the disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 7.2.2** The Contractor and the City will first attempt to resolve disputes or disagreements at the field level through discussions between the Contractor's Representative(s) and the City's Representative(s) as described In Article 7.4.
- 7.2.3** If a dispute or disagreement cannot be resolved pursuant to Article 7.2.2, upon the request of either party, the parties' Representatives as described in Article 7.4 will meet as soon as conveniently possible, but in no case later than thirty (30) days after the request is made, to attempt to resolve the dispute or disagreement. Before any meetings between the parties Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 7.2.4** In the event Contractor incurs expenses related to a delay for which the City is responsible pursuant to A.R.S. §34 609(E), as amended, Contractor and the City will negotiate an equitable adjustment to the Job Order Price and/or Job Order Time. This provision does not void any other section of this Contract that

requires notice of delays, provides for arbitration or other procedures for settlement or provides for liquidated damages.

7.3 DUTY TO CONTINUE PERFORMANCE

Unless provided to the contrary in the Contract Documents, Contractor will continue to perform the Work and the City will continue to satisfy its payment obligations to Contractor, until final resolution of any dispute or disagreement between Contractor and the City.

7.4 REPRESENTATIVES OF THE PARTIES

A. City's Representatives

1. The City designates the individual listed below as the City's Senior Representative. This individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2.3:

City of Scottsdale
Attn: Alison Tymkiw
7447 E Indian School Road, Ste 205
Scottsdale, AZ 85251
(480) 312-7760

2. The City will designate an individual for each Job Order as the City's Representative. This person will manage the Job Order.

B. Contractor's Representatives

1. Contractor designates the individual listed below as Contractor's Senior Representative. This individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2.3:

Hunter Contracting Co.
Attn: Dig Karki
701 North Cooper Road
Gilbert, AZ 85233
(480) 632-4926

2. Contractor will designate an individual for each Job Order as Contractor's Representative.

ARTICLE 8 – SUSPENSION, TERMINATION AND CANCELLATION

8.1 CITY'S RIGHT TO STOP JOB ORDER SERVICES

- A. The City may, at its discretion and without cause, order Contractor in writing to stop and suspend any Job Order. Immediately after receiving this notice, Contractor will discontinue advancing the Job Order. The suspension will not exceed one hundred eighty (180) consecutive days. If the City suspends the Job

Order for one hundred eighty-one (181) consecutive days or more, the suspension will be considered a termination for convenience.

- B. Contractor may seek an adjustment of the Job Order Price or Job Order Time if its cost or time to perform the Contract Services has been adversely impacted by any suspension or stoppage of the Work by the City.

8.2 TERMINATION FOR CONVENIENCE

- A. The City reserves the right to terminate this Contract, in whole or in part, or abandon any portion of any Job Order for which services have not been performed by Contractor, at its sole convenience and discretion, upon written notice given pursuant to this Contract.

- 1. Contractor will estimate the value of the Work it has completed and submit its appraisal to the City for evaluation. The City will have the right to inspect the Work, to appraise the Work completed.

Contractor shall be entitled to receive just and equitable compensation for the percentage of Work actually completed and materials accepted before the effective date of the termination. This compensation will be an amount mutually agreed upon by Contractor and the City based on the Job Order and Scope of Work. If there is no mutual agreement, the final determination will be made in accordance with this Article.

- 2. The City will make the final payment within 60 days after Contractor has delivered the last of the partially completed items and the final fee has been agreed upon.

If the City terminates this Contract in compliance with this Article and proceeds to complete the Job Order through its employees, agents or other third parties, the City's rights to use the Work product will be as stated in Article 8.4.

- B. Upon termination of construction services during any Job Order, Contractor will proceed with the following obligations:

- 1. Stop Work as stated in the notice;
 - 2. Place no further subcontracts or orders;
 - 3. Terminate all subcontracts to the extent they relate to the Work terminated;
 - 4. Assign to the City all right, title and interest of Contractor under the subcontracts terminated, in which case the City will have the right to settle or to pay any termination settlement proposal arising out of those terminations;
 - 5. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of Contractor and which the City has or may acquire an interest; and

6. Comply with the requirements of Article 6.5(B).
- C. Contractor will submit complete termination inventory schedules no later than sixty (60) days from the date of the notice of termination.
- D. The City will pay Contractor the following:
 1. The direct value of its completed Work and materials supplied as of the date of termination;
 2. The reasonable costs and expenses attributable to the termination;
 3. Contractor will be entitled to profit and overhead on completed Work but will not be entitled to anticipated profit or anticipated overhead. If it appears Contractor would have sustained a loss on the entire Work had the Job Order been completed, Contractor will not be allowed profit and the City will reduce the settlement to reflect the indicated rate of loss;
 4. Contractor will maintain all records and documents for three (3) years after final settlement. These records will be maintained and subject to auditing as required in Article 6.7; and
 5. Take any action that may be necessary for the protection and preservation of the property related to the Job Order(s) that is in the possession of Contractor and in which the City has or may acquire an interest.

8.3 CANCELLATION FOR CAUSE

The City may also cancel this Contract or any part of it with seven (7) days notice for cause in the event of any default by Contractor, or if Contractor fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance, despite a reasonable opportunity to cure as judged by the City's Representative and failure to provide the City, upon request, with adequate assurances of future performance will all be causes allowing the City to cancel this Contract for cause. In the event of cancellation for cause, the City will not be liable to Contractor for any amount as damages, and Contractor will be liable to the City for any and all damages sustained as a result of the default that caused the cancellation.

8.4 CITY'S RIGHT TO PERFORM AND CANCEL FOR CAUSE

- A. If Contractor persistently fails to:
 1. Provide a sufficient number of skilled workers;
 2. Supply the materials required by the Contract Documents or Job Order(s);
 3. Comply with applicable Legal Requirements;
 4. Timely pay, without cause, Subconsultants or Subcontractors;
 5. Perform the Contract Services with promptness and diligence to ensure

that a Job Order is completed by the Job Order Time, as the times may be adjusted; or

6. Perform other material obligations under the Contract Documents and/or individual Job Orders;

Then the City, in addition to any other rights and remedies provided in the Contract Documents or by law, will have the rights stated in Articles 8.2 and 8.3.

In the event the City cancels this Contract or any part of the services under any Job Order, the City will notify Contractor in writing, and immediately upon receiving this notice, Contractor will discontinue advancing the Work under this Contract or the Job Order and proceed to close all operations of any affected Job Order or this Contract.

- B. If the City provides Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and Contractor fails to comply in a time frame specified, the City may have the Work accomplished by other sources at Contractor's expense and without an increase to the Job Order Price
- C. Upon the occurrence of an event stated in Article 8.4(B), the City may provide written notice to Contractor that it intends to cancel the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Contractor's receipt of notice.
 1. If Contractor fails to cure, or reasonably commence to cure, the problem, then the City may give a second written notice to Contractor of its intent to cancel within an additional seven (7) day period.
 2. If Contractor, within this second seven (7) day period, fails to cure, or reasonably commence to cure the problem, then the City may declare the Contract cancelled for default by providing written notice to Contractor of this declaration.
- D. Upon declaring the Contract cancelled in accordance with Article 8.4(C), and for the purpose of completing the Work, the City may for all Job Orders enter upon the premises and take possession of all materials, equipment, scaffolds, tools, appliances and other items, which have been purchased or provided for the performance of the Work, all of which Contractor now transfers, assigns and sets over to the City for this purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- E. If through any cause, Contractor fails to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor violates any of the covenants, Contracts, or stipulations of this Contract, the City may withhold any payments to Contractor for the purpose of setoff until the exact amount of damages due the City from Contractor is determined by a court of competent jurisdiction.
- F. In the event of a cancellation, Contractor will not be entitled to receive any further

payments under the Contract Documents until the Work on all Job Orders is completed in accordance with the Contract Documents. At that time, Contractor will only be entitled to be paid for Work performed and accepted by the City before its default.

- G. If the City's cost and expense of completing the Work exceeds the unpaid balance of a Job Order Price, then Contractor will be obligated to pay the difference to the City. These costs and expenses will include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the City in connection with the procurement and defense of claims arising from Contractor's default.
- H. If the City cancels this Contract for cause and the cancellation is determined to have been without legal right, the cancellation for cause will be considered to have been a termination for convenience in accordance with the provisions of Article 8.2.

ARTICLE 9 - INSURANCE AND BONDS

9.1 INSURANCE REQUIREMENTS

- A. At the same time as execution of this Contract, Contractor will furnish the City of Scottsdale a Certificate of Insurance on a standard insurance industry ACORD form. The ACORD form will be issued by an insurance company authorized to transact business in the State of Arizona or one that is named on the List of Qualified Unauthorized Insurers maintained by the Arizona Department of Insurance.
- B. Contractor, Subcontractors and Subconsultants must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the Work by Contractor, its agents, representatives, employees, or Subcontractors.
- C. The Insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
- D. The City in no way warrants that the minimum limits contained in this Contract are sufficient to protect Contractor from liabilities that might arise out of the performance of the Contract Services under this Contract by Contractor, its agents, representatives, employees, Subcontractors or Subconsultants and Contractor is free to purchase any additional insurance as may be determined necessary. The City will not pay for higher limits, but if Contractor pays for insurance with higher limits, Contractor will name the City as an additional insured on any additional insurance.
- E. Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract,

and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

- F. Deductibles and Self-Insured Retentions. The policies stated in this Article may provide coverage which contains deductibles or self-insured retention amounts. Any deductibles or self-insured retention are not applicable to the policy limits provided to the City. Contractor is solely responsible for any deductible or self-insured retention amount. The City, at its option, may require Contractor to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit. Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

9.2 MINIMUM SCOPE AND LIMITS OF INSURANCE

Contractor must provide coverage at least as broad and with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expenses (Any one person)	OPTIONAL

Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 operations, independent contractors, products completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

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

Combined Single Limit Per Accident	\$1,000,000
For Bodily Injury and Property Damage	

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

coverage scope than underlying insurance.

C. Workers Compensation and Employers Liability

Workers' Compensation	<i>Statutory</i>
Employers Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$1,000,000

Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes applicable to Contractor's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance. The insurer must agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from Work performed by Contractor for the City.

D. Coverage Terms and Required Endorsements

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City of Scottsdale, its officers, officials, agents, and employees are to be named as additional insureds with respect to liability arising out of activities performed by, or on behalf of, Contractor including the City's general supervision of Contractor, products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
2. Except for Contractors Professional Liability and Workers Compensation insurance, for all insurance policies required under this Contract, the City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by Contractor even if those limits of liability are in excess of those required by this Contract.
3. Except for Contractors Professional Liability and Workers Compensation insurance, all insurance policies required under this Contract, including any excess insurance policies, must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees will be in excess of the coverage provided by Contractor and must not contribute to it.
4. For all insurance policies required under this Contract, insurance coverage must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. For all Insurance policies required under this Contract, Insurance coverage must not be limited to the liability assumed under the indemnification provisions of this Contract.
6. All insurance policies required under this Contract, must contain a waiver of subrogation against the City, its officers, officials, agents, and

employees, for losses arising from Work performed by Contractor for the City.

7. For all insurance policies required under this Contract, if Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the Contract Administrator for the City, unless such coverage is immediately replaced with similar policies.
8. Contractor, its successors or assigns, is required to maintain Commercial General Liability Insurance as specified in this Contract for a minimum period of three (3) years following completion and acceptance of the Work. Contractor must submit Certificates of Insurance evidencing the Commercial General Liability insurance during this three (3) year period containing all the insurance requirements stated in this Contract including naming the City of Scottsdale, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
9. The Commercial General Liability policy will be at least as broad as the Insurance Service Office, Inc.'s CG 0 0 01 07 98.

9.3 OTHER INSURANCE REQUIREMENTS

The policies are to contain, or be endorsed to contain, the following provisions:

- A. Contractors Professional Liability: Contractor must carry Contractors Professional Liability insurance to cover the residual, contingent, and passive design exposures of Contractor.
- B. Contractors Professional Limits of Liability: Contractor must carry limits of \$1,000,000 each Project and \$2,000,000 in the Aggregate under a stand-alone policy or included by endorsement under the Commercial General Liability policy. Contractor, its successors and or assigns, is required to maintain this Professional Liability insurance as specified in this Contract for a minimum period of three (3) years following completion and acceptance of the Work. Certificates of Insurance citing that applicable coverage is in force and contains the provisions required by this Contract must be submitted for the three (3) year period. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage will extend for three (3) years past completion and acceptance of the work or services, and Contractor, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a three (3) year period. If there is no Professional Liability work or service as a part of this Contract, the City will waive the Professional Liability Insurance requirement in writing.
- C. Builders Risk-Installation Insurance (Course of Construction)

Builders Risk-Installation and/or Boiler and Machinery Insurance coverage to be provided by Contractor as determined necessary by the City prior to the start of

construction.

Contractor bears all responsibility for loss to all Work being performed and to buildings under construction. Unless waived in writing by the City of Scottsdale, Contractor will purchase and maintain in force Builders Risk-Installation insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss or Open Perils policy form, for the completed value, at replacement cost equal to each Job Order contract price and all subsequent modifications.

This Builders Risk-Installation insurance must cover the entire Work including reasonable compensation for architects and Contractor's services and expenses and other "soft costs" made necessary by an insured loss. Builders Risk-Installation insurance must provide coverage from the time any covered property comes under Contractor's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.

Contractor must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders Risk-Installation insurance stated above If the Work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law and or testing requirements in the performance of this Contract.

Contractor will be responsible for any and all deductibles and the City must also be named as a Loss Payee under these policies. Contractor's insurance must be primary and not contributory; and waive all rights of subrogation against the City of Scottsdale, its officer, officials and employees. Contractor's insurance must name the City of Scottsdale, Contractor and all tiers of Subcontractors as insureds as respects their insurable interest at the time of loss. It must contain a provision that this insurance will not be canceled or materially altered without at least thirty (30) days advance notice to the City. Contractor is also required to give the City thirty (30) days advance written notice of the coverage termination for the Project.

The Builders Risk-Installation insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City. Builders Risk-Installation Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.

9.4 SUBCONSULTANT'S AND SUBCONTRACTOR'S INSURANCE

Unless Contractor's Subconsultants and Subcontractors can provide the same level of coverage as detailed in Article 9.2 and name the City and Contractor as Additional Insureds, Contractor's certificates must include all Subcontractors and Subconsultants as insureds under its policies or Contractor must maintain separate certificates and

endorsements for each Subcontractor and Subconsultant. All coverage for Subcontractors and Subconsultants must be in the amounts shown in Article 9.2, except for the General Liability Each Occurrence limit which shall be \$1,000,000. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least thirty (30) days advance notice to the City.

9.5 NOTICE OF CANCELLATION

If Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the City's Contract Administrator, unless such coverage is immediately replaced with similar policies. Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided, canceled by either party, reduced in coverage or in limits until thirty (30) days written notice has first been given in accordance with Article 11.24, herein.

9.6 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or approved to conduct business in the State of Arizona and with an A. M. Best rating of no less than B++6. The City in no way warrants that the above required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency. Failure to maintain insurance as required may result in termination of this Contract at the City's sole discretion.

9.7 VERIFICATION OF COVERAGE

- A. Contractor must furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverages must be clearly noted on the Certificate of Insurance.
- B. All certificates and endorsements are to be received and approved by the City before Contract Services commence except for Builders Risk-Installation Insurance. Each insurance policy required by this Contract must be in effect at or before the earlier of commencement of Work under the Contract Documents or the signing of this Contract, except for Builders Risk-Installation Insurance which, if required by the City, must be in effect before commencement of the Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- C. All Certificates of Insurance required by this Contract must be sent directly to the City of Scottsdale, Attn: Capital Project Management Office. **The project number and project description must be included on the Certificates of Insurance.** The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. Failure to provide a Certificate of Insurance with the appropriate verbiage will result in rejection of Contractor's Certificate and delay in contract execution. Additional Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and

returned or discarded.

9.8 APPROVAL

Any variation from the Insurance requirements in this Article 9 must be approved by the City's Risk Management Division, whose decision will be final. Said variation will not require a formal contract amendment but may be made by administrative action.

9.9 BONDS AND OTHER PERFORMANCE SECURITY

- A. Before execution of each individual Job Order, Contractor must provide a performance bond and a payment bond for all construction services, each in an amount equal to the full amount of the agreed upon cost for that Job Order. Contractor may, at its own option, provide Payment and Performance Bonds for the entire Contract Price amount, but there shall be no obligation for the City to reimburse Contractor for bond costs incurred, except on an actual cost basis as each Individual Job Order is issued. Bonds must be submitted in accordance with Title 34, Chapter 6 of the Arizona Revised Statutes and must be in substantially the same form as Exhibits A and B, attached to this Contract.
- B. Each bond must 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 must accompany the bonds. The Certificate must have been issued or updated within two (2) years before the execution of this Contract.
- C. The bonds must be made payable and acceptable to the City of Scottsdale.
- D. The bonds must be written or countersigned by an authorized representative of the surety and the bonds must have attached a certified copy of the Power of Attorney of the signing official.
 - 1. If one Power of Attorney is submitted, it must be for twice the total Job Order Price.
 - 2. If two Powers of Attorney are submitted, each must be for the total Job Order Price. Personal or individual bonds are not acceptable.
 - 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 must promptly furnish a copy of the bonds or must permit a copy to be made.
- E. All bonds submitted for this Project must be provided by a company which has been rated "A or better" by the A.M. Best Company.

ARTICLE 10 - INDEMNIFICATION

10.1 CONTRACTOR'S GENERAL INDEMNIFICATION

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation, for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any acts, omissions, negligence, recklessness, or intentional wrongful conduct to the extent caused by Contractor or any of its owners, officers, directors, agents or employees performing Work or Services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of Contractor employees. This indemnity includes any claim or amount arising out of, or recovered under, the Worker's Compensation Law or arising out of the failure of Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, Contractor agrees to waive all rights of subrogation against the City, its officers, agents, representatives, directors, officials, and employees for losses arising from the work performed by Contractor for the City.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this Article and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. Nothing in this paragraph shall limit the responsibility of Contractor's insurer to pay the City for valid claims that are covered by Contractor's insurance policy. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

10.2 INTELLECTUAL PROPERTY

- A. Contractor must pay all royalties and license fees associated with its performance of services.
- B. To the extent permitted by law, Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the City of materials furnished or Work performed under this Contract.
- C. Contractor must defend any action or proceeding brought against the City based on any claim that the Work, or any part of the Work, or the operation or use of the Work or any part of it, constitutes infringement of any United States patent or copyright, now or subsequently issued. The City will give prompt written notice to

Contractor of any action or proceeding and will reasonably provide authority, information and assistance in the defense of the action. Contractor shall indemnify and hold harmless the City from and against all damages, expenses, losses, royalties, profits and costs, including but not limited to attorneys' fees and expenses awarded against the City or Contractor in any action or proceeding. Contractor agrees to keep the City informed of all developments in the defense of these actions. The City may be represented by, and actively participate through, its own counsel in any suit or proceedings if it so desires.

- D. If the City is enjoined from the operation or use of the Work, or any part of the Work, as the result of any patent or copyright suit, claim, or proceeding, Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Contractor cannot procure this right within a reasonable time, Contractor will promptly, at Contractor's option and at Contractor's expense, without an increase to the Job Order Price, (i) modify the Work so as to avoid infringement of any patent or copyright or (ii) replace the Work with Work that does not infringe or violate any patent or copyright.
- E. Articles 10.2(C) and 10.2(D) will not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright:
 - 1. Relating solely to a particular process or product of a particular manufacturer specified by the City and not offered or recommended by Contractor to the City; or
 - 2. Arising from modifications to the Work by the City or its agents after acceptance of the Work; or
 - 3. Relating to the copyrights of any specification, drawings, or any Design Documents provided by the City, the Design Professional, any consultant retained by the City, or by a Subcontractor or Supplier.
- F. The obligations stated in this Article 10.2 will constitute the sole Contract between the parties relating to liability for infringement or violation of any patent or copyright.

ARTICLE 11 – GENERAL PROVISIONS

11.1 MARSHALING AREA

Contractor shall contact the City of Scottsdale, Development Services to determine the requirements for obtaining a permit for marshaling areas it proposes to use. Marshaling areas must be fenced. Contractor will obtain written approval from the property owner for marshaling area use. This approval must contain any requirements, which are a condition of this approval. Marshaling yard requirements according to M.A.G. Subsection 107.6.1 and the City of Scottsdale Supplemental Specifications will apply.

11.2 CONTRACT DOCUMENTS

- A. Contract Documents are as defined in Article 12.
- B. The Contract Documents form the entire Contract between the City and

Contractor. No oral representations or other Contracts have been made by the parties except as specifically stated in the Contract Documents. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated herein.

- C. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents will take precedence in the order in which they are listed in the definition of Contract Documents in Article 12. As to drawings and plans, given dimensions will take precedence over scaled measurements, and large-scale plans over small-scale plans. Contract specifications will take precedence over contract plans.
- D. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the times and prices agreed upon for each Job Order. 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.
- E. This Contract, the Plans, Standard Specifications and Details, Special Provisions, Performance Bond, Payment Bond, Certificates of Insurance, Job Orders and Job Order Adjustments (if any) are by reference made a part of this Contract to the same extent as if set forth in full.
- F. Work Product
 - 1. All Work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared or procured in the performance of this Contract (collectively referred to as documents) are to be and remain the property of the City and are to be delivered to the City before the final payment is made to Contractor. In the event these documents are altered, modified or adapted without the written consent of Contractor or the Subconsultants, which consent Contractor or the Subconsultants will not unreasonably withhold, the City agrees to hold Contractor and the Subconsultants harmless to the extent permitted by law from the legal liability arising out of the City's alteration, modification or adoption of the documents.
 - 2. The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed, created by Contractor, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to Contractor.

11.3 MODIFICATIONS

The Contract Documents may not be changed, altered, or amended in any way except as consistent with the City of Scottsdale Procurement Code, as amended.

11.4 TIME IS OF THE ESSENCE

Time is of the essence with respect to the dates and times stated in the Contract Documents.

11.5 COOPERATION AND FURTHER DOCUMENTATION

Contractor agrees to provide the City any other duly executed documents, as will be reasonably requested by the City, to implement the intent of the Contract Documents.

11.6 ASSIGNMENT

Neither Contractor nor the City will, without the written consent of the other, assign, transfer or sublet any portion of this Contract or part of the Work or the obligations required by the Contract Documents.

11.7 FORCE MAJEURE

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

11.8 FUNDS APPROPRIATION

Multiterm contracts for job-order-contracting construction services are subject to A.R.S. §34-607, as amended. If the City Council does not appropriate funds to continue this Contract and pay for charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice to Contractor at least thirty (30) days before the end of its current fiscal period and will pay Contractor for all approved charges incurred through the end of the period.

11.9 CONSTRUCTION METHODS

If the City provides Contractor with a written order to provide adequate maintenance of traffic, clean-up, dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and Contractor fails to comply in the time frame specified, the City may have Work accomplished by other sources at Contractor's expense, without an increase in the Job Order Price.

11.10 UTILITY RELOCATIONS FOR CONSTRUCTION METHODS

If any utility is relocated or rebuilt to accommodate Contractor's construction methods and available equipment, the expense will be borne by Contractor and will be replaced to the original location before completion of the Job Order at the request of the City's

Project Coordinator at Contractor's sole expense, without an increase in the Job Order Price.

11.11 DAMAGED UTILITIES DURING CONSTRUCTION

Any utilities damaged during construction shall be replaced at Contractor's expense, without an increase in the Job Order Price, as per the requirements of the M.A.G. Standard Specifications.

11.12 SUCCESSORS AND ASSIGNS

This Contract will extend to and be binding upon Contractor, its successors and assigns, including any individual, company, partnership, or other entity with or into which Contractor will merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which Contractor will sell its assets, except that services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

11.13 CONFLICT IN LANGUAGE

All services and Work performed will conform to all applicable City of Scottsdale codes, ordinances and requirements as outlined in the Contract Documents. If there is a conflict in interpretation between provisions in this Contract and those in exhibits, the provisions in this Contract will prevail.

11.14 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and Contractor, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and Contractor and not for the benefit of any other or third party.

11.15 GOVERNING LAW AND VENUE

This Contract and all Contract Documents will be considered to be made under and will be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions. Any action to enforce any provision of this Contract or to obtain any remedy with respect to this Contract shall be brought in the Superior Court of Maricopa County, Arizona, and for this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of that Court and waives the right to have such action removed to Federal District Court.

11.16 SEVERABILITY

If any provision of the Contract Documents or their application to any person or circumstance is invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application of the Contract Documents will not be affected and will be enforceable to the fullest extent permitted by law. In accordance with the provisions of A.R.S. § 41-194.01, as amended, should the Attorney General give notice to the City that any provision of the Contract Documents violates state law or the Arizona

Constitution, or that it may violate a state statute or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from the Contract Documents and the City and Contractor shall, within ten (10) days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s).

11.17 LEGAL REQUIREMENTS

Contractor shall perform all Contract Services in accordance with all Legal Requirements and will provide all notices applicable to the Contract Services as required by the Legal Requirements.

11.18 INDEPENDENT CONTRACTOR

The services the Contractor provides to the City are that of an Independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract. Upon request, the Contractor shall provide the required I.R.S. Form W-9 which is available from the IRS website at www.IRS.gov under its forms section.

Any provisions in the Contract Documents that may appear to give the City the right to direct Contractor as to the details of accomplishing the Work or to exercise a measure of control over the Work means that Contractor will follow the wishes of the City as to the results of the Work only. These results will comply with all applicable laws and ordinances.

11.19 CITY'S RIGHT OF CANCELLATION

Pursuant to A.R.S. § 38-511, as amended, the City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a contractor to any other party to the contract with respect to the contract's subject matter. The cancellation will be effective when all other parties to the contract receive the City's written notice unless the notice specifies a later time.

11.20 SURVIVAL

Except as expressly agreed herein, all warranties, representations and indemnifications by Contractor shall survive the completion, expiration, and/or termination of this Contract.

11.21 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Scottsdale has any interest, financially, or otherwise, in the firm. For breach or violation of this warranty, the City will have the right to annul this Contract without

liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of any commission, percentage, brokerage, or contingent fee.

11.22 NO WAIVER

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

11.23 HEADINGS

The headings used in this Contract, or any other Contract Documents, are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.

11.24 NOTICE

All notices or demands required by this Contract must be given to the other party in writing, delivered by hand or by registered or certified mail at the addresses stated below, or to any other address the parties may substitute by giving written notice as required by this section. Notice by electronic mail or facsimile will not be considered notice.

To City:	City of Scottsdale Attn: Alison Tymkiw 7447 E Indian School Road, Ste 205 Scottsdale, AZ 85251
To JOC Contractor:	Hunter Contracting Co. Attn: Dig Karki 701 North Cooper Road Gilbert, AZ 85233

11.25 ADDITIONAL CITY RIGHTS REGARDING SECURITY INQUIRIES

Projects may be completed in both secure and non-secure City facilities. All Contractor and Subcontractor employees may be required to pass mandatory background checks prior to the start of any Work and be issued access badges by City of Scottsdale Municipal Security. In addition to the foregoing, the City reserves the right to: (1) have an employee/prospective employee of Contractor be required to provide fingerprints and execute any other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not that information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contractor's employees or prospective employees; and, (4) object, at any time and for any reason, to an employee of Contractor performing Work (including supervision and oversight) under this Contract.

- A. Provisions Applicable to all Contractor Contracts and Subcontracts. Contractor will include the terms of this provision for employee background and security checks

and screening in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

- B. Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Contract, as stated above, are material to the City's entry into this Contract and any breach by Contractor may, at the City's sole option and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Contract. Termination will subject Contractor to liability for its breach of contract.

11.26 HAZARDOUS MATERIALS

- A. Upon discovery of hazardous materials Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.
- B. Unless included in the Work, if Contractor encounters onsite, or as material to be incorporated in the Work, any material which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by public health laws, it will immediately stop work and report the condition to the City.
- C. If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by public health laws, Contractor will not resume Work in the affected area until the material has been abated or rendered harmless. Contractor and the City may agree, in writing, to continue Work in non-affected areas onsite.
- D. An extension of Job Order Time may be granted in accordance with Article 5.
- E. Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- F. Despite the provisions of this Article 11.26, the City is not responsible for hazardous conditions or materials introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable. Contractor will indemnify, defend and hold harmless the City and the City's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous conditions or materials introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable.

11.27 TRAFFIC CONTROL

- A. Complete street closures will not be permitted unless specified in the Special Provisions or approved by the City. The timing and sequence of street closures will be approved by the Traffic Engineering Director, or designee, at least fourteen (14) days before the closure. This approval is necessary to provide coordination with other roadway projects and special events.
- B. Adequate barricades and lighted warning signs must be installed and maintained by Contractor throughout the duration of any Project. All traffic control must be in accordance with the current version of the City of Scottsdale Supplement to MAG

Uniform Standard Specifications Section 401 or as required by the approved barricade plan unless otherwise specified in the Special Provisions.

- C. Contractor will submit a construction schedule and a barricade plan to the City Traffic Engineering Director, or designee, for approval or modification at least seventy-two (72) hours before construction is initiated, and must wait to commence construction until the plan is signed as accepted by the City Traffic Engineering Director, or designee.

11.28 MATERIAL SOURCE

No material source has been designated by the City for use under this Contract. MAG Specification, Section 106 will apply as will ADOT Standard Specifications 1982, Section 106.1, 106.2, 106.7 & 106.8, which outline controls and Section 1001-1, -2, & -4 concerning approval of Contractor-Furnished Source and supplemental Contracts in regards to environmental analysis and the liability for materials testing costs.

Contractor and Subcontractor furnished material sources situated in the 100-year flood plain of any stream or watercourse will not be allowed if located within 1.0 mile upstream and 2.0 miles downstream of any highway structure or surfaced roadway crossing.

A Contractor and Subcontractor-furnished source will be defined as a material source, which is neither an ADOT furnished source nor a commercial source, as defined in this Contract.

A commercial source will be defined as a material source in which the owner or producer has been regularly engaged for at least one (1) year during regular business hours on a regular basis in the processing and selling of sand, rock, ready mixed Portland cement concrete, asphaltic concrete and other similar products normally produced and sold to all parties. The company must have an Arizona retail sales tax license.

The location of any new material source or existing non-commercial material source proposed for use under this Contract must be reviewed by the appropriate agency having flood plain management jurisdiction over the area of proposed source location. Contractor and Subcontractor will obtain a letter from the agency addressed to the Contract Administrator certifying that the proposed source location conforms to the required conditions and the applicable Standard Specifications. Contractor will familiarize himself with the nature and extent of the Contract Documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

11.29 FAMILIARIZATION WITH APPLICABLE LAWS

Contractor will familiarize itself with the nature and extent of the Contract Documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. Contractor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations.

11.30 NATIVE PLANTS

Contractor agrees it will take whatever steps, procedures or means necessary to remove, move, displace and save all native plants within the contract work area in accordance with the City of Scottsdale Revised Code, as amended, and all applicable state and county statutes, ordinances, codes and other policy requirements and recognized methods, procedures, techniques and equipment for protection, salvage, and handling of all plants to be moved from the construction area. This is not a pay item unless specified upon the Schedule of Bid Items.

11.31 ENDANGERED HARDWOODS

Contractor agrees any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions will not use endangered tropical hardwood unless an exemption is granted by the Director of the State of Arizona, Department of Administration.

11.32 CONSTRUCTION ACTIVITY

Contractor agrees that all construction activity occurring on Site shall conform to the hour and noise requirements of the City of Scottsdale Revised Code, as amended.

11.33 COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

- A. Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989, Fair Labor Standards Act, Age Discrimination in Employment Act, Family and Medical Leave Act, National Labor Relations Act, Occupational Safety and Health Act, and other local, state or federal law governing Contractor's labor and employment practices. Contractor agrees to comply with these laws in performing this Contract and to permit the City to verify compliance. Contractor further agrees that any violation of provision on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

Contractor will also comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. §34-302, "Residence Requirements for Employees," as amended. Contractor will include the terms of this provision in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. §41-4401, Contractor warrants to the City that Contractor and all its Subcontractors will comply with all Federal Immigration laws and regulations that relate to its employees and that Contractor and all its Subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by Contractor or any of its Subcontractors will be considered a material breach of this Contract and may subject Contractor or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of Contractor or any Subcontractor who works on this Contract to ensure that Contractor or any

Subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of Contractor and any of its Subcontractors to ensure compliance with this warranty. Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider Contractor or any of its Subcontractors in material breach of this Contract if Contractor and its Subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A), as amended. The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract Contractor enters into with any and all of its Subcontractors who provide services under this Contractor any Subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or Subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. Contractor will take appropriate steps to assure that all Subcontractors comply with the requirements of the E-Verify Program. Contractor's failure to assure compliance by all its Subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

- B. Compliance with Americans with Disabilities Act. Contractor acknowledges that, in accordance with the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this provision on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.
- C. Equal Employment Opportunity and Discrimination. For the duration of this Contract, Contractor represents and warrants it will comply with all applicable local, state and federal laws governing equal employment opportunities, or prohibiting employment or other discrimination based on any protected characteristic including but not limited to actual or perceived race, color, religion, sex, age, disability, national origin, sexual orientation, gender identity, or U.S. military status. City of Scottsdale Revised Code, Chapter 15 mandates Contractor compliance with the policies contained therein. Contractor agrees that any violation of provision on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

Contractor will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender

identity, or national origin.

- D. No Preferential Treatment or Discrimination. In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin. To avoid the appearance of impropriety, Contractor shall not make any donation to the City, of any goods or services during the term of this Contract, unless it has specifically been approved by the City Manager or designee.
- E. Advertising. No advertising or publicity concerning the City using Contractor's services shall be undertaken without prior written approval of such advertising or publicity by the Contract Administrator and the City Attorney.

11.34 DATA CONFIDENTIALITY

- A. As used in this Contract, 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 Contractor in the performance of this Contract.
- B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with Contractor's performance of this Contract is confidential and proprietary information belonging to the City.
- C. Contractor will not divulge data to any third party without first obtaining the written consent of the City. Contractor will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided Contractor has first given the required notice to the City:
1. Data, which was known to Contractor before its performance under this Contract unless the data was acquired in connection with the Work performed for the City;
 2. Data which was acquired by Contractor in its performance under this Contract and which was disclosed to Contractor by a third party, who to the best of Contractor's knowledge and belief, had the legal right to make disclosures and Contractor is not otherwise required to hold the data in confidence; or
 3. Data, which is required to be disclosed by virtue of law, regulation, or court order to which Contractor is subject.
- D. In the event Contractor is required or requested to disclose data to a third party, or any other information to which Contractor became privy as a result of any other contract with the City, Contractor will first notify the City as required in this Article of the request or demand for the data. Contractor will give the City sufficient facts

so that the City can be given an opportunity to first give its consent or take any action the City may consider appropriate to protect the data or other information from disclosure.

- E. Unless prohibited by law, within ten (10) days after completion of services for a third party on real or personal property owned or leased by the City, Contractor will promptly deliver, as stated in this Article, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Contract.
- F. 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 Article are violated by Contractor, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will be considered to cause irreparable harm that justifies injunctive relief in court.

11.35 CONFLICT OF INTEREST

- A. To evaluate and avoid potential conflicts of interest, Contractor will provide written notice to the City, as stated in this Article, of any work or services performed by Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. The notice will be given seven (7) business days before commencement of the Project by Contractor for a third party, or seven (7) business days before an adverse action as defined below. Written notice and disclosure will be sent to the City Senior Representative identified in Article 7.4.
- B. Actions that are considered to be adverse to the City under this Contract include but are not limited to:
 - 1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
 - 2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
 - 3. Using data to produce income for Contractor or its employees independently of performing the services under this Contract, without first obtaining the written consent of the City.
- C. Contractor represents that except for those persons, entities and projects identified to the City, the services to be performed by Contractor under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.
- D. Contractor's failure to provide a written notice and disclosure of the information stated in this Article on Conflicts of Interest will constitute a material breach of this Contract.
- E. This Contract is subject to cancellation by the City of Scottsdale in accordance with the provisions of A.R.S. § 38 511, as amended.

11.36 COMMENCEMENT OF STATUTORY LIMITATION PERIOD AND STATUTE OF REPOSE

- A. Before Final Completion. As to acts or failures to act occurring before the relevant date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will be considered to have accrued in any and all events not later than the date of Final Completion.
- B. Between Punch List Preparation and Final Completion. As to acts or failures to act occurring between the relevant date of Punch List Preparation and before Final Completion, any applicable statute of limitation will begin to run and any alleged cause of action will be considered to have accrued in any events not later than the date of Final Completion.
- C. After Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will be considered to have accrued in any and all events not later than the date of any correction of the Work or failure to correct the Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or the City, whichever occurs last.
- D. Statute of Repose. The time period for the applicable Statute of Repose will commence to run at the time specified in A.R.S. §12-552 as it is amended or renumbered from time to time.

11.37 LOSS AND DAMAGES

Except as expressly provided in this Contract, all loss or damage arising out of the nature of the Work to be done or from the action of the elements, or from any unforeseen circumstances, in the prosecution of the same, or from any unusual obstructions or difficulties which may be encountered in or during the prosecution of the Work, or from any casualty whatsoever of every description, will be sustained and borne by Contractor at its sole cost and expense. By signing this Contract, all rights of subrogation are waived against the City, its officers, officials, agents and employees.

11.38 RIGHTS-OF-WAY

The M.A.G. Standard Specification 107.12 is modified to read as follows: "Contractor, at its own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage and maintenance purposes, which are required in addition to existing easements or rights of way secured by the City as indicated upon the plans."

11.39 EXISTING TRAFFIC AND STREET SIGNS AND TRAFFIC SIGNAL EQUIPMENT

Contractor will use due care when excavating at or near intersections where traffic signal underground conduit is located. Contractor will notify the Transportation Maintenance Traffic Signal Division (tel. 480.312.5620) at least forty-eight (48) hours in advance of any work at the intersections. Contractor will be responsible for the installation and maintenance of temporary overhead traffic signal cable as specified by the

Transportation Department when underground conduit is to be severed by excavations at the intersection. The Transportation Department will have all underground traffic conduit located and will provide the necessary City Technicians to assist Contractor in identifying wiring phases and direction of conduit runs upon twenty-four (24) hours' notice from Contractor and at least one (1) day before Contractor's scheduled wiring and installation of temporary cables. Contractor will be responsible for the wiring and connection of all temporary cable within the pull boxes and terminal compartments. The Transportation Department will provide a City technician to assist Contractor with connecting field wiring within the traffic signal control cabinet. Contractor will provide, at its expense, at least one off-duty uniformed Police Officer as may be required to direct traffic while the traffic signal is turned off and the wiring is transferred. Contractor will be responsible as specified by the Traffic Department for the repair and restoration of all traffic signal overhead and underground items that have been damaged or modified. The City does not permit the splicing of Magnetic Detector Loops.

11.40 CERTIFICATION OF USE OF BENCHMARKS

In compliance with the City's Design Standards & Policies Manual (DS&PM), Sections 9-1.1 and 9-1.301, it is the City's intent that Contractor must use both horizontal and vertical benchmarks with City of Scottsdale published values for any survey on all public works projects. These published values are available for public use at the following website: <https://eservices.scottsdaleaz.gov/maps/benchmarks>. AT LEAST 1 HORIZONTAL AND 1 VERTICAL BENCHMARK MUST MATCH THE NORTHING, EASTING OR ELEVATION VALUES PUBLISHED ON THE CITY'S WEBSITE. If required by the City, Contractor must sign and submit with this Contract, the Certificate of Use attached and by reference made a part of this Contract.

11.41 TAX INDEMNIFICATION

The fee listed in this Contract includes any and all taxes applicable to the activities under this Contract. The City will have no obligation to pay additional amounts for taxes of any type. Contractor, its Subcontractors, Subconsultants and Suppliers, shall pay all Federal, state and local taxes applicable to its operation and any persons employed by Contractor, its Subcontractors, Subconsultants and Suppliers, except as may be otherwise provided in this Contract. Contractor shall, and also require its Subcontractors, Subconsultants and Suppliers to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

11.42 ISRAEL BOYCOTT/FORCED LABOR PROVISIONS

By executing this contract, Contractor certifies that it is not currently engaged in and will not for the duration of this Contract engage in boycott activity proscribed by A.R.S. § 35-393 *et seq*, as amended.

Pursuant to A.R.S. § 35-394, as amended, Contractor warrants and certifies that it does not currently, and agrees for the duration of this Contract that it will not use:

- 1) The forced labor of ethnic Uyghurs in the People's Republic of China.

- 2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 3) Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Contractor becomes aware during the term of this Contract that Contractor is not in compliance with this Article, Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. Failure of Contractor to provide a written certification that Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the City of its noncompliance will result in automatic termination of this Contract, unless an earlier contract termination, cancellation, or expiration date applies.

ARTICLE 12 – DEFINITIONS

"Allowance" means an agreed amount by the City and Contractor for items which may be required to complete the scope of work.

"As-built Document" – "As-built in construction is equivalent to "as-is." Drawings deemed "as-built" are final drawings that include all changes made during the actual construction process. These drawings represent the actual existing constructed conditions as opposed to designs or a proposed condition. The As-built Documents should be per A.R.S. § 32-152.

"Blueline or Blackline Prints" – Prints that allows comparison of document versions to show what has been revised.

"City" means the City of Scottsdale, Arizona, an Arizona municipal corporation. Regulatory activities handled by the City of Scottsdale Development Services, Planning and Fire Departments or any other City department are not subject to the responsibilities of the City under this Contract.

"City's Representative" means the person designated in Article 7.4(A)(2).

"City's Senior Representative" means the person designated in Article 7.4(A)(1).

"Construction Coordinator" means a City employee who coordinates the daily construction activities with Contractor, and with their inspection staff that performs quality control inspections, enforces project plans and specifications and adopted City codes and ordinances.

"Construction Documents" means the plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements and incorporating addenda and approved Job Order Adjustments.

"Construction Fee" means Contractor's home office overhead and profit, whether at Contractor's principal or branch offices. This includes the home office costs and any limitations or exclusions that may be included in the General Conditions for the construction phase.

"Contract" or "Job Order Contract" means this fully executed Contract between the City and Contractor.

"Contract Administrator" means the person designated in Article 7.4(A) or designee. The Contract Administrator will serve as Contractor's primary point of contact with the City, monitor Contractor's performance, review and approve invoices, establish delivery schedules, and in conjunction with Purchasing ensure Certificates of Insurance are current, conform to the requirements of this Contract, and are in the City's possession. Contractor will direct any reports and/or special requests to the Contract Administrator.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and Contractor: (1) Change Orders; (2) Job Order Adjustments; (3) Contract Modifications; (4) Job Orders; (5) this Contract including all exhibits and attachments; (6) Contractor's Proposal (if any); (7) Contractor Statement of Qualifications.

"Contract Modification" means a specific written concurrence between the City and Contractor for changes to this Contract consistent with the City of Scottsdale Procurement Code, as amended.

"Contract Price" means the amount or amounts stated in Article 4 subject to any Contract Modifications.

"Contract Services" means the services required by the Contract Documents.

"Contract Time(s)" means the time stated in Article 3, subject to Contract Modifications as permitted by this Contract.

"Contractor" is Contractor selected by the City to provide or procure construction services as detailed in this Job Order Contract.

"Contractor Payment Request" means the City form used by Contractor to request progress payments for Job Orders in accordance with Article 6.

"Contractor's Representative" means the person described in Article 7.4(B)(2).

"Contractor's Senior Representative" means the person described in Article 7.4(B)(1).

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

"Delay" means an unanticipated event or interference with the progress of a critical path work activity being performed at the time that causes the completion date of the project to be extended. Delays may be caused by the City, Contractor, third parties or Force Majeure events. Delays may be excusable, compensable, non-compensable or concurrent.

"Delay, Compensable" means delay that results from the City's actions or inactions that entitle Contractor to both a time extension and delay damages.

"Delay, Concurrent" means two (2) or more delays, within the same timeframe, both of which would independently impact the Project Schedule. If one delay is caused by the City and the other by Contractor, Contractor will generally be entitled to an excusable, non-compensable time extension, to the degree the delays may "overlap."

"Delay, Excusable" means an unforeseeable delay caused by an event beyond the control and without the fault or negligence of Contractor (including its Suppliers and Subcontractors). Excusable delays may be compensable or non-compensable, depending upon whether the terms

of the Contract or the law allows recovery of delay costs. Unless otherwise shown, it will generally be presumed that these delays are non-compensable.

"Delay, Non-Excusable" means a delay within the control of Contractor, its Suppliers and Subcontractors, or a delay resulting from a risk taken by Contractor under the terms of the Contract. Contractor will not be due any time extension or delay damages, and may be responsible for paying to the City, actual or liquidated damages for the delay.

"Deliverables" means the work products prepared by Contractor in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by Contractor may include, but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, Subcontractor procurement plan, Subcontractor Contracts, Subcontractor bid packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

"Design Professional" means a qualified, licensed design professional who furnishes design or construction administration services.

"Differing Site Conditions" comply with M.A.G. Standard Specifications, Subsection 102.4.

"Effective Date" means the date specified in this Contract on which the Contract becomes effective, but if no date is specified, the date on which the City executes this Contract.

"Field Order" means a written field directive prepared and signed by the City, directing a change in work that may or may not include an adjustment in contract price or contract time.

"Final Acceptance" means the completion of a Job Order as prescribed in Article 3.5.

"Hazardous Substance" - means:

- (a) Any substance designated pursuant to sections 311(b) (2) (A) and 307(a) of the clean water act.
- (b) Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA.
- (c) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.
- (d) Any hazardous air pollutant listed under section 112 of the federal clean air act (42 United States Code section 7412).
- (e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the federal toxic substances control act (15 United States Code section 2606).
- (f) Any substance which the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.

"Informational Submittals" – Submittals are required (common with construction projects) for the architect and engineer to verify that the correct products and quantities will be installed on a project.

"Job Order" or "Project" means a specific scope of Contract Services done pursuant to an individual Job Order and includes a specific written Contract between the City and Contractor for a Job Order including a Scope of Work, a Job Order Price, a Job Order Time and any special conditions that may apply to be performed under this Contract. The Job Order includes the plans, technical specifications, special provisions and Contractor's proposal either by reference or inclusion.

"Job Order Adjustment" or "Adjustment" means a written order signed by an authorized representative of the City and which approves changes in the Work required under a Job Order, the Job Order Price, or the Job Order Time consistent with the City of Scottsdale Procurement Code, as amended.

"Job Order Notice-to-Proceed," (NTP) means a written notice given by the City to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under that individual Job Order.

"Job Order Price" means the amount negotiated between Contractor and the City for an individual Job Order that includes costs, overhead, bonding, insurance, profit and other costs as agreed to and calculated on the Unit Prices, Cost-coefficient and Special Items as prescribed in Article 4.

"Job Order Time" or "Duration of the Work" means the number of Days from a Job Order Notice-to-Proceed to Substantial Completion. The approved Job Order Time will be made part of this Contract by executing an individual Job Order for that specific Project.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over a Project or Site, the practices involved in a Project or Site, or any Work.

"Liquidated Damages" means an amount Contractor will pay in compliance with Article 3.6.

"Must" and "will" as used in this Contract are mandatory.

"Owner Agent," "City's Agent" or "Owner Representative" see "City's Senior Representative."

"Payment Request" means a monthly progress payment request that is based on a monthly estimate of the dollar value of the Work completed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

"Professional Certification" – Professional certification is a designation which indicates that a person is qualified to perform a job or task. Professional certification can be trade certification or professional designation.

"Project Record Documents" means the documents created pursuant to Article 1.9.

"Project Record Drawing Prints" – Set of current design drawings used by construction contractor for reference during construction. These drawings are typically marked up during the construction process and are used to develop the subsequent "as-built" drawings.

"Punch List" means those minor items of Work to be completed before Final Acceptance which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a Certificate of Occupancy.

"Samples" means physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Values (SOV)" means the Document specified in the construction phase, which divides the Job Order Price into pay items, such that the sum of all pay items equals the Job Order Price for the construction phase Work, or for any portion of the Work having a separate specified Job Order Price. The SOV may or may not be output from the Progress Schedule depending on whether the Progress Schedule is cost-loaded or not.

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

"Site" means the land or premises on which a Job Order is located. Contractor will require all Subcontractors to include the street address of the Job Order in their contracts.

"Specifications" means those sections 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 applicable administrative details.

"Subcontractor" or "Subconsultant" means any person or entity retained by Contractor as an independent contractor to perform a portion of the Contract Services and must include material men and suppliers. All Subcontractors must be selected in accordance with the selection plan stated in Article 1.13.

"Substantial Completion" means when the Work, or when an agreed upon portion of the Work is sufficiently complete so that the City can occupy and use the Project or a portion of it for its intended purposes. This may include, but is not limited to: (1) approval by the City Fire Marshall and local authorities (Certificate of Occupancy); (2) issuance of elevator permit; (3) demonstration to the City that all systems are in place, functional, and displayed to the City or its representative; (4) installation of all materials and equipment; (5) City review and acceptance of all systems; (6) City review and acceptance of draft O&M manuals and record documents; (7) City operation and maintenance training completed; (8) HVAC test and balance completed [provide minimum 30 days before projected substantial completion]; (9) completed landscaping and site work; and (10) final cleaning.

"Supplier" means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with Contractor or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase work by Contractor or any Subcontractor.

"Work" means the entire completed construction or the various separately identifiable parts of the construction, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

[END OF TEXT- SIGNATURE PAGE TO FOLLOW]

CITY OF SCOTTSDALE, ARIZONA

CONTRACT NO. 2026-071-COS

CONTRACT

This Contract has been properly executed by the parties above named, on the date and year written above, to be retained by the City Clerk.

Contractor agrees that this Contract, as awarded, is for the stated Work and understands that payment for the Work will be made on the basis of the indicated amount, per the terms and conditions of this Contract.

CITY OF SCOTTSDALE, an
Arizona municipal corporation

CONTRACTOR: Hunter Contracting Co.,
an Arizona corporation

By: _____
Lisa Borowsky, Mayor

By: _____

Name: _____

ATTEST:

Title: _____

Ben Lane, City Clerk

RECOMMENDED:

Jenn Myers, MPA, CPPO, NIGP-CPP, CPPB
Purchasing Director

Alison Tymkiw, Senior Director - City Engineer

George Woods
Safety & Risk Management Director

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY



Luis E. Santaella, City Attorney
By: Lydia Tulin, Assistant City Attorney

EXHIBIT A

**STATUTORY PERFORMANCE BOND
PURSUANT TO TITLE 34, CHAPTER 6,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract Amount)**

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal) as Principal, and _____, a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Scottsdale, County of Maricopa, State of Arizona in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City of Scottsdale, dated the _____ day of _____, 2026, for Bid No. (bid number), Project No. (project number), (project name), which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and Contracts 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 Contracts 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, Arizona Revised Statutes, and all liabilities on this Bond will be determined in accordance with the provisions of Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this Contract. The prevailing party in a suit on this bond will recover as part of the judgment reasonable attorney fees that may be fixed by a Judge of the Court. The performance under this bond is limited to the construction to be performed under the contract and does not include any design services, preconstruction services, financial services, maintenance services, operations services or any other related services included in the contract.

WITNESS our hands the _____ day of _____, 2026.

PRINCIPAL

BY:

SURETY (SEAL)

AGENCY OF RECORD

AGENCY ADDRESS

EXHIBIT B

STATUTORY PAYMENT BOND

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

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

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and _____ a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Scottsdale, County of Maricopa, State of Arizona, in the amount of _____ Dollars (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City of Scottsdale dated the _____ day of _____, 2026, for Bid No. (bid number), Project No. (project number), (project name), which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

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

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

WITNESS our hands the _____ day of _____, 2026.

PRINCIPAL

BY:

SURETY (SEAL)

AGENCY OF RECORD

AGENCY ADDRESS



CITY OF SCOTTSDALE

JOB ORDER CONTRACT (JOC) FOR CITYWIDE CIVIL SITE WORK

SOLICITATION NO. 26RFSQ061

CONTRACT NO. 2026-072-COS

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**CITY OF SCOTTSDALE
SOLICITATION NO. 26RFSQ061
CONTRACT NO. 2026-072-COS**

THIS CONTRACT, ("Contract") is entered into this ____ day of _____, 2026, ("Effective Date") between the City of Scottsdale, an Arizona municipal corporation (the "City") and J. Banicki Construction, Inc., an Arizona corporation (the "Contractor").

RECITALS

- A.** The Mayor of the City of Scottsdale, Arizona, is authorized and empowered by the provisions of the City Charter to execute contracts for construction and related services.
- B.** The City intends to contract for construction and related services with Contractor for one or more individual Job Orders.
- C.** Contractor has represented to the City the ability to provide or procure the required construction and related services and, based on this representation, the City engages Contractor for these services.

FOR AND IN CONSIDERATION of the mutual covenants and considerations contained in this Contract, it is agreed by the City and Contractor as follows:

ARTICLE 1 - CONTRACTOR'S SERVICES AND RESPONSIBILITIES

1.1. GENERAL SERVICES

- A.** Contractor will furnish any and all labor, materials, equipment, transportation, utilities, services and facilities specified in the individual Job Order for which it is issued a Job Order Notice-to-Proceed for Work in accordance with this Contract. The City may determine it is in its best interest to furnish materials and equipment for an individual Job Order in accordance with the Job Order.
- B.** The Work will be performed in a good, workmanlike and substantial manner and to the satisfaction of the City Engineer and under the monitoring of the City Engineer, or designee, with the care and skill of a qualified contractor in Scottsdale, Arizona.
 - 1.** Minor design services may be required for some Job Orders. For those Job Orders that may require minor design services, Contractor will seek the services of an Arizona registered architect or engineering professional to prepare plans for permitting. The procurement of minor design services will be in accordance with the City's procurement procedures and code. If the services of a design professional are used, the design professional must maintain at least \$1,000,000 Professional Liability Coverage.
 - 2.** All documents prepared by Contractor are subject to review by the City. Review by the City is for the benefit of the City only, is not intended to be for the benefit of any other person and does not relieve Contractor from the professional liability associated with the documents they have prepared.

3. Contractor's Representative shall be reasonably available to the City and will have the necessary expertise and experience required to supervise the Contract Services. A Contractor's Representative will be assigned for each Job Order. Contractor's Representative will communicate regularly with the City and will be vested with the authority to act on behalf of Contractor.
- C. The City is a member of \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, Maricopa County, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under \$AVE Cooperate Purchasing Agreement, and with the concurrence of successful Respondents under this solicitation, a member of \$AVE may access a contract resulting from this solicitation issued by the City. By signing the JOC Contract, Contractor agrees to allow other \$AVE members the ability to purchase their needs and "use" this contract for JOC requirements.

1.2. GOVERNMENT APPROVALS AND PERMITS

- A. Unless otherwise provided, Contractor will obtain or assist the City in obtaining 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. Contractor is responsible for obtaining payment for the necessary environmental permits or file the necessary environmental notices.
- B. Copies of these permits and notices must be provided to the City's Representative before starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of the permit or notice requirements.
- C. The City is responsible for the City of Scottsdale review and permit(s) fees for building and demolition permits. The City will pay City review fees for grading and drainage, water, sewer, storm water management, and landscaping. The City will also pay for City utility design fees for permanent services.
- D. Contractor is responsible for all other permits and review fees not specifically listed in Article 1.2(C) above.
- E. Contractor is responsible for the cost of construction-related water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water will be Contractor's responsibility. Construction water does not include "test water" required to complete new water line pressure tests.
- F. The M.A.G. Standard Specification 107.12 is modified to read as follows: "Contractor, at its own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage, maintenance, and refuse haul-off as indicated upon the plans, which are required in addition to existing easements or rights-of-way secured by the City."

1.3. PRE-CONSTRUCTION CONFERENCE

- A. After issuance of a Job Order and before the commencement of any Work on any Individual Job Order, a pre-construction conference may be scheduled.
- B. The purpose of this conference is to establish a working relationship between Contractor, design firms, utility firms, and various City departments. The agenda will include critical elements of the work schedule, submittal schedule, level of Record Drawings required, cost breakdown of major lump sum items, payment application and processing, coordination with the utility firms involved, and emergency telephone numbers for all representatives involved in the course of construction.
- C. At a minimum, attendees will include Contractor Representative, who is authorized to execute and sign documents on behalf of the firm, the Job superintendent, and Contractor's safety officer.
- D. The Job Order Notice-to-Proceed date will be established.
- E. Contractor will provide a Baseline Project Schedule indicating duration, manpower and equipment resources required to complete all major Work activities. The City and Design Team will review and comment on the Baseline Project Schedule. Contractor will revise the Baseline Project Schedule to the satisfaction of the City's Representative. No work will begin until the City accepts the Baseline Project Schedule.
- F. Contractor will submit a Schedule of Values based on the work and bids accepted from selected Subcontractors. These values will reflect the actual labor time, materials, profit and overhead for the Work or in accordance with Contractor's price book.

1.4. CONTROL OF THE WORK

Contractor will properly guard and protect all partially finished work and will be responsible for the Work until the entire Job Order is completed and accepted by the City. Any payment for completed portions of the Work will not release Contractor from this responsibility; however, it will turn over the entire Work in full compliance with the specifications or Job Order before final settlement is made. In case of suspension of the Work for any cause whatever, Contractor is responsible for the Project and will take all precautions necessary to prevent damage to the Project and will erect any necessary temporary structures, signs, or other facilities at no cost to the City.

- A. After all Work under the Job Order is completed, Contractor will remove all loose concrete, lumber, wire, reinforcing, debris and other materials not incorporated in the Work from the site of the Project.
- B. Unless the Job Order states that it is the responsibility of the City or a separate contractor, Contractor will provide through itself or its Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, other temporary facilities, temporary fencing, roll-offs, and dust control to permit Contractor to complete the Work consistent with

the Job Order.

- C. Contractor will perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Job Order. Contractor will at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- D. Survey stakes and marks required for the completion of the construction shown on the plans and described in the specifications will be furnished by Contractor.
- E. Contractor, its designee or Contractor's Superintendent will be present at the Work at all times that construction activities are taking place.
 - 1. All elements of the Work, such as concrete work, pipe work, etc., will be under the direct supervision of a foreman or his/her designated representative on the Site who will have the authority to take actions required to properly carry out that particular element of the Work.
 - 2. In the event of noncompliance with Article 5.1, the City may require Contractor to stop or suspend the Work in whole or in part.
- F. Where the Job Order requires that a particular product be installed or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for that portion of the Work is pre-approved by the manufacturer.
- G. Before ordering materials for or doing the Work, Contractor and each Subcontractor will verify measurements at the Site and will be responsible for the correctness of these measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, will be submitted to the City for resolution before proceeding with the Work.
- H. Contractor will take field measurements and verify field conditions and carefully compare these field measurements, conditions and other information known to Contractor with the Job Order before starting activities. Errors, inconsistencies or omissions discovered will be immediately reported to the City.
- I. Contractor will establish and maintain all building and construction grades, lines, levels, and benchmarks, and will be responsible for the accuracy and protection of these items. This portion of the Work will be performed or supervised by an Arizona licensed civil engineer or surveyor.
- J. Any person employed by Contractor or any Subcontractor who, in the opinion of the City, does not perform his/her portion of the Work in a proper, skillful and safe manner or is intemperate or disorderly will, at the written request of the City, be removed from the Work by Contractor or Subcontractor employing this person, and will not be employed again in any portion of the Work without the written approval of the City. Contractor or Subcontractor will hold the City harmless from damages or claims, which may occur in the enforcement of this Article.

- K. Contractor assumes responsibility for the proper performance of the Work of Subcontractors and any acts and omissions in connection with this performance. Nothing in the Contract Documents is intended or considered to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- L. Contractor will coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- M. On a daily basis, Contractor will prepare a Contractor's Daily Report. The City's CPM Project Inspector or the Public Works Project Coordinator will provide a sample report format to Contractor. The report will detail the activities that took place during the course of the day, all equipment utilized and the number of hours operated, and all personnel on the Site including Subcontractors. Unless otherwise arranged, the Daily Reports will be submitted on a daily basis to the City's CPM Inspector or the Public Work's Project Coordinator. The Daily Reports will also be made available to the City's Representative upon request. Failure to provide Daily Reports as arranged or requested above will result in the retention of monthly progress payments until the Reports are brought up to date.
- N. In the event of noncompliance with this Article 1.4, the City may require Contractor to stop or suspend the construction in whole or in part. Any suspension due to Contractor's noncompliance will not be considered a basis for an increase in the Job Order Price or extension of the Job Order Time.

1.5. CONTROL OF THE WORK SITE

- A. Throughout all phases of construction, including any suspension of the Work, Contractor will keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor will remove all debris, trash, construction waste, materials, equipment, machinery and tools arising from the Work or applicable portions of it to permit the City to occupy the Project or a portion of the Project for its intended use.
- B. Dust Control. Contractor will take whatever steps, procedures or means required to prevent abnormal dust conditions due to his construction operations in connection with this Contract. The dust control measures will be maintained at all times during construction of the Project(s) to the satisfaction of the City in accordance with the requirements of the Maricopa County Health Department Air Pollution Control Regulations and City of Scottsdale Supplement to M.A.G. Standard Specifications together with applicable provisions of Federal and State Law.
- C. Dust Control Coordinator. Subject to the requirements or exemptions contained A.R.S. §49-474.05, as amended, Contractor shall comply with the training, permitting, and Dust Control Coordinator requirements applicable to the Site and

the Project. The Dust Control Coordinator must have full authority to ensure that dust control measures are implemented at the Site, including authority to conduct inspections, deploy dust suppression resources, and modify or shutdown activities as needed to control dust. The Dust Control Coordinator must be responsible for managing dust prevention and dust control on the Site, including the use of leaf blowers and street sweeping equipment. The Dust Control Coordinator must have a valid Dust Training Certification Identification Card readily accessible on the Site while acting as the Dust Control Coordinator.

A Subcontractor who is engaged in dust generating operations at a Site that is subject to a Dust Control Permit issued by a County Control Officer and that requires the control of PM-10 emissions from dust generating operations must register with the County Control Officer. The Subcontractor must have its registration number readily accessible on the Site while conducting any dust generating operations.

- D. Storage on Site. Only materials and equipment, which are to be used directly in the Work, will be brought to and stored on the Site by Contractor. When equipment is no longer required for the Work, it will be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of Contractor.
- E. Waste Products. Contractor is responsible for the cost to dispose of all waste products including excess earth material which will not be incorporated into the Work under this Contract. The waste product referred to will become the property of Contractor. Contractor will provide for the legal disposal at an appropriate off-site location for all waste products, debris, etc., and will make necessary arrangements for its disposal. Any disposal/dumping of waste products or unused materials will conform to applicable Federal, State and Local Regulations.
- F. Contractor will supervise and direct the Work. Contractor will be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor will employ and maintain on the Site a qualified supervisor or superintendent who will have been designated in writing by Contractor as Contractor's Representative. The Contractor's Representative will have full authority to act on behalf of Contractor and all communications given to the Representative will be as binding as if given to Contractor. The Representative will be present on the Site at all times as required to perform adequate supervision and coordination of the Work. Where appropriate all Provisions of M.A.G., Section 105.5, will be applicable.
- G. Abnormal Weather. In the event of abnormal weather conditions, such as windstorms, rainstorms, etc., Contractor will immediately inspect the Work and Site and take all necessary actions to insure public access and safety are maintained.
- H. Damage to Property at the Site. Contractor will be responsible for any and all damage or loss to property at the Site, except to the extent caused by the acts or omissions of the City or its representatives, employees or agents and not covered by insurance. The costs and expenses incurred by Contractor under this Article will be paid as a Cost of the Work to the extent that these costs and expenses are in excess of or are not covered by required insurance, and to the extent of any

deductibles, but they will not increase the Job Order Price.

- I. Damage to Property of Others. Contractor will avoid damage, as a result of Contractor's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of separate contractors and the property of the City. Contractor will repair any damage caused by the operations of Contractor, and these costs will be paid as a Cost of the Work to the extent that the costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible, but they will not increase the Job Order Price.
- J. Failure of Contractor to Repair Damage. Within ten (10) days written notice to Contractor by the City, if Contractor fails to commence the repair of damage to property as provided in Articles 1.5(H) and 1.5(I), and diligently pursue the repair, then the City may elect to repair the damages at its own expense and to deduct from payments due or to become due to Contractor, amounts paid or incurred by the City in correcting the damage (provided Contractor has not commenced such repair during the 10 day notice period).

1.6. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- A. 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 Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Contractor will review, approve and verify that all submittals meet the intent of the Contract Documents.
- B. Three (3) copies of each Shop Drawing, Product Data, Sample, and similar submittals required by the Contract Documents will be delivered to the City in compliance with the approved schedule so as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by Contractor, which are not required by the Contract Documents, may be returned without action.
- C. Contractor will 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 City. All Work will be in compliance with approved submittals. Contractor will not be relieved of responsibility for any errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval. Deviation from the original specifications will be specifically noted on the submittal to the City and the City will be allowed seven (7) days to approve or reject any deviations.
- D. By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements and field construction criteria, or will do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Job Order.
- E. Contractor will not be relieved of responsibility for deviations from requirements of the Job Order by the City's approval of Shop Drawings, Product Data, Samples or

similar submittals unless Contractor has specifically informed the City in writing of the deviation at the time of submittal and the City has given written approval to the specific deviation. Contractor will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval.

- F. Contractor will direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City on previous submittals.
- G. Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.
- H. When professional certification of performance criteria of materials, systems or equipment is required by the Job Order, the City will be entitled to rely upon the accuracy and completeness of the calculations and certifications.

1.7. QUALITY CONTROL, TESTING AND INSPECTION

- A. Inspection. The City's Inspectors may be stationed on the Site to report to the City's Representative, or designee, as to the progress of the Work. The City's Representative, or designee, may also report as to the manner in which the Work is being performed and report whenever it appears that material furnished or Work performed by Contractor fails to fulfill the requirements of the specifications, this Contract or the Job Order. The Inspector may direct the attention of Contractor to any failure or infringement but this inspection will not relieve Contractor from any obligation to furnish acceptable materials or to provide completed construction that complies with the Contract or the Job Order in every way. The Inspector is for the purpose of assisting the City's Representative and should not be confused with an Inspector with a City regulatory agency or with an Inspector from a laboratory under Article 1.8.
- B. In case of any dispute arising between the Inspector and Contractor as to material furnished or the manner of performing the Work, the Inspector will have the authority to reject materials or suspend the Work until the question and issue can be referred to and decided by the City. Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the specifications. Inspectors will in no case act as foremen or perform other duties for Contractor or interfere with the management of the Work by Contractor.
- C. Inspection or supervision by the City's Representative, or designee, will not be considered as direct control of an individual worker or the Work. The direct control will be solely the responsibility of Contractor.
- D. The furnishing of these services for the City will not make the City responsible for or give the City control over construction means, methods, techniques, sequenced procedures or for safety precautions or programs or responsibility for Contractor's failure to perform the Work in compliance with the Contract Documents.

1.8. MATERIALS TESTING

All materials used in the Work will be new and unused, unless otherwise noted, and will meet all quality requirements of the Job Order.

- A. All construction materials to be used on 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 of the City. Any materials rejected by the City will be removed immediately and replaced in a manner acceptable to the City without increasing the Job Order Price.
- B. The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and tests will be made in compliance with the following: The City of Scottsdale Minimum Sampling Frequency Guide, the City of Scottsdale Material Testing Manual and the standard methods of AASHTO or ASTM, DSPM and MAG supplements.
- C. The City will select a pre-qualified City or Independent Testing Laboratory and will pay for initial City Acceptance Testing.
 - 1. When the first and subsequent tests indicate noncompliance with the Job Order, the cost associated with that noncompliance will be incurred by Contractor without increasing the Job Order Price.
 - 2. When the first and subsequent tests indicate noncompliance with the Job Order, all retesting will be performed by the same testing agency. The cost associated with the noncompliance will be incurred by Contractor without increasing the Job Order Price.
 - 3. Contractor will cooperate with the selected testing laboratory and all others responsible for the testing and inspecting of the Work and will provide them access to the Work at all times.
- D. At the option of the City, materials may be approved at the source of supply before delivery is started.
- E. Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, will be incurred by Contractor without increasing the Job Order Price, unless otherwise provided in the Job Order.
- F. Contractor's convenience and quality control testing and inspections will be the sole responsibility of Contractor and incurred by Contractor without increasing the Job Order Price.
- G. All soils and materials testing will be performed and paid for by the City. The City will order tests and distribute test results for all construction areas. The City will be responsible for ordering testing and will distribute test results within 24 hours of receipt.

1.9. PROJECT RECORD DOCUMENT/AS BUILTS

A. During the construction period, Contractor will maintain at the Site a set of Blueline or Blackline Prints of the Construction Document drawings and Shop Drawings for Project Record Document purposes.

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

- Dimensional changes to the drawings;
- Revisions to details shown on drawings;
- Depths of foundations below first floor;
- Locations and depths of underground utilities;
- Revisions to routing of piping and conduits;
- Revisions to electrical circuitry;
- Actual equipment locations;
- Duct size and routing;
- Locations of concealed internal utilities;
- Changes made by Adjustment; and
- Details not on original Contract Drawings.

2. Contractor will mark completely and accurately Project Record Documents, prints of Construction 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 location.

3. Contractor will mark sets of Project Record Drawings Prints with red erasable colored pencil.

4. Contractor will note Request for Information (RFI) Numbers, American Standards Institute (ASI) Numbers and Adjustment Numbers, etc., as required to identify the source of the change to the Construction Documents.

5. Contractor will at the time of Substantial Completion, submit Project Record Drawing Prints and Shop Drawings to the City or its representative for review and comment.

B. Immediately upon receipt of the reviewed Project Record Drawings from the City, Contractor will correct any deficiencies or omissions to the drawings and prepare the following for submission to the City:

1. A complete set of PDF electronic files of all Project Record Drawing prepared in Microstation format compatible with City of Scottsdale CADD requirements. If a Design Professional is contracted with, the Design Professional will provide files of the original Construction Documents to

Contractor for use in preparing these final Project Record Documents, or Contractor may contract with the Design Professional to revise and update the electronic drawing files. Each drawing will be clearly marked with "As-Built Document" and shall be certified by an Arizona Registered Land Surveyor.

2. A complete set of As-Built reproducible mylars from the final Microstation drawings and an electronic pdf file on CD are required.
3. The original copy of the Project Record Drawings with redline mark-ups.

1.10. PROJECT SAFETY

- A. The Occupational Safety and Health Act (OSHA) and the City of Scottsdale loss control procedures are the minimum standard for safety and environmental protection and must be fully complied with at all times. All Work will be performed in compliance with all applicable federal, state and local laws, ordinances, statutes, rules and regulations including ADOSH policies and procedures. Contractor may be required to attend a City safety briefing session at the pre-construction meeting. The session will be attended by the Contract Administrator, the designated Risk Management staff, and a Contractor's Representative. Contractors that violate the aforementioned rules and regulations may be subject to job shutdown and or removal from City facilities.
- B. The Risk Management Division makes available a packet which contains the City's OSHA compliance guidelines, emergency evacuation, the City's safety and health plan, and other safety information.
- C. Contractor will conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.
- D. Contractor will contact the City's Representative and the Risk Management Division within twenty-four (24) hours of the occurrence of an accident or injury arising out of Contractor's Work under this Contract.
- E. Contractor employees are encouraged to abate or remedy any unsafe act or condition, which may arise in the course of Contractor's Work under this Contract.
- F. The City reserves the right to conduct safety audits at the Site and stop unsafe acts at any time. In addition, the City will be notified within four (4) hours should any OSHA inspection occur at a Site.
- G. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to:
 1. All individuals at the Site, whether working or visiting;
 2. The Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and
 3. All other property at the Site or adjacent to the Site.

- H. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- I. Contractor will, before commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Contractor's Safety Representative will be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.
- J. Contractor must provide OSHA 300A Summary log information including total recordable cases, total case rates, and lost workday incident rates for the past two (2) calendar years. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable.
- K. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-governmental authorities having jurisdiction over safety-related matters involving the Project or the Work.
- L. Contractor's responsibility for safety under this Article 1.10 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for:
 - 1. Complying with all Legal Requirements, including those related to health and safety matters; and
 - 2. Taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
- M. Contractor and Subcontractors must agree to provide Material Safety Data Sheets for all substances that are delivered to the City of Scottsdale, that come under the Occupational Safety and Health Administration Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication (reference Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazardous Communication Standard).

All Contractors and all Subcontractors using chemicals on City of Scottsdale property shall use only the safest chemicals, with the least harmful ingredients. These chemicals shall be approved for use by a City of Scottsdale representative before bringing them on the property.

Contractor and all Subcontractors shall make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation will be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication, Contractor and Subcontractors are informed of the presence of (or possible presence of) chemicals in the area where the Work requested will be performed. It is the responsibility of Contractor or all selected Subcontractors to contact the City of Scottsdale for specific information relative to the type of chemicals present and location of appropriate Material Safety Data Sheets.

Unless included in the Work, if Contractor encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, it will immediately stop Work and report the condition to the City.

If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, Contractor will not resume Work in the affected area until the material has been abated or rendered harmless. Contractor and the City may agree, in writing, to continue Work in non-affected areas onsite. An extension of the Contract Time may be granted as provided in Article 5.

1.11. WARRANTY

- A. Contractor warrants that any material or service supplied to the City shall fully conform to all requirements of this Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by this Contract. The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contractor shall maintain all applicable licenses and permits.
- B. The provisions of M.A.G., Section 108.8 will apply with the following additional requirements:
 - 1. Should Contractor fail to begin repairs or corrective work within fourteen (14) calendar days after receipt of written notice from the City, the City may perform the necessary work and Contractor agrees to reimburse the City for the actual cost.
 - 2. The warranty period on any part of the Work repaired or replaced will be extended for a period of one (1) year from the date of the repair or replacement.
 - 3. This warranty will not apply to damage caused by normal wear and tear or by acts beyond Contractor's control.
- C. 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 liable.
- D. Contractor's warranty obligation will be for one (1) year.

- E. Nothing in this warranty is intended to limit any manufacturer's warranty which provides the City with greater warranty rights than those found in this Article 1.11 or the Contract Documents. Contractor will provide the City with all manufacturers' warranties upon Substantial Completion of each Job Order.

1.12. CORRECTION OF DEFECTIVE WORK

- A. Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Article 1.11 above, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within any longer period to the extent required by the Contract Documents. All removal/replacement work, as directed by the City to Contractor, in compliance with this Contract, MAG standards and City codes will have cost determinations by the City and be issued as a Job Order Adjustment to the Project. A Progress Payment, or partial or entire use or occupancy of the Project by the City will not constitute acceptance of Work not in accordance with the Contract Documents.

During the Work, Contractor shall take meaningful steps to begin correction of any nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Contractor fails to begin the necessary steps during the Work, the City, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that the City will commence correction of any nonconforming Work, at its discretion, through its employees, agents or other third parties.

Contractor shall take meaningful steps to begin correction of nonconforming Work subject to Article 1.11 above. These measures include but are not limited to timely correction of the Work. If Contractor fails to initiate necessary measures for this Work within seven (7) days of receipt of written notice from the City, the City, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that the City will begin correction of the nonconforming Work, at its discretion, through its employees, agents or other third parties.

- B. If the City does perform this corrective Work, Contractor will be responsible for all reasonable costs incurred by the City in performing the correction without increasing the Job Order Price.
- C. Contractor shall immediately respond to any nonconforming Work that creates an emergency.
- D. The one (1) year period referenced in Article 1.11 above applies only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding Contractor's other obligations under the Contract Documents.

1.13. SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- A. Contractor shall select major Subcontractors and major Suppliers, subject to first obtaining the City's approval. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors must not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of Contractor, but the City must approve in writing the selection of all Subcontractors. In any case, Contractor is solely responsible for the performance of the selected Subcontractors/Suppliers.

Contractor shall prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval or Contractor may use the City's plan as described in Article 1.13(B). This Subcontractor selection plan will identify those Subcontractor trades anticipated to be selected by qualifications only as provided in Article 1.13(B) and those Subcontractor trades anticipated to be selected by qualifications and competitive bid as provided in Article 1.13(C). This plan will also identify those Subcontractors that will not be selected through a formalized qualifications-based selection process. The Subcontractor selection plan must be consistent with the selection requirements included in this Contract.

- B. **Selection by qualifications only** - The City may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when Contractor can demonstrate it is in the best interest of the Project.
1. Contractor will apply the Subcontractor selection plan approved by the City in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation. The selection plan will be Contractor's own selection plan approved by the City or the City's selection plan as provided in this Article 1.13(B).
 2. Contractor will negotiate costs for services/supplies from the Subcontractor(s)/Supplier(s) under the approved qualifications only method.

City Selection Plan:

3. Contractor may elect to comply with the following City procedures in its selection of Subcontractor(s) or Suppliers(s) based on qualifications only:
 - a. The Request for Qualifications (RFQ) will contain the best description of the services or material desired; and
 - b. A statement that only unpriced statements of qualifications will be considered; and
 - c. State the requirements for the project, such as drawings and descriptive literature; and
 - d. State the criteria for evaluating the qualifications; and
 - e. A closing date and time for receipt of a statement of qualifications

and the location where the statements should be delivered or mailed; and

- f. A statement that discussions may be held; and
 - g. A statement that only statements of qualifications determined to be acceptable will be considered for award.
- 4. The RFQ may be amended after the submission of the statements of qualifications. Any amendment will be distributed only to bidders who submitted statements of qualifications. Those bidders will be permitted to submit new unpriced statements of qualifications or to amend statements already submitted.
 - 5. Statements of Qualifications will not be opened publicly but will be opened in the presence of Contractor. The contents of unpriced statements of qualifications will not be disclosed to unauthorized persons.
 - 6. Statements of Qualifications will be evaluated solely in accordance with the criteria stated in the RFQ and will be determined to be either acceptable for further consideration or unacceptable. A determination that the statement is unacceptable shall be in writing, state the basis of the determination and be retained by Contractor. Contractor will notify the bidder of the determination and the bidder will not be given an opportunity to amend its statement of qualifications further.
 - 7. Contractor may conduct discussions with any bidder who submits an acceptable or potentially acceptable statement of qualifications. During discussions, Contractor will not disclose any information derived from any other bidder's statement of qualifications.
 - 8. Contractor will negotiate costs for services/supplies from the Subcontractor(s)/Supplier(s) selected under this method.
- C. **Selection by qualifications and competitive bid** – Contractor will apply the City's Subcontractor selection plan stated above or Contractor's selection plan, if previously approved by the City, in Contractor's evaluation of the qualifications of Subcontractor(s)/Supplier(s) and will provide the City with the selected process to prequalify prospective Subcontractors/Suppliers. Selection may not be based on price alone. All Work by major Subcontractors and major Suppliers will then be competitively bid to the prequalified Subcontractors unless a Subcontractor or Supplier was selected in accordance with Article 1.13(B) above. Contractor may elect to comply with the following procedures in step 2 of its competitive bid process.
- 1. Contractor will develop Subcontractor and Supplier Interest, submit the names of a minimum of three (3) qualified Subcontractors or Suppliers for each trade in the Project and solicit bids for the various Work categories. If there are not three (3) qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances, Contractor may request approval by the City to submit less than three (3) names. Without

first giving written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.

2. If the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, Contractor will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
 3. Contractor will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors and Suppliers. Contractor will then review the price bids submitted by Subcontractors and Suppliers and make its selection based on the responsive and responsible bidder with the lowest price.
 4. If Contractor desires to self-perform certain portions of the Work, it must 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 in the Invitation for Bids. If events warrant and the City concurs that in order to insure compliance with the Project Schedule or cost, Contractor may self-perform Work without bidding or re-bidding the Work. (For horizontal construction, as defined in A.R.S. § 34-101(16), Contractor must self-perform not less than 45% of the Work as required by A.R.S. § 34-603(I)(3).)
- D. If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, Contractor will nominate a substitute Subcontractor or Supplier, preferably if this option is still available, from those who submitted Subcontractor bids for the Work affected. Once the substitute Subcontractors and Suppliers are consented to by the City, Contractor's proposed price for the Work or portion of the Work will be correspondingly adjusted to reflect any higher or lower costs from any substitution. Under no circumstances will the City's objection or comment on any Subcontractor or Supplier relieve Contractor of its sole responsibility for control over the methods, means and processes by which the Work is accomplished. The City must approve in writing the selected Subcontractor Selection Plan before work commences on any Job Order.
- E. Contractor shall incorporate by reference the terms and conditions of this Contract. in any subcontract or supplier contract hereunder.

ARTICLE 2 - CITY'S SERVICES AND RESPONSIBILITIES

2.1 INFORMATION AND SERVICES

The City will furnish Contractor, at no cost to Contractor, the following information or services for this Project:

1. One copy of data pertinent to the Work. However, Contractor will be responsible for searching the records and requesting information required for the Project.
2. All available data and information relative to policies, standards, criteria,

studies, etc.

3. Project funding and budget allocations and any changes affecting the funding or budget allocations.
4. For purpose of determining the Job Order Price, any Plans and Specifications.
5. For purpose of Project Record Drawing Prints, a CADD file of the Construction Documents in Microstation format compatible with City of Scottsdale CADD requirements.

2.2 CITY'S REPRESENTATIVE

The City's Representative will be responsible for providing City-supplied information and approvals in a timely manner to permit Contractor to fulfill its obligations under the Contract Documents.

2.3 DESIGN PROFESSIONAL SERVICES

- A. The City may contract separately with one or more Design Professionals to provide architectural or engineering design of the Project in accordance with the provisions of A.R.S. §34-603.
- B. The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work:
 1. The Design Professional may provide administration of the Work. The City and Contractor will endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants will be through the Design Professional.
 2. The Design Professional may visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work.
 3. Upon Contractor's submittals, the Design Professional may review and approve or take other appropriate action on submittals as Shop Drawings, Product Data and Samples in accordance with Article 1.6.
 4. All drawings produced for projects considered to be performed under Contractor are the property of the City and are owned in whole by the City for any and all future use and considerations.

2.4 CITY'S SEPARATE CONTRACTORS

The City is responsible for all Work performed on the Project or at the Site by separate contractors under the City's control. The City will contractually require its separate

contractors to cooperate with and coordinate their activities so as not to interfere with Contractor in order to enable Contractor to timely complete the Work consistent with the Contract Documents. Contractor agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.5 FURNISHING OF SERVICES AND INFORMATION

A. The City will be responsible for the payment or waiver of the following:

1. City review and permit(s) fees for building, encroachment, and demolition permits including City, State and County.
2. City review fees for grading and drainage, water, sewer and landscaping.
3. Utility design fees or permanent services fees are paid by the City, but all submittals are the responsibility of Contractor.
4. Obtaining Nationwide 404 Permits.
5. City Development Fees.

B. Unless expressly stated to the contrary in the Contract Documents, the City will provide, at its own cost and expense, for Contractor's information the following:

1. To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
2. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, necessary to permit the proper design and construction of the Project and enable Contractor to perform the Work;
3. A legal description and street or physical address of the Site;
4. To the extent available, as-built record or historical drawings of any existing structures at the Site;
5. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including hazardous materials, in existence at the Site; and
6. To the extent available, Geotechnical studies describing subsurface conditions and other surveys describing other latent or concealed physical conditions at the Site.
7. The City will provide all City standards and guidelines, supplementary conditions and special provisions that will be included in the plans and specifications for the Project. These may include but are not limited to: disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, special quality

control testing and termite treatment requirements.

2.6 PROJECT MANAGEMENT SERVICES

- A. The City may contract separately with one or more Technical Consultants to provide project management assistance for the Project. The Technical Consultant's contract as well as contracts with other firms hired by the City will be furnished to Contractor. Contractor will not have any right, however, to limit or restrict any Project modifications that are mutually acceptable to the City and Technical Consultant.
- B. The Technical Consultant services will augment the City staffing resources to effectively manage the objectives of the City and the Project with the goal of managing the key Project communication, cost and time parameters.
- C. The Technical Consultant may provide pre-programming and design standards.
- D. The City may contract with the Technical Consultant to provide any or all of the services or functions of the City's project manager during the performance of the construction.

2.7 PERMIT REVIEW AND INSPECTIONS

For clarification, permitting activities are handled by the City of Scottsdale Developmental Services, Fire and Planning Departments. Obtaining any permits and submittals are the responsibility of the City.

2.8 UTILITY COMPANY COORDINATION

Contractor will be responsible for coordinating utility design work for permanent service to the Project and will ensure that the work takes place in a timely manner and does not impact the Project schedule. Any utility design fees for permanent services to a Job Order will be paid by the City in accordance with Article 2.6.

ARTICLE 3 - CONTRACT TIME AND JOB ORDER TIME

3.1 CONTRACT TIME

- A. The initial term of this Contract will be for two (2) years and will commence on the Effective Date, with the option to extend for three (3) additional years in one (1) year increments.
 - 1. The option to extend may be exercised based on Contractor's successful performance and the needs of the City.
 - 2. A contract modification will be processed for each extension and will commence on or about the anniversary date of the Contract. Each extension must be authorized by the Contract Administrator and Purchasing Director for the City and need not return to the City's Council for approval.
- B. The Contract will remain in full force and effect during the performance of any Job

Order.

3.2 JOB ORDER TIME

- A. Job Orders may be issued at any time during the term of this Contract.
- B. Each individual Job Order will include a Job Order Notice-to-Proceed date, Duration of the Work as determined in accordance with this Article 3.2 and a calculated Substantial Completion date.
- C. Contractor agrees that it will commence performance of the Work and achieve the approved Job Order Time.
- D. Job Order Time may be subject to adjustment in accordance with Article 5.

3.3 SUBSTANTIAL COMPLETION

- A. Substantial Completion of each Job Order is when all construction has been completed with the exception of final inspection punch list work and further defined in Article 12. The purpose of granting or acknowledging Substantial Completion is to stop Job Order Time.
- B. Before notifying the City in accordance with Article 3.3(C), Contractor will inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. Contractor will proceed promptly to complete and correct items on the list. Failure to include an item on the list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.
- C. Contractor will notify the City when it believes a Job Order, or to the extent permitted in the Contract Documents, a portion of the Job Order, is substantially complete.
- D. Within five (5) days of the City's receipt of Contractor's notice in accordance with Article 3.3(C), the City and Contractor will jointly inspect the Work to confirm Substantial Completion.
- E. Once Substantial Completion of the Work is confirmed in accordance with Article 3.3(D), the City will prepare and issue a Certificate of Substantial Completion that will state:
 - 1. The date of Substantial Completion of the Work or portion of the Work;
 - 2. The remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance;
 - 3. Provisions (to the extent not already provided in the Contract Documents) establishing the City's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance.
- F. The City, at its option, may use a portion of the Work which has been determined

to be substantially complete provided, however, that:

1. Certificate of Substantial Completion has been issued for the portion of Work addressing the items in Article 3.3(E)(2).
2. Contractor and the City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and
3. The City and Contractor agree that the City's use or occupancy will not interfere with Contractor's completion of the remaining Work required under Article 3.3(E).

3.4 PUNCH LIST PREPARATION

A minimum of seven (7) days before Substantial Completion, Contractor, in conjunction with the City, will prepare a comprehensive list of Punch List items, which the City may edit and supplement. Contractor will proceed promptly to complete and correct the Punch List items. Failure to include an item on the Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Warranties required by the Contract Documents will not commence until the date of Final Acceptance, unless otherwise provided in the Contract Documents. Seven (7) days before the City issues its Final Acceptance Letter, Contractor will deliver to the City all Operation and Maintenance Manuals necessary for the City to assume responsibility for the operation and maintenance of that portion of the Work.

3.5 FINAL ACCEPTANCE

Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, the City and Contractor will jointly inspect to verify that the remaining items of Work have been completed as required under Article 3.3(E). Upon verification that the items have been satisfactorily completed, the City will issue a Final Acceptance Letter.

3.6 LIQUIDATED DAMAGES

- A. Contractor understands that if Substantial Completion is not attained within the Job Order Time, as may be adjusted for each Job Order, the City will suffer damages, based on the anticipated loss caused by the breach and the difficulty in determining and accurately specifying the damages. Contractor agrees that if Substantial Completion is not attained within the Job Order Time as adjusted, Contractor will pay the City the amount prescribed in Article 3.6(B) below as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Job Order Time as adjusted.
- B. The following will be the liquidated damages for each Job Order unless a specific amount has been determined for each individual Job Order.

LIQUIDATED DAMAGES

Original Job Order Amount		Daily Charges
From more than	To and including	Calendar Day or Fixed Date
\$00	\$25,000	\$200
25,001	50,000	250
50,001	100,000	280
100,001	500,000	430
500,001	750,000	500
750,001	1,000,000	570
1,000,001	1,250,000	610
1,250,001	1,500,000	650

ARTICLE 4- CONTRACT PRICE AND JOB ORDER PRICE**4.1 CONTRACT PRICE**

The fee for individual projects performed under this contract will be negotiated on a project-by-project basis as Job Orders. The amount paid to the Contractor under this contract for all Job Orders shall not exceed Twelve Million Dollars (\$12,000,000) for the initial two (2) year term and Seven Million Five Hundred Thousand Dollar (\$7,500,000) for any successive one (1) year contract extension. The Contractor agrees at its own cost and expense, to do all the Work as specified in the Contract Documents and any Work contingent to the Contract and necessary for the construction of the improvements. The Contractor will completely construct the Work and install the materials, free and clear of all claims, liens, and charges of any kind, in the manner and under the conditions specified within the time or times stated in each Job Order.

- A. In no event will any individual Job Order Price exceed Four Million Dollars (\$4,000,000). If the City opts to extend this Contract in accordance with Article 3.1(A), the Contract Modification may increase the maximum amount, if necessary, at that time.
- B. The Job Order Price is subject to Adjustments made in accordance with Article 5.
- C. Unless otherwise provided in the Contract Documents, the Job Order Price is considered to include all sales, use, consumer and other taxes throughout the term of this Contract, whether or not yet effective or merely scheduled to go into effect.
- D. Contractor must secure and maintain, during the life of the Contract, State of Arizona and City of Scottsdale Transaction Privilege (sales) Tax Licenses.

To obtain a State of Arizona Privilege (Sales) Tax License Application, please go to the following website:

<https://azdor.gov/transaction-privilege-tax/tpt-license/applying-tpt-license>

To obtain a City of Scottsdale Transaction (Sales) Tax License Application, please go to the following website:

<https://www.scottsdaleaz.gov/taxes/resources>

Contractor must demonstrate compliance with the E-Verify Program as provided in Article 11.33 and as required by A.R.S. §41-1080, as amended, before issuance of any License by the City.

4.2 RESPONSIBILITY FOR PRIVILEGE (SALES) TAXES

- A. Contractor is responsible for payment of all applicable State of Arizona and City of Scottsdale transaction privilege (sales) taxes due on construction income whether or not these taxes are specifically separated in the bid amount. The taxes are to be reported on either a progressive billing (accrual) basis or cash receipts basis, depending on the method chosen at the time application was made for the Privilege (sales) Tax License.

City Privilege (sales) tax exemptions/deductions may be applicable to certain projects. Contractor is advised to consider this as it prepares its bid. Please review, in detail, Sections 415, 465, and 110 of the Scottsdale Revised City Code, Appendix C to determine if exemptions/ deductions are applicable. For tax guidance, please reference the City Code and other tax resources at the following website:

<http://www.scottsdaleaz.gov/taxes/>

The State of Arizona has similar exemptions; please reference A.R.S. Title 42 at the following website:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=42>

For further questions regarding tax treatment, please contact the Arizona Department of Revenue at 602-255-2060 and the City of Scottsdale Tax & Audit Section at 480-312-2768.

ARTICLE 5 - CHANGES TO THE CONTRACT PRICE AND TIME

5.1 DELAYS TO THE WORK

- A. Delays may be compensable, concurrent, excusable or non-excusable as defined in Article 12.
- B. If Contractor is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Contractor is responsible, the Job Order Time for performance may be reasonably extended by Job Order Adjustment.
- C. Contractor must request a Job Order Adjustment by written notice, including an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay, only one request is necessary.
- D. Written notice will be received within fourteen (14) days of the commencement of the cause of the delay. If written notice is received more than fourteen (14) days after commencement of the cause of the delay, the period of delay will be considered to commence fourteen (14) days before the giving of any notice.

- E. If adverse weather conditions are the basis for a Job Order Adjustment request, the requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- F. Permitting Contractor to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights.
- G. In the event Contractor incurs expenses related to a delay for which the City is responsible pursuant to A.R.S. §34-609(E), as amended, Contractor and the City will negotiate an equitable adjustment to the Job Order Price and/or Job Order Time. This provision does not void any other section of this Contract that requires notice of delays, provides for arbitration or other procedures for settlement or provides for liquidated damages.
- H. In addition to Contractor's right to request a time extension for those events stated in this Article 5.1, Contractor may also be entitled to an appropriate adjustment of the Job Order Price provided, however, that the Job Order Price will not be adjusted for delays caused by reason of force majeure as defined in this Contract.

5.2 DIFFERING SITE CONDITIONS

- 5.2.1. If Contractor encounters a Differing Site Condition(s), Contractor may be entitled to an adjustment in the Job Order Price or Job Order Time(s) to the extent Contractor's cost or time of performance are the direct result of a Differing Site Condition(s).
- 5.2.2. Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to the City of the condition, which notice will not be later than seven (7) days after the condition has been encountered. Final costs must be submitted within thirty (30) days after notice is received by the City, unless extended by written agreement of the parties. Contractor must give the City's Contract Administrator written notice of and an opportunity to observe such condition before disturbing or altering the Differing Site conditions. The failure of Contractor to give written notice and make the Claim as required by this Article and Article 7.1.5 shall constitute a waiver by Contractor of any rights arising out of or relating to such Differing Site Conditions.
- 5.2.3. In order for Contractor to obtain any additional compensation or time extensions for Differing Site Conditions, Contractor must demonstrate that it encountered a material difference at the Site, as defined in Article 12, that required it to expend additional cost or time. Contractor will also establish that it actually and reasonably relied upon the representations found in the Contract Documents concerning the Site conditions.

5.3 APPLICATION FOR EXTENSION OF TIME

5.3.1 If performance by Contractor is delayed for a reason set forth in Article 5, Contractor may be allowed a reasonable extension of time in conformance with this Article. Before Contractor's time extension request may be considered, Contractor shall notify the City of the condition which allegedly has caused or is causing the delay, and shall submit a written application to the City identifying:

1. Liquidated damage assessment rate, as specified in the Contract;
2. Original Job Order Price;
3. Original Job Order Time;
4. Any previous Job Order Adjustments granted (number and duration); and
5. The extension of time requested.

5.3.2 In addition, the application for extension of time shall set forth in detail:

1. The nature of each alleged cause of delay in completing the Work;
2. The date upon which each such cause of delay began and ended and the number of dates attributable to each such cause;
3. A statement that Contractor waives all claims except for those delineated in the application, and the particulars of any claims which Contractor does not agree to waive. For time extensions for Substantial Completion and final completion payments, the application shall include a detailed statement of the dollar amounts of each claim item reserved; and
4. A statement indicating Contractor's understanding that the time extension is granted only for purposes of permitting continuation of Contract performance and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

5.4 ERRORS, DISCREPANCIES AND OMISSIONS

- A. If Contractor observes errors, discrepancies or omissions in the Contract Documents, it will promptly notify the City and request clarification. Contractor will provide a copy of this notice to the City's Representative.
- B. If Contractor proceeds with the Work affected by the errors, discrepancies or omissions, without receiving any clarifications, it does so at its own risk. Adjustments involving these circumstances made by Contractor before clarification by the Design Professional will be at Contractor's risk.

5.5 CITY REQUESTED CHANGE IN WORK

- A. The City reserves the right to make, at any time during the progress of the Work, any alterations as may be found necessary or desirable.
- B. These alterations and changes will not invalidate this Contract nor release the surety and Contractor agrees to perform the Work as altered, the same as if it had been a part of the original Job Order. Contractor will notify the surety of the changes and will assure that the alterations and changes are adequately covered by the surety bond.
- C. The City will request a proposal for a change in Work from Contractor, and an Adjustment to the Job Order Price or Job Order Time will be made based on a mutual agreed upon cost and time.

5.6 LEGAL REQUIREMENTS

The Job Order Price or Job Order Time will be adjusted to compensate Contractor for the effects of any changes in the Legal Requirements enacted after the date of the Contract affecting the performance of the Work.

5.7 JOB ORDER ADJUSTMENTS

- A. In accordance with the City of Scottsdale Procurement Code, and related Rules and Procedures, the City and Contractor will negotiate in good faith and as expeditiously as possible the appropriate Job Order Adjustment(s). Upon reaching an agreement, the parties will prepare and execute an appropriate Adjustment reflecting the terms of their agreement. The change in Work may or may not include an Adjustment in the Job Order Price or Job Order Time.
- B. All changes in Work authorized by Job Order Adjustments will be performed under the conditions of the Contract Documents. The decision to make an Adjustment to the Job Order rests solely with the City and any decision to make a Job Order Adjustment must be promptly complied with by Contractor, subject to the provisions of Article 5.8.
- C. The execution of a Job Order Adjustment by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, the Job Order Price, and the Job Order Time by Contractor. Contractor, by executing the Job Order Adjustment, waives and forever releases any claim against the City for any additional time or compensation for matters relating to, arising out of, or resulting from the Work included within or affected by the executed Job Order Adjustment of which Contractor knew or should have known.

5.8 UNILATERAL DETERMINATION OF JOB ORDER VALUE

If no mutual agreement occurs between the City and Contractor, the change in Job Order Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions to the Work. Such reasonable actual costs or savings shall include a component for direct job site overhead and profit but shall not include home-office overhead or other indirect costs and components. The calculation

of actual costs shall conform to the markup schedule in Article 5.12 below. Any such costs or savings shall be documented in the format and with such content and detail as the City requires. Contractor shall promptly submit such documentation and other backup as the City may require in evaluating the actual costs incurred.

5.9 ADDITIONAL JOB ORDER COST REQUIREMENTS

Contractor's or Subcontractor's submittals shall include the cost of materials, sales tax, and the cost of all transport. The cost of items listed shall be directly related to the Job Order Adjustment. Indirect costs not specifically related to the Job Order Adjustment shall not be considered. Contractor's or Subcontractor's Direct Labor Costs shall be limited to the hourly rate of directly involved workmen, employer contributions toward Contractor standard benefits, pensions, unemployment or social security (if any), and employer costs for paid sick and annual leave. Contractor's or Subcontractor's Overhead shall include license fees, bond premiums, supervision, wages of timekeepers and clerks, incidentals, home and field office expense, and vehicle expense directly related to the Project, and all other direct Project expenses not included in Contractor's material, direct labor, and equipment costs.

5.9.1 The allowance for overhead and profit shall be limited to the following schedule:

1. For Contractor, for any work performed by Contractor's own forces, fifteen (15%) percent of the Subtotal of Costs to Contractor.
2. For Contractor, for any work performed by its Subcontractor, six (6%) percent of the amount due to the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved, for any work performed by their own forces, fifteen (15%) of their materials and direct labor costs.
4. For each Subcontractor, for work performed by its Sub-Subcontractor(s), six (6%) percent of the amount due to the Sub-subcontractor.

5.10 LIMITATION OF COMPENSABLE ITEMS

5.10.1 For Job Order Adjustment, the total cost or credit to the City shall be based on the following schedule:

1. Contractor's Materials Costs.
2. Contractor's Direct Labor Costs.
3. Contractor's Equipment Costs (includes owned/rented equipment).
4. Applicable Subcontractor Costs.
5. Subtotal of Costs to Contractor.
6. Contractor's Overhead and Profit.

7. Total Cost or Credit to the City.

5.11 FIELD ORDERS

- A. The City has authority to initiate Field Orders that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Field Orders will be made by written order and will be binding on the City and Contractor. Contractor will carry out any written Field Orders promptly.
- B. Field Orders will not involve an adjustment in the Job Order Price or Job Order Times unless or until it becomes a Job Order Adjustment.
- C. Contractor may make minor changes in the Work, provided, however that Contractor will promptly inform the City, in writing, of any changes and record the changes, if appropriate, on the Project Record Documents maintained by Contractor.

5.12 JOB ORDER PRICE ADJUSTMENTS

- A. The increase or decrease in Job Order Price resulting from a change in the Work will be determined by one or more of the following methods:
 - 1. Unit prices stated in the Contract or as subsequently agreed to between the parties;
 - 2. A mutually agreed upon accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the City; and
 - 3. Costs, fees and any other markups.
- B. If an increase or decrease cannot be agreed to as stated in Article 5.7(A), the cost of the change of the Work will be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be stated in the Contract Documents. Contractor will maintain a documented, itemized accounting, evidencing the expenses and savings associated with these changes.
- C. If unit prices are stated in the Contract Documents, or are later agreed to by the parties, but application of the unit prices will cause substantial inequity to the City or Contractor because of differences in the character or quantity of the unit items as originally contemplated, the unit prices will be equitably adjusted.
- D. If the City and Contractor disagree upon whether Contractor is entitled to be paid for any services required by the City, the amount to be paid, other disagreements over the Scope of Work, proposed changes to the Work, or the time required to complete the Work, the City and Contractor will resolve the disagreements in accordance with Article 7.
 - 1. As part of the negotiation process, Contractor will furnish the City with a

good faith estimate of the costs to perform the disputed services, or the additional time required in accordance with the City's interpretations.

2. If the parties are unable to agree and the City expects Contractor to perform the services in accordance with the City's interpretations, Contractor will proceed to perform the disputed services, conditioned upon the City issuing a written order to Contractor:

(a) directing Contractor to proceed; and

(b) specifying the City's interpretation of the services that are to be performed.

- E. Emergencies. In any emergency affecting the safety of persons or property, Contractor will act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Job Order Price or Job Order Time(s) resulting from emergency work will be determined as provided in this Article 5.

ARTICLE 6- PROCEDURE FOR PAYMENT

6.1 JOB ORDER PAYMENT REQUEST

- A. At the pre-construction conference prescribed in Article 1.3, Contractor will submit for the City's review and approval a Schedule of Values. The Schedule of Values will include values for all items comprising the Job Order Price and will serve as the basis for monthly progress payments made to Contractor throughout the Work.
- B. At least five (5) working days before the date established for a progress payment, Contractor will meet with the City's Representative to review the progress of the Work, as it will be reflected on the Contractor Payment Request.
- C. The Contractor Payment Request will constitute Contractor's representation that the Work has been performed consistent with the Job Order including any Adjustment(s), has progressed to the point indicated in the Contractor Payment Request, and that title to all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

6.2 PARTIAL PAYMENTS

- A. Partial progress payment will be made for Job Orders with Job Order Time greater than 30 Days and may be made if the Job Order Time is less than 30 Days.
- B. The Contractor Payment Request may request payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.
- C. For equipment and materials suitably stored at the Site, the equipment and materials will be protected by suitable insurance and the City will receive the equipment and materials free and clear of all liens and encumbrances.

1. For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Maricopa County and be accessible for the City's inspection. Title to the materials and equipment will include applicable insurance, bonding, storage and transportation to the Site..
2. The City will be named as an Additional Insured on all insurance and bonds required for all stored materials or equipment

6.3 PAYMENT OF JOB ORDER PRICE

- A. Payments should be provided on the City format for a Pay Application which is based on the agreed upon Schedule of Values. Payment will be made no later than fourteen (14) days after the Contractor Payment Request is certified and approved, but in each case less the total of payments previously made.
- B. The Contractor Payment Request shall be deemed approved and certified for payment seven (7) days after the date of submission to the City by Contractor unless before that time the City prepares and issues a specific written finding setting forth those items in detail in the Contractor Payment Request that are not approved for payment under the Contract. The finding will indicate the specific amounts the City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Contractor must take to rectify the City's concerns. The City may withhold an amount from the progress payment sufficient to pay the expenses the City reasonably expects to incur in correcting the deficiency set forth in the written finding. Contractor and the City will attempt to resolve the City's concerns. If the parties cannot resolve the concerns, Contractor may pursue its rights under the Contract Documents, including those under Article 7.

6.4 RETENTION ON JOB ORDER PAYMENTS

In compliance with A.R.S. §34-609, as amended, there is no retention for job-order-contracting construction services contracts.

6.5 FINAL PAYMENT

- A. After receipt of a final Contractor Payment Request, the City will make final payment as required by this Article 6.5, provided that Contractor has completed all of the Work in conformance with the Job Order and Contract Documents and a Final Acceptance Letter has been issued by the City.
- B. At the time of submission of its final Contractor Payment Request, Contractor will provide the following information:
 1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect the City's interests; and
 2. A general release executed by Contractor waiving, upon receipt of final

payment by Contractor, all claims, except those claims previously made in writing to the City and remaining unsettled at the time of final payment.

6.6 PAYMENTS TO SUBCONTRACTORS OR SUPPLIERS

- A. Contractor will pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. Contractor will pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. No Contract between Contractor and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment as provided in this Contract.
- B. If Contractor fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and Contractor agrees that the City may take these actions:
 - 1. To hold Contractor in default under this Contract;
 - 2. Withhold future payments until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
 - 3. Reject all future offers to perform work for the City for a period not to exceed one (1) year from the Substantial Completion date of the Job Order at issue; or
 - 4. Terminate this Contract for cause.
- C. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Article, the failure or delay will not be considered a waiver, release, or modification of the requirements of this Article or of any of the terms or provisions of this Contract.
- D. Contractor will include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Contract.

6.7 AUDIT AND INSPECTION

- A. Records of Contractor's direct personnel payroll, reimbursable expenses related to each Job Order and records of accounts between the City and Contractor will be kept on a generally recognized accounting basis and will be available for three (3) years after completion of the Project.

From the effective date of this Contract and until three (3) years after the date of final payment by the City of Scottsdale to Contractor, the City, its authorized representative, or the appropriate federal or state agencies, reserve the right to audit Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate the Contract Documents. The City of Scottsdale or its authorized representative will have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and will be provided adequate and appropriate workspace, in order to conduct audits in compliance

with the provisions of this Article. The City of Scottsdale will give Contractor or Subcontractor reasonable advance notice of intended audits.

- B. The City reserves the right to decrease Job Order Price or payments made on this Contract if, upon audit of Contractor's records, the audit discloses Contractor has provided false, misleading, or inaccurate cost and pricing data.
- C. Contractor will include a similar provision in all of its contracts with Suppliers, Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, or the appropriate federal or state agency, has access to the Supplier, Subconsultant and Subcontractor records to verify the accuracy of cost and pricing data.
- D. The City reserves the right to decrease Job Order Price or payments made on this Contract if the above provision is not included in Supplier, Subconsultant and Subcontractor contracts, and one or more Suppliers, Subconsultants or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.
- E. If an audit in accordance with this Article, discloses overcharges of any nature by Contractor to the City in excess of 1% of the total contract billings, the actual cost of the City's audit will be reimbursed to the City by Contractor. Any adjustments or payments which must be made as a result of any audit or inspection of Contractor's invoices or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City's findings.
- F. This audit provision includes the right to inspect personnel records as required by Section 11.33.
- G. City may, at reasonable times, inspect the place of business of Contractor or its Subcontractor(s) that is related to the performance of this Contract.

ARTICLE 7- CLAIMS AND DISPUTES

7.1 REQUESTS FOR CONTRACT ADJUSTMENTS AND RELIEF

- 7.1.1 If either Contractor or the City believes that it is entitled to relief against the other for any event arising out of or related to the Work, that party will provide written notice to the other party of the basis for its claim for relief. The claims shall set forth in detail all known facts and circumstances supporting the claim; final costs associated with any claim upon which notice has been given must be submitted in writing to the City within thirty (30) days after notice has been received.
- 7.1.2 This notice will, if possible, be made before incurring any cost or expense and in accordance with any specific notice requirements contained in applicable articles of the Contract.
- 7.1.3 In the absence of any specific notice requirement, written notice will be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

- 7.1.4** This notice will include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of the request. ANY NOTICE OF CLAIM NOT FILED WITH THE CITY WITHIN SUCH TIME AND IN COMPLIANCE WITH THE PRECEEDING PROVISIONS SHALL BE CONSIDERED TO HAVE BEEN WAIVED AND SHALL BE DISMISSED.
- 7.1.5** In the event Contractor seeks to make a claim for an increase in the Job Order Price, as a condition precedent to any liability of the City therefore, unless emergency conditions exist, Contractor shall strictly comply with the requirements of this section and such claim shall be made by Contractor before proceeding to execute any Work for which a claim is made. Failure to comply with this condition precedent shall constitute a waiver by Contractor of any claims for compensation.
- 7.1.6** Contractor must continue its performance under this Contract regardless of the existence of any claims by Contractor.
- 7.1.7** In a claim by Contractor against the City for compensation in excess of the Job Order Price, any liability of the City to Contractor shall be strictly limited and computed in accordance with the Contract Documents and shall in no event include indirect costs, such as home office overheads or consequential damages of Contractor or any estimated costs or damages.

7.2 DISPUTE AVOIDANCE AND RESOLUTION

- 7.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the Contractor and the City each commit to resolving the disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 7.2.2** The Contractor and the City will first attempt to resolve disputes or disagreements at the field level through discussions between the Contractor's Representative(s) and the City's Representative(s) as described in Article 7.4.
- 7.2.3** If a dispute or disagreement cannot be resolved pursuant to Article 7.2.2, upon the request of either party, the parties' Representatives as described in Article 7.4 will meet as soon as conveniently possible, but in no case later than thirty (30) days after the request is made, to attempt to resolve the dispute or disagreement. Before any meetings between the parties Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 7.2.4** In the event Contractor incurs expenses related to a delay for which the City is responsible pursuant to A.R.S. §34 609(E), as amended, Contractor and the City will negotiate an equitable adjustment to the Job Order Price and/or Job Order Time. This provision does not void any other section of this Contract that

requires notice of delays, provides for arbitration or other procedures for settlement or provides for liquidated damages.

7.3 DUTY TO CONTINUE PERFORMANCE

Unless provided to the contrary in the Contract Documents, Contractor will continue to perform the Work and the City will continue to satisfy its payment obligations to Contractor, until final resolution of any dispute or disagreement between Contractor and the City.

7.4 REPRESENTATIVES OF THE PARTIES

A. City's Representatives

1. The City designates the individual listed below as the City's Senior Representative. This individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2.3:

City of Scottsdale
Attn: Alison Tymkiw
7447 E Indian School Road, Ste 205
Scottsdale, AZ 85251
(480) 312-7760

2. The City will designate an individual for each Job Order as the City's Representative. This person will manage the Job Order.

B. Contractor's Representatives

1. Contractor designates the individual listed below as Contractor's Senior Representative. This individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2.3:

J. Banicki Construction, Inc.
Attn: Mike Abraham
4720 E. Cotton Gin Loop, Suite 240
Phoenix, AZ 85040
(602) 390-1243

2. Contractor will designate an individual for each Job Order as Contractor's Representative.

ARTICLE 8 – SUSPENSION, TERMINATION AND CANCELLATION

8.1 CITY'S RIGHT TO STOP JOB ORDER SERVICES

- A. The City may, at its discretion and without cause, order Contractor in writing to stop and suspend any Job Order. Immediately after receiving this notice, Contractor will discontinue advancing the Job Order. The suspension will not exceed one hundred eighty (180) consecutive days. If the City suspends the Job

Order for one hundred eighty-one (181) consecutive days or more, the suspension will be considered a termination for convenience.

- B. Contractor may seek an adjustment of the Job Order Price or Job Order Time if its cost or time to perform the Contract Services has been adversely impacted by any suspension or stoppage of the Work by the City.

8.2 TERMINATION FOR CONVENIENCE

- A. The City reserves the right to terminate this Contract, in whole or in part, or abandon any portion of any Job Order for which services have not been performed by Contractor, at its sole convenience and discretion, upon written notice given pursuant to this Contract.

- 1. Contractor will estimate the value of the Work it has completed and submit its appraisal to the City for evaluation. The City will have the right to inspect the Work, to appraise the Work completed.

Contractor shall be entitled to receive just and equitable compensation for the percentage of Work actually completed and materials accepted before the effective date of the termination. This compensation will be an amount mutually agreed upon by Contractor and the City based on the Job Order and Scope of Work. If there is no mutual agreement, the final determination will be made in accordance with this Article.

- 2. The City will make the final payment within 60 days after Contractor has delivered the last of the partially completed items and the final fee has been agreed upon.

If the City terminates this Contract in compliance with this Article and proceeds to complete the Job Order through its employees, agents or other third parties, the City's rights to use the Work product will be as stated in Article 8.4.

- B. Upon termination of construction services during any Job Order, Contractor will proceed with the following obligations:

- 1. Stop Work as stated in the notice;
 - 2. Place no further subcontracts or orders;
 - 3. Terminate all subcontracts to the extent they relate to the Work terminated;
 - 4. Assign to the City all right, title and interest of Contractor under the subcontracts terminated, in which case the City will have the right to settle or to pay any termination settlement proposal arising out of those terminations;
 - 5. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of Contractor and which the City has or may acquire an interest; and

6. Comply with the requirements of Article 6.5(B).
- C. Contractor will submit complete termination inventory schedules no later than sixty (60) days from the date of the notice of termination.
- D. The City will pay Contractor the following:
 1. The direct value of its completed Work and materials supplied as of the date of termination;
 2. The reasonable costs and expenses attributable to the termination;
 3. Contractor will be entitled to profit and overhead on completed Work but will not be entitled to anticipated profit or anticipated overhead. If it appears Contractor would have sustained a loss on the entire Work had the Job Order been completed, Contractor will not be allowed profit and the City will reduce the settlement to reflect the indicated rate of loss;
 4. Contractor will maintain all records and documents for three (3) years after final settlement. These records will be maintained and subject to auditing as required in Article 6.7; and
 5. Take any action that may be necessary for the protection and preservation of the property related to the Job Order(s) that is in the possession of Contractor and in which the City has or may acquire an interest.

8.3 CANCELLATION FOR CAUSE

The City may also cancel this Contract or any part of it with seven (7) days notice for cause in the event of any default by Contractor, or if Contractor fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance, despite a reasonable opportunity to cure as judged by the City's Representative and failure to provide the City, upon request, with adequate assurances of future performance will all be causes allowing the City to cancel this Contract for cause. In the event of cancellation for cause, the City will not be liable to Contractor for any amount as damages, and Contractor will be liable to the City for any and all damages sustained as a result of the default that caused the cancellation.

8.4 CITY'S RIGHT TO PERFORM AND CANCEL FOR CAUSE

- A. If Contractor persistently fails to:
 1. Provide a sufficient number of skilled workers;
 2. Supply the materials required by the Contract Documents or Job Order(s);
 3. Comply with applicable Legal Requirements;
 4. Timely pay, without cause, Subconsultants or Subcontractors;
 5. Perform the Contract Services with promptness and diligence to ensure

that a Job Order is completed by the Job Order Time, as the times may be adjusted; or

6. Perform other material obligations under the Contract Documents and/or individual Job Orders;

Then the City, in addition to any other rights and remedies provided in the Contract Documents or by law, will have the rights stated in Articles 8.2 and 8.3.

In the event the City cancels this Contract or any part of the services under any Job Order, the City will notify Contractor in writing, and immediately upon receiving this notice, Contractor will discontinue advancing the Work under this Contract or the Job Order and proceed to close all operations of any affected Job Order or this Contract.

- B. If the City provides Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and Contractor fails to comply in a time frame specified, the City may have the Work accomplished by other sources at Contractor's expense and without an increase to the Job Order Price
- C. Upon the occurrence of an event stated in Article 8.4(B), the City may provide written notice to Contractor that it intends to cancel the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Contractor's receipt of notice.
 1. If Contractor fails to cure, or reasonably commence to cure, the problem, then the City may give a second written notice to Contractor of its intent to cancel within an additional seven (7) day period.
 2. If Contractor, within this second seven (7) day period, fails to cure, or reasonably commence to cure the problem, then the City may declare the Contract cancelled for default by providing written notice to Contractor of this declaration.
- D. Upon declaring the Contract cancelled in accordance with Article 8.4(C), and for the purpose of completing the Work, the City may for all Job Orders enter upon the premises and take possession of all materials, equipment, scaffolds, tools, appliances and other items, which have been purchased or provided for the performance of the Work, all of which Contractor now transfers, assigns and sets over to the City for this purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- E. If through any cause, Contractor fails to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor violates any of the covenants, Contracts, or stipulations of this Contract, the City may withhold any payments to Contractor for the purpose of setoff until the exact amount of damages due the City from Contractor is determined by a court of competent jurisdiction.
- F. In the event of a cancellation, Contractor will not be entitled to receive any further

payments under the Contract Documents until the Work on all Job Orders is completed in accordance with the Contract Documents. At that time, Contractor will only be entitled to be paid for Work performed and accepted by the City before its default.

- G. If the City's cost and expense of completing the Work exceeds the unpaid balance of a Job Order Price, then Contractor will be obligated to pay the difference to the City. These costs and expenses will include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the City in connection with the reprourement and defense of claims arising from Contractor's default.
- H. If the City cancels this Contract for cause and the cancellation is determined to have been without legal right, the cancellation for cause will be considered to have been a termination for convenience in accordance with the provisions of Article 8.2.

ARTICLE 9 - INSURANCE AND BONDS

9.1 INSURANCE REQUIREMENTS

- A. At the same time as execution of this Contract, Contractor will furnish the City of Scottsdale a Certificate of Insurance on a standard insurance industry ACORD form. The ACORD form will be issued by an insurance company authorized to transact business in the State of Arizona or one that is named on the List of Qualified Unauthorized Insurers maintained by the Arizona Department of Insurance.
- B. Contractor, Subcontractors and Subconsultants must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the Work by Contractor, its agents, representatives, employees, or Subcontractors.
- C. The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
- D. The City in no way warrants that the minimum limits contained in this Contract are sufficient to protect Contractor from liabilities that might arise out of the performance of the Contract Services under this Contract by Contractor, its agents, representatives, employees, Subcontractors or Subconsultants and Contractor is free to purchase any additional insurance as may be determined necessary. The City will not pay for higher limits, but if Contractor pays for insurance with higher limits, Contractor will name the City as an additional insured on any additional insurance.
- E. Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract,

and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

- F. Deductibles and Self-Insured Retentions. The policies stated in this Article may provide coverage which contains deductibles or self-insured retention amounts. Any deductibles or self-insured retention are not applicable to the policy limits provided to the City. Contractor is solely responsible for any deductible or self-insured retention amount. The City, at its option, may require Contractor to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit. Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

9.2 MINIMUM SCOPE AND LIMITS OF INSURANCE

Contractor must provide coverage at least as broad and with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expenses (Any one person)	OPTIONAL

Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 operations, independent contractors, products completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess Insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

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

Combined Single Limit Per Accident For Bodily Injury and Property Damage	\$1,000,000
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Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess Insurance must be "follow form" equal or broader in

coverage scope than underlying insurance.

C. Workers Compensation and Employers Liability

Workers' Compensation	Statutory
Employers Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$1,000,000

Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes applicable to Contractor's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance. The insurer must agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from Work performed by Contractor for the City.

D. Coverage Terms and Required Endorsements

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City of Scottsdale, its officers, officials, agents, and employees are to be named as additional insureds with respect to liability arising out of activities performed by, or on behalf of, Contractor including the City's general supervision of Contractor, products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
2. Except for Contractors Professional Liability and Workers Compensation insurance, for all insurance policies required under this Contract, the City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by Contractor even if those limits of liability are in excess of those required by this Contract.
3. Except for Contractors Professional Liability and Workers Compensation insurance, all insurance policies required under this Contract, including any excess insurance policies, must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees will be in excess of the coverage provided by Contractor and must not contribute to it.
4. For all insurance policies required under this Contract, insurance coverage must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. For all insurance policies required under this Contract, insurance coverage must not be limited to the liability assumed under the indemnification provisions of this Contract.
6. All insurance policies required under this Contract, must contain a waiver of subrogation against the City, its officers, officials, agents, and

employees, for losses arising from Work performed by Contractor for the City.

7. For all insurance policies required under this Contract, if Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the Contract Administrator for the City, unless such coverage is immediately replaced with similar policies.
8. Contractor, its successors or assigns, is required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of three (3) years following completion and acceptance of the Work. Contractor must submit Certificates of Insurance evidencing the Commercial General Liability insurance during this three (3) year period containing all the Insurance requirements stated in this Contract including naming the City of Scottsdale, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
9. The Commercial General Liability policy will be at least as broad as the Insurance Service Office, Inc.'s CG 0 0 01 07 98.

9.3 OTHER INSURANCE REQUIREMENTS

The policies are to contain, or be endorsed to contain, the following provisions:

- A. Contractors Professional Liability: Contractor must carry Contractors Professional Liability insurance to cover the residual, contingent, and passive design exposures of Contractor.
- B. Contractors Professional Limits of Liability: Contractor must carry limits of \$1,000,000 each Project and \$2,000,000 in the Aggregate under a stand-alone policy or included by endorsement under the Commercial General Liability policy. Contractor, its successors and or assigns, is required to maintain this Professional Liability insurance as specified in this Contract for a minimum period of three (3) years following completion and acceptance of the Work. Certificates of Insurance citing that applicable coverage is in force and contains the provisions required by this Contract must be submitted for the three (3) year period. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage will extend for three (3) years past completion and acceptance of the work or services, and Contractor, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a three (3) year period. If there is no Professional Liability work or service as a part of this Contract, the City will waive the Professional Liability Insurance requirement in writing.
- C. Builders Risk-Installation Insurance (Course of Construction)

Builders Risk-Installation and/or Boiler and Machinery Insurance coverage to be provided by Contractor as determined necessary by the City prior to the start of

construction.

Contractor bears all responsibility for loss to all Work being performed and to buildings under construction. Unless waived in writing by the City of Scottsdale, Contractor will purchase and maintain in force Builders Risk-Installation insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss or Open Perils policy form, for the completed value, at replacement cost equal to each Job Order contract price and all subsequent modifications.

This Builders Risk-Installation insurance must cover the entire Work including reasonable compensation for architects and Contractor's services and expenses and other "soft costs" made necessary by an insured loss. Builders Risk-Installation insurance must provide coverage from the time any covered property comes under Contractor's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.

Contractor must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders Risk-Installation insurance stated above if the Work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law and or testing requirements in the performance of this Contract.

Contractor will be responsible for any and all deductibles and the City must also be named as a Loss Payee under these policies. Contractor's insurance must be primary and not contributory; and waive all rights of subrogation against the City of Scottsdale, its officer, officials and employees. Contractor's insurance must name the City of Scottsdale, Contractor and all tiers of Subcontractors as insureds as respects their insurable interest at the time of loss. It must contain a provision that this insurance will not be canceled or materially altered without at least thirty (30) days advance notice to the City. Contractor is also required to give the City thirty (30) days advance written notice of the coverage termination for the Project.

The Builders Risk-Installation insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City. Builders Risk-Installation Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.

9.4 SUBCONSULTANT'S AND SUBCONTRACTOR'S INSURANCE

Unless Contractor's Subconsultants and Subcontractors can provide the same level of coverage as detailed in Article 9.2 and name the City and Contractor as Additional Insureds, Contractor's certificates must include all Subcontractors and Subconsultants as insureds under its policies or Contractor must maintain separate certificates and

endorsements for each Subcontractor and Subconsultant. All coverages for Subcontractors and Subconsultants must be in the amounts shown in Article 9.2, except for the General Liability Each Occurrence limit which shall be \$1,000,000. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least thirty (30) days advance notice to the City.

9.5 NOTICE OF CANCELLATION

If Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the City's Contract Administrator, unless such coverage is immediately replaced with similar policies. Each Insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided, canceled by either party, reduced in coverage or in limits until thirty (30) days written notice has first been given in accordance with Article 11.24, herein.

9.6 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or approved to conduct business in the State of Arizona and with an A. M. Best rating of no less than B++6. The City in no way warrants that the above required minimum Insurer rating is sufficient to protect Contractor from potential insurer insolvency. Failure to maintain insurance as required may result in termination of this Contract at the City's sole discretion.

9.7 VERIFICATION OF COVERAGE

- A. Contractor must furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverages must be clearly noted on the Certificate of Insurance.
- B. All certificates and endorsements are to be received and approved by the City before Contract Services commence except for Builders Risk-Installation Insurance. Each insurance policy required by this Contract must be in effect at or before the earlier of commencement of Work under the Contract Documents or the signing of this Contract, except for Builders Risk-Installation Insurance which, if required by the City, must be in effect before commencement of the Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- C. All Certificates of Insurance required by this Contract must be sent directly to the City of Scottsdale, Attn: Capital Project Management Office. **The project number and project description must be included on the Certificates of Insurance.** The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. Failure to provide a Certificate of Insurance with the appropriate verbiage will result in rejection of Contractor's Certificate and delay in contract execution. Additional Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and

returned or discarded.

9.8 APPROVAL

Any variation from the insurance requirements in this Article 9 must be approved by the City's Risk Management Division, whose decision will be final. Said variation will not require a formal contract amendment but may be made by administrative action.

9.9 BONDS AND OTHER PERFORMANCE SECURITY

- A. Before execution of each individual Job Order, Contractor must provide a performance bond and a payment bond for all construction services, each in an amount equal to the full amount of the agreed upon cost for that Job Order. Contractor may, at its own option, provide Payment and Performance Bonds for the entire Contract Price amount, but there shall be no obligation for the City to reimburse Contractor for bond costs incurred, except on an actual cost basis as each individual Job Order is issued. Bonds must be submitted in accordance with Title 34, Chapter 6 of the Arizona Revised Statutes and must be in substantially the same form as Exhibits A and B, attached to this Contract.
- B. Each bond must 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 must accompany the bonds. The Certificate must have been issued or updated within two (2) years before the execution of this Contract.
- C. The bonds must be made payable and acceptable to the City of Scottsdale.
- D. The bonds must be written or countersigned by an authorized representative of the surety and the bonds must have attached a certified copy of the Power of Attorney of the signing official.
 - 1. If one Power of Attorney is submitted, it must be for twice the total Job Order Price.
 - 2. If two Powers of Attorney are submitted, each must be for the total Job Order Price. Personal or individual bonds are not acceptable.
 - 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 must promptly furnish a copy of the bonds or must permit a copy to be made.
- E. All bonds submitted for this Project must be provided by a company which has been rated "A or better" by the A.M. Best Company.

ARTICLE 10 - INDEMNIFICATION

10.1 CONTRACTOR'S GENERAL INDEMNIFICATION

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation, for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any acts, omissions, negligence, recklessness, or intentional wrongful conduct to the extent caused by Contractor or any of its owners, officers, directors, agents or employees performing Work or Services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of Contractor employees. This indemnity includes any claim or amount arising out of, or recovered under, the Worker's Compensation Law or arising out of the failure of Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, Contractor agrees to waive all rights of subrogation against the City, its officers, agents, representatives, directors, officials, and employees for losses arising from the work performed by Contractor for the City.

Insurance provisions in this Contract are separate and independent from the Indemnity provisions of this Article and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. Nothing in this paragraph shall limit the responsibility of Contractor's insurer to pay the City for valid claims that are covered by Contractor's insurance policy. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

10.2 INTELLECTUAL PROPERTY

- A. Contractor must pay all royalties and license fees associated with its performance of services.
- B. To the extent permitted by law, Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the City of materials furnished or Work performed under this Contract.
- C. Contractor must defend any action or proceeding brought against the City based on any claim that the Work, or any part of the Work, or the operation or use of the Work or any part of it, constitutes infringement of any United States patent or copyright, now or subsequently issued. The City will give prompt written notice to

Contractor of any action or proceeding and will reasonably provide authority, information and assistance in the defense of the action. Contractor shall indemnify and hold harmless the City from and against all damages, expenses, losses, royalties, profits and costs, including but not limited to attorneys' fees and expenses awarded against the City or Contractor in any action or proceeding. Contractor agrees to keep the City informed of all developments in the defense of these actions. The City may be represented by, and actively participate through, its own counsel in any suit or proceedings if it so desires.

- D. If the City is enjoined from the operation or use of the Work, or any part of the Work, as the result of any patent or copyright suit, claim, or proceeding, Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Contractor cannot procure this right within a reasonable time, Contractor will promptly, at Contractor's option and at Contractor's expense, without an increase to the Job Order Price, (i) modify the Work so as to avoid infringement of any patent or copyright or (ii) replace the Work with Work that does not infringe or violate any patent or copyright.
- E. Articles 10.2(C) and 10.2(D) will not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright:
 - 1. Relating solely to a particular process or product of a particular manufacturer specified by the City and not offered or recommended by Contractor to the City; or
 - 2. Arising from modifications to the Work by the City or its agents after acceptance of the Work; or
 - 3. Relating to the copyrights of any specification, drawings, or any Design Documents provided by the City, the Design Professional, any consultant retained by the City, or by a Subcontractor or Supplier.
- F. The obligations stated in this Article 10.2 will constitute the sole Contract between the parties relating to liability for infringement or violation of any patent or copyright.

ARTICLE 11 – GENERAL PROVISIONS

11.1 MARSHALING AREA

Contractor shall contact the City of Scottsdale, Development Services to determine the requirements for obtaining a permit for marshaling areas it proposes to use. Marshaling areas must be fenced. Contractor will obtain written approval from the property owner for marshaling area use. This approval must contain any requirements, which are a condition of this approval. Marshaling yard requirements according to M.A.G. Subsection 107.6.1 and the City of Scottsdale Supplemental Specifications will apply.

11.2 CONTRACT DOCUMENTS

- A. Contract Documents are as defined in Article 12.
- B. The Contract Documents form the entire Contract between the City and

Contractor. No oral representations or other Contracts have been made by the parties except as specifically stated in the Contract Documents. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated herein.

- C. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents will take precedence in the order in which they are listed in the definition of Contract Documents in Article 12. As to drawings and plans, given dimensions will take precedence over scaled measurements, and large-scale plans over small-scale plans. Contract specifications will take precedence over contract plans.
- D. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the times and prices agreed upon for each Job Order. 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.
- E. This Contract, the Plans, Standard Specifications and Details, Special Provisions, Performance Bond, Payment Bond, Certificates of Insurance, Job Orders and Job Order Adjustments (if any) are by reference made a part of this Contract to the same extent as if set forth in full.
- F. Work Product
 - 1. All Work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared or procured in the performance of this Contract (collectively referred to as documents) are to be and remain the property of the City and are to be delivered to the City before the final payment is made to Contractor. In the event these documents are altered, modified or adapted without the written consent of Contractor or the Subconsultants, which consent Contractor or the Subconsultants will not unreasonably withhold, the City agrees to hold Contractor and the Subconsultants harmless to the extent permitted by law from the legal liability arising out of the City's alteration, modification or adoption of the documents.
 - 2. The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed, created by Contractor, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to Contractor.

11.3 MODIFICATIONS

The Contract Documents may not be changed, altered, or amended in any way except as consistent with the City of Scottsdale Procurement Code, as amended.

11.4 TIME IS OF THE ESSENCE

Time is of the essence with respect to the dates and times stated in the Contract Documents.

11.5 COOPERATION AND FURTHER DOCUMENTATION

Contractor agrees to provide the City any other duly executed documents, as will be reasonably requested by the City, to implement the intent of the Contract Documents.

11.6 ASSIGNMENT

Neither Contractor nor the City will, without the written consent of the other, assign, transfer or sublet any portion of this Contract or part of the Work or the obligations required by the Contract Documents.

11.7 FORCE MAJEURE

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

11.8 FUNDS APPROPRIATION

Multiterm contracts for job-order-contracting construction services are subject to A.R.S. §34-607, as amended. If the City Council does not appropriate funds to continue this Contract and pay for charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice to Contractor at least thirty (30) days before the end of its current fiscal period and will pay Contractor for all approved charges incurred through the end of the period.

11.9 CONSTRUCTION METHODS

If the City provides Contractor with a written order to provide adequate maintenance of traffic, clean-up, dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and Contractor fails to comply in the time frame specified, the City may have Work accomplished by other sources at Contractor's expense, without an increase in the Job Order Price.

11.10 UTILITY RELOCATIONS FOR CONSTRUCTION METHODS

If any utility is relocated or rebuilt to accommodate Contractor's construction methods and available equipment, the expense will be borne by Contractor and will be replaced to the original location before completion of the Job Order at the request of the City's

Project Coordinator at Contractor's sole expense, without an increase in the Job Order Price.

11.11 DAMAGED UTILITIES DURING CONSTRUCTION

Any utilities damaged during construction shall be replaced at Contractor's expense, without an increase in the Job Order Price, as per the requirements of the M.A.G. Standard Specifications.

11.12 SUCCESSORS AND ASSIGNS

This Contract will extend to and be binding upon Contractor, its successors and assigns, including any individual, company, partnership, or other entity with or into which Contractor will merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which Contractor will sell its assets, except that services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

11.13 CONFLICT IN LANGUAGE

All services and Work performed will conform to all applicable City of Scottsdale codes, ordinances and requirements as outlined in the Contract Documents. If there is a conflict in interpretation between provisions in this Contract and those in exhibits, the provisions in this Contract will prevail.

11.14 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and Contractor, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and Contractor and not for the benefit of any other or third party.

11.15 GOVERNING LAW AND VENUE

This Contract and all Contract Documents will be considered to be made under and will be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions. Any action to enforce any provision of this Contract or to obtain any remedy with respect to this Contract shall be brought in the Superior Court of Maricopa County, Arizona, and for this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of that Court and waives the right to have such action removed to Federal District Court.

11.16 SEVERABILITY

If any provision of the Contract Documents or their application to any person or circumstance is invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application of the Contract Documents will not be affected and will be enforceable to the fullest extent permitted by law. In accordance with the provisions of A.R.S. § 41-194.01, as amended, should the Attorney General give notice to the City that any provision of the Contract Documents violates state law or the Arizona

Constitution, or that it may violate a state statute or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from the Contract Documents and the City and Contractor shall, within ten (10) days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s).

11.17 LEGAL REQUIREMENTS

Contractor shall perform all Contract Services in accordance with all Legal Requirements and will provide all notices applicable to the Contract Services as required by the Legal Requirements.

11.18 INDEPENDENT CONTRACTOR

The services the Contractor provides to the City are that of an Independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract. Upon request, the Contractor shall provide the required I.R.S. Form W-9 which is available from the IRS website at www.IRS.gov under its forms section.

Any provisions in the Contract Documents that may appear to give the City the right to direct Contractor as to the details of accomplishing the Work or to exercise a measure of control over the Work means that Contractor will follow the wishes of the City as to the results of the Work only. These results will comply with all applicable laws and ordinances.

11.19 CITY'S RIGHT OF CANCELLATION

Pursuant to A.R.S. § 38-511, as amended, the City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a contractor to any other party to the contract with respect to the contract's subject matter. The cancellation will be effective when all other parties to the contract receive the City's written notice unless the notice specifies a later time.

11.20 SURVIVAL

Except as expressly agreed herein, all warranties, representations and indemnifications by Contractor shall survive the completion, expiration, and/or termination of this Contract.

11.21 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Scottsdale has any interest, financially, or otherwise, in the firm. For breach or violation of this warranty, the City will have the right to annul this Contract without

liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of any commission, percentage, brokerage, or contingent fee.

11.22 NO WAIVER

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

11.23 HEADINGS

The headings used in this Contract, or any other Contract Documents, are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.

11.24 NOTICE

All notices or demands required by this Contract must be given to the other party in writing, delivered by hand or by registered or certified mail at the addresses stated below, or to any other address the parties may substitute by giving written notice as required by this section. Notice by electronic mail or facsimile will not be considered notice.

To City:	City of Scottsdale Attn: Alison Tymkiw 7447 E Indian School Road, Ste 205 Scottsdale, AZ 85251
To JOC Contractor:	J. Banicki Construction, Inc. Attn: Mike Abraham 4720 E. Cotton Gin Loop, Suite 240 Phoenix, AZ 85040

11.25 ADDITIONAL CITY RIGHTS REGARDING SECURITY INQUIRIES

Projects may be completed in both secure and non-secure City facilities. All Contractor and Subcontractor employees may be required to pass mandatory background checks prior to the start of any Work and be issued access badges by City of Scottsdale Municipal Security. In addition to the foregoing, the City reserves the right to: (1) have an employee/prospective employee of Contractor be required to provide fingerprints and execute any other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not that information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contractor's employees or prospective employees; and, (4) object, at any time and for any reason, to an employee of Contractor performing Work (including supervision and oversight) under this Contract.

- A. Provisions Applicable to all Contractor Contracts and Subcontracts. Contractor will include the terms of this provision for employee background and security checks

and screening in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

- B. Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Contract, as stated above, are material to the City's entry into this Contract and any breach by Contractor may, at the City's sole option and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Contract. Termination will subject Contractor to liability for its breach of contract.

11.26 HAZARDOUS MATERIALS

- A. Upon discovery of hazardous materials Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.
- B. Unless included in the Work, if Contractor encounters onsite, or as material to be incorporated in the Work, any material which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by public health laws, it will immediately stop work and report the condition to the City.
- C. If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by public health laws, Contractor will not resume Work in the affected area until the material has been abated or rendered harmless. Contractor and the City may agree, in writing, to continue Work in non-affected areas onsite.
- D. An extension of Job Order Time may be granted in accordance with Article 5.
- E. Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- F. Despite the provisions of this Article 11.26, the City is not responsible for hazardous conditions or materials introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable. Contractor will indemnify, defend and hold harmless the City and the City's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous conditions or materials introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable.

11.27 TRAFFIC CONTROL

- A. Complete street closures will not be permitted unless specified in the Special Provisions or approved by the City. The timing and sequence of street closures will be approved by the Traffic Engineering Director, or designee, at least fourteen (14) days before the closure. This approval is necessary to provide coordination with other roadway projects and special events.
- B. Adequate barricades and lighted warning signs must be installed and maintained by Contractor throughout the duration of any Project. All traffic control must be in accordance with the current version of the City of Scottsdale Supplement to MAG

Uniform Standard Specifications Section 401 or as required by the approved barricade plan unless otherwise specified in the Special Provisions.

- C. Contractor will submit a construction schedule and a barricade plan to the City Traffic Engineering Director, or designee, for approval or modification at least seventy-two (72) hours before construction is initiated, and must wait to commence construction until the plan is signed as accepted by the City Traffic Engineering Director, or designee.

11.28 MATERIAL SOURCE

No material source has been designated by the City for use under this Contract. MAG Specification, Section 106 will apply as will ADOT Standard Specifications 1982, Section 106.1, 106.2, 106.7 & 106.8, which outline controls and Section 1001-1, -2, & -4 concerning approval of Contractor-Furnished Source and supplemental Contracts in regards to environmental analysis and the liability for materials testing costs.

Contractor and Subcontractor furnished material sources situated in the 100-year flood plain of any stream or watercourse will not be allowed if located within 1.0 mile upstream and 2.0 miles downstream of any highway structure or surfaced roadway crossing.

A Contractor and Subcontractor-furnished source will be defined as a material source, which is neither an ADOT furnished source nor a commercial source, as defined in this Contract.

A commercial source will be defined as a material source in which the owner or producer has been regularly engaged for at least one (1) year during regular business hours on a regular basis in the processing and selling of sand, rock, ready mixed Portland cement concrete, asphaltic concrete and other similar products normally produced and sold to all parties. The company must have an Arizona retail sales tax license.

The location of any new material source or existing non-commercial material source proposed for use under this Contract must be reviewed by the appropriate agency having flood plain management jurisdiction over the area of proposed source location. Contractor and Subcontractor will obtain a letter from the agency addressed to the Contract Administrator certifying that the proposed source location conforms to the required conditions and the applicable Standard Specifications. Contractor will familiarize himself with the nature and extent of the Contract Documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

11.29 FAMILIARIZATION WITH APPLICABLE LAWS

Contractor will familiarize itself with the nature and extent of the Contract Documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. Contractor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations.

11.30 NATIVE PLANTS

Contractor agrees it will take whatever steps, procedures or means necessary to remove, move, displace and save all native plants within the contract work area in accordance with the City of Scottsdale Revised Code, as amended, and all applicable state and county statutes, ordinances, codes and other policy requirements and recognized methods, procedures, techniques and equipment for protection, salvage, and handling of all plants to be moved from the construction area. This is not a pay item unless specified upon the Schedule of Bid Items.

11.31 ENDANGERED HARDWOODS

Contractor agrees any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions will not use endangered tropical hardwood unless an exemption is granted by the Director of the State of Arizona, Department of Administration.

11.32 CONSTRUCTION ACTIVITY

Contractor agrees that all construction activity occurring on Site shall conform to the hour and noise requirements of the City of Scottsdale Revised Code, as amended.

11.33 COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

- A. Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989, Fair Labor Standards Act, Age Discrimination in Employment Act, Family and Medical Leave Act, National Labor Relations Act, Occupational Safety and Health Act, and other local, state or federal law governing Contractor's labor and employment practices. Contractor agrees to comply with these laws in performing this Contract and to permit the City to verify compliance. Contractor further agrees that any violation of provision on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

Contractor will also comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. §34-302, "Residence Requirements for Employees," as amended. Contractor will include the terms of this provision in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. §41-4401, Contractor warrants to the City that Contractor and all its Subcontractors will comply with all Federal Immigration laws and regulations that relate to its employees and that Contractor and all its Subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by Contractor or any of its Subcontractors will be considered a material breach of this Contract and may subject Contractor or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of Contractor or any Subcontractor who works on this Contract to ensure that Contractor or any

Subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of Contractor and any of its Subcontractors to ensure compliance with this warranty. Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider Contractor or any of its Subcontractors in material breach of this Contract if Contractor and its Subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A), as amended. The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract Contractor enters into with any and all of its Subcontractors who provide services under this Contractor any Subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or Subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. Contractor will take appropriate steps to assure that all Subcontractors comply with the requirements of the E-Verify Program. Contractor's failure to assure compliance by all its Subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

- B. Compliance with Americans with Disabilities Act. Contractor acknowledges that, in accordance with the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this provision on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.
- C. Equal Employment Opportunity and Discrimination. For the duration of this Contract, Contractor represents and warrants it will comply with all applicable local, state and federal laws governing equal employment opportunities, or prohibiting employment or other discrimination based on any protected characteristic including but not limited to actual or perceived race, color, religion, sex, age, disability, national origin, sexual orientation, gender identity, or U.S. military status. City of Scottsdale Revised Code, Chapter 15 mandates Contractor compliance with the policies contained therein. Contractor agrees that any violation of provision on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

Contractor will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender

identity, or national origin.

- D. No Preferential Treatment or Discrimination. In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin. To avoid the appearance of impropriety, Contractor shall not make any donation to the City, of any goods or services during the term of this Contract, unless it has specifically been approved by the City Manager or designee.
- E. Advertising. No advertising or publicity concerning the City using Contractor's services shall be undertaken without prior written approval of such advertising or publicity by the Contract Administrator and the City Attorney.

11.34 DATA CONFIDENTIALITY

- A. As used in this Contract, 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 Contractor in the performance of this Contract.
- B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with Contractor's performance of this Contract is confidential and proprietary information belonging to the City.
- C. Contractor will not divulge data to any third party without first obtaining the written consent of the City. Contractor will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided Contractor has first given the required notice to the City:
 - 1. Data, which was known to Contractor before its performance under this Contract unless the data was acquired in connection with the Work performed for the City;
 - 2. Data which was acquired by Contractor in its performance under this Contract and which was disclosed to Contractor by a third party, who to the best of Contractor's knowledge and belief, had the legal right to make disclosures and Contractor is not otherwise required to hold the data in confidence; or
 - 3. Data, which is required to be disclosed by virtue of law, regulation, or court order to which Contractor is subject.
- D. In the event Contractor is required or requested to disclose data to a third party, or any other information to which Contractor became privy as a result of any other contract with the City, Contractor will first notify the City as required in this Article of the request or demand for the data. Contractor will give the City sufficient facts

so that the City can be given an opportunity to first give its consent or take any action the City may consider appropriate to protect the data or other information from disclosure.

- E. Unless prohibited by law, within ten (10) days after completion of services for a third party on real or personal property owned or leased by the City, Contractor will promptly deliver, as stated in this Article, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Contract.
- F. 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 Article are violated by Contractor, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will be considered to cause irreparable harm that justifies injunctive relief in court.

11.35 CONFLICT OF INTEREST

- A. To evaluate and avoid potential conflicts of interest, Contractor will provide written notice to the City, as stated in this Article, of any work or services performed by Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. The notice will be given seven (7) business days before commencement of the Project by Contractor for a third party, or seven (7) business days before an adverse action as defined below. Written notice and disclosure will be sent to the City Senior Representative identified in Article 7.4.
- B. Actions that are considered to be adverse to the City under this Contract include but are not limited to:
 - 1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
 - 2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
 - 3. Using data to produce income for Contractor or its employees independently of performing the services under this Contract, without first obtaining the written consent of the City.
- C. Contractor represents that except for those persons, entities and projects identified to the City, the services to be performed by Contractor under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.
- D. Contractor's failure to provide a written notice and disclosure of the information stated in this Article on Conflicts of Interest will constitute a material breach of this Contract.
- E. This Contract is subject to cancellation by the City of Scottsdale in accordance with the provisions of A.R.S. § 38 511, as amended.

11.36 COMMENCEMENT OF STATUTORY LIMITATION PERIOD AND STATUTE OF REPOSE

- A. Before Final Completion. As to acts or failures to act occurring before the relevant date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will be considered to have accrued in any and all events not later than the date of Final Completion.
- B. Between Punch List Preparation and Final Completion. As to acts or failures to act occurring between the relevant date of Punch List Preparation and before Final Completion, any applicable statute of limitation will begin to run and any alleged cause of action will be considered to have accrued in any events not later than the date of Final Completion.
- C. After Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will be considered to have accrued in any and all events not later than the date of any correction of the Work or failure to correct the Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or the City, whichever occurs last.
- D. Statute of Repose. The time period for the applicable Statute of Repose will commence to run at the time specified in A.R.S. §12-552 as it is amended or renumbered from time to time.

11.37 LOSS AND DAMAGES

Except as expressly provided in this Contract, all loss or damage arising out of the nature of the Work to be done or from the action of the elements, or from any unforeseen circumstances, in the prosecution of the same, or from any unusual obstructions or difficulties which may be encountered in or during the prosecution of the Work, or from any casualty whatsoever of every description, will be sustained and borne by Contractor at its sole cost and expense. By signing this Contract, all rights of subrogation are waived against the City, its officers, officials, agents and employees.

11.38 RIGHTS-OF-WAY

The M.A.G. Standard Specification 107.12 is modified to read as follows: "Contractor, at its own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage and maintenance purposes, which are required in addition to existing easements or rights of way secured by the City as indicated upon the plans."

11.39 EXISTING TRAFFIC AND STREET SIGNS AND TRAFFIC SIGNAL EQUIPMENT

Contractor will use due care when excavating at or near intersections where traffic signal underground conduit is located. Contractor will notify the Transportation Maintenance Traffic Signal Division (tel. 480.312.5620) at least forty-eight (48) hours in advance of any work at the intersections. Contractor will be responsible for the installation and maintenance of temporary overhead traffic signal cable as specified by the

Transportation Department when underground conduit is to be severed by excavations at the intersection. The Transportation Department will have all underground traffic conduit located and will provide the necessary City Technicians to assist Contractor in identifying wiring phases and direction of conduit runs upon twenty-four (24) hours' notice from Contractor and at least one (1) day before Contractor's scheduled wiring and installation of temporary cables. Contractor will be responsible for the wiring and connection of all temporary cable within the pull boxes and terminal compartments. The Transportation Department will provide a City technician to assist Contractor with connecting field wiring within the traffic signal control cabinet. Contractor will provide, at its expense, at least one off-duty uniformed Police Officer as may be required to direct traffic while the traffic signal is turned off and the wiring is transferred. Contractor will be responsible as specified by the Traffic Department for the repair and restoration of all traffic signal overhead and underground items that have been damaged or modified. The City does not permit the splicing of Magnetic Detector Loops.

11.40 CERTIFICATION OF USE OF BENCHMARKS

In compliance with the City's Design Standards & Policies Manual (DS&PM), Sections 9-1.1 and 9-1.301, it is the City's intent that Contractor must use both horizontal and vertical benchmarks with City of Scottsdale published values for any survey on all public works projects. These published values are available for public use at the following website: <https://eservices.scottsdaleaz.gov/maps/benchmarks>. AT LEAST 1 HORIZONTAL AND 1 VERTICAL BENCHMARK MUST MATCH THE NORTHING, EASTING OR ELEVATION VALUES PUBLISHED ON THE CITY'S WEBSITE. If required by the City, Contractor must sign and submit with this Contract, the Certificate of Use attached and by reference made a part of this Contract.

11.41 TAX INDEMNIFICATION

The fee listed in this Contract includes any and all taxes applicable to the activities under this Contract. The City will have no obligation to pay additional amounts for taxes of any type. Contractor, its Subcontractors, Subconsultants and Suppliers, shall pay all Federal, state and local taxes applicable to its operation and any persons employed by Contractor, its Subcontractors, Subconsultants and Suppliers, except as may be otherwise provided in this Contract. Contractor shall, and also require its Subcontractors, Subconsultants and Suppliers to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

11.42 ISRAEL BOYCOTT/FORCED LABOR PROVISIONS

By executing this contract, Contractor certifies that it is not currently engaged in and will not for the duration of this Contract engage in boycott activity proscribed by A.R.S. § 35-393 *et seq.*, as amended.

Pursuant to A.R.S. § 35-394, as amended, Contractor warrants and certifies that it does not currently, and agrees for the duration of this Contract that it will not use:

- 1) The forced labor of ethnic Uyghurs in the People's Republic of China.

- 2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 3) Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Contractor becomes aware during the term of this Contract that Contractor is not in compliance with this Article, Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. Failure of Contractor to provide a written certification that Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the City of its noncompliance will result in automatic termination of this Contract, unless an earlier contract termination, cancellation, or expiration date applies.

ARTICLE 12 – DEFINITIONS

"Allowance" means an agreed amount by the City and Contractor for items which may be required to complete the scope of work.

"As-built Document" – "As-built in construction is equivalent to "as-is." Drawings deemed "as-built" are final drawings that include all changes made during the actual construction process. These drawings represent the actual existing constructed conditions as opposed to designs or a proposed condition. The As-built Documents should be per A.R.S. § 32-152.

"Blueline or Blackline Prints" – Prints that allows comparison of document versions to show what has been revised.

"City" means the City of Scottsdale, Arizona, an Arizona municipal corporation. Regulatory activities handled by the City of Scottsdale Development Services, Planning and Fire Departments or any other City department are not subject to the responsibilities of the City under this Contract.

"City's Representative" means the person designated in Article 7.4(A)(2).

"City's Senior Representative" means the person designated in Article 7.4(A)(1).

"Construction Coordinator" means a City employee who coordinates the daily construction activities with Contractor, and with their inspection staff that performs quality control inspections, enforces project plans and specifications and adopted City codes and ordinances.

"Construction Documents" means the plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements and incorporating addenda and approved Job Order Adjustments.

"Construction Fee" means Contractor's home office overhead and profit, whether at Contractor's principal or branch offices. This includes the home office costs and any limitations or exclusions that may be included in the General Conditions for the construction phase.

"Contract" or "Job Order Contract" means this fully executed Contract between the City and Contractor.

"Contract Administrator" means the person designated in Article 7.4(A) or designee. The Contract Administrator will serve as Contractor's primary point of contact with the City, monitor Contractor's performance, review and approve invoices, establish delivery schedules, and in conjunction with Purchasing ensure Certificates of Insurance are current, conform to the requirements of this Contract, and are in the City's possession. Contractor will direct any reports and/or special requests to the Contract Administrator.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and Contractor: (1) Change Orders; (2) Job Order Adjustments; (3) Contract Modifications; (4) Job Orders; (5) this Contract including all exhibits and attachments; (6) Contractor's Proposal (if any); (7) Contractor Statement of Qualifications.

"Contract Modification" means a specific written concurrence between the City and Contractor for changes to this Contract consistent with the City of Scottsdale Procurement Code, as amended.

"Contract Price" means the amount or amounts stated in Article 4 subject to any Contract Modifications.

"Contract Services" means the services required by the Contract Documents.

"Contract Time(s)" means the time stated in Article 3, subject to Contract Modifications as permitted by this Contract.

"Contractor" is Contractor selected by the City to provide or procure construction services as detailed in this Job Order Contract.

"Contractor Payment Request" means the City form used by Contractor to request progress payments for Job Orders in accordance with Article 6.

"Contractor's Representative" means the person described in Article 7.4(B)(2).

"Contractor's Senior Representative" means the person described in Article 7.4(B)(1).

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

"Delay" means an unanticipated event or interference with the progress of a critical path work activity being performed at the time that causes the completion date of the project to be extended. Delays may be caused by the City, Contractor, third parties or Force Majeure events. Delays may be excusable, compensable, non-compensable or concurrent.

"Delay, Compensable" means delay that results from the City's actions or inactions that entitle Contractor to both a time extension and delay damages.

"Delay, Concurrent" means two (2) or more delays, within the same timeframe, both of which would independently impact the Project Schedule. If one delay is caused by the City and the other by Contractor, Contractor will generally be entitled to an excusable, non-compensable time extension, to the degree the delays may "overlap."

"Delay, Excusable" means an unforeseeable delay caused by an event beyond the control and without the fault or negligence of Contractor (including its Suppliers and Subcontractors). Excusable delays may be compensable or non-compensable, depending upon whether the terms

of the Contract or the law allows recovery of delay costs. Unless otherwise shown, it will generally be presumed that these delays are non-compensable.

"Delay, Non-Excusable" means a delay within the control of Contractor, its Suppliers and Subcontractors, or a delay resulting from a risk taken by Contractor under the terms of the Contract. Contractor will not be due any time extension or delay damages, and may be responsible for paying to the City, actual or liquidated damages for the delay.

"Deliverables" means the work products prepared by Contractor in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by Contractor may include, but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, Subcontractor procurement plan, Subcontractor Contracts, Subcontractor bid packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

"Design Professional" means a qualified, licensed design professional who furnishes design or construction administration services.

"Differing Site Conditions" comply with M.A.G. Standard Specifications, Subsection 102.4.

"Effective Date" means the date specified in this Contract on which the Contract becomes effective, but if no date is specified, the date on which the City executes this Contract.

"Field Order" means a written field directive prepared and signed by the City, directing a change in work that may or may not include an adjustment in contract price or contract time.

"Final Acceptance" means the completion of a Job Order as prescribed in Article 3.5.

"Hazardous Substance" - means:

- (a) Any substance designated pursuant to sections 311(b) (2) (A) and 307(a) of the clean water act.
- (b) Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA.
- (c) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.
- (d) Any hazardous air pollutant listed under section 112 of the federal clean air act (42 United States Code section 7412).
- (e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the federal toxic substances control act (15 United States Code section 2606).
- (f) Any substance which the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.

"Informational Submittals" – Submittals are required (common with construction projects) for the architect and engineer to verify that the correct products and quantities will be installed on a project.

"Job Order" or "Project" means a specific scope of Contract Services done pursuant to an individual Job Order and includes a specific written Contract between the City and Contractor for a Job Order including a Scope of Work, a Job Order Price, a Job Order Time and any special conditions that may apply to be performed under this Contract. The Job Order includes the plans, technical specifications, special provisions and Contractor's proposal either by reference or inclusion.

"Job Order Adjustment" or "Adjustment" means a written order signed by an authorized representative of the City and which approves changes in the Work required under a Job Order, the Job Order Price, or the Job Order Time consistent with the City of Scottsdale Procurement Code, as amended.

"Job Order Notice-to-Proceed," (NTP) means a written notice given by the City to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under that individual Job Order.

"Job Order Price" means the amount negotiated between Contractor and the City for an individual Job Order that includes costs, overhead, bonding, insurance, profit and other costs as agreed to and calculated on the Unit Prices, Cost-coefficient and Special Items as prescribed in Article 4.

"Job Order Time" or "Duration of the Work" means the number of Days from a Job Order Notice-to-Proceed to Substantial Completion. The approved Job Order Time will be made part of this Contract by executing an individual Job Order for that specific Project.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over a Project or Site, the practices involved in a Project or Site, or any Work.

"Liquidated Damages" means an amount Contractor will pay in compliance with Article 3.6.

"Must" and "will" as used in this Contract are mandatory.

"Owner Agent," "City's Agent" or "Owner Representative" see "City's Senior Representative."

"Payment Request" means a monthly progress payment request that is based on a monthly estimate of the dollar value of the Work completed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

"Professional Certification" – Professional certification is a designation which indicates that a person is qualified to perform a job or task. Professional certification can be trade certification or professional designation.

"Project Record Documents" means the documents created pursuant to Article 1.9.

"Project Record Drawing Prints" – Set of current design drawings used by construction contractor for reference during construction. These drawings are typically marked up during the construction process and are used to develop the subsequent "as-built" drawings.

"Punch List" means those minor items of Work to be completed before Final Acceptance which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a Certificate of Occupancy.

"Samples" means physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Values (SOV)" means the Document specified in the construction phase, which divides the Job Order Price into pay items, such that the sum of all pay items equals the Job Order Price for the construction phase Work, or for any portion of the Work having a separate specified Job Order Price. The SOV may or may not be output from the Progress Schedule depending on whether the Progress Schedule is cost-loaded or not.

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

"Site" means the land or premises on which a Job Order is located. Contractor will require all Subcontractors to include the street address of the Job Order in their contracts.

"Specifications" means those sections 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 applicable administrative details.

"Subcontractor" or "Subconsultant" means any person or entity retained by Contractor as an independent contractor to perform a portion of the Contract Services and must include material men and suppliers. All Subcontractors must be selected in accordance with the selection plan stated in Article 1.13.

"Substantial Completion" means when the Work, or when an agreed upon portion of the Work is sufficiently complete so that the City can occupy and use the Project or a portion of it for its intended purposes. This may include, but is not limited to: (1) approval by the City Fire Marshall and local authorities (Certificate of Occupancy); (2) issuance of elevator permit; (3) demonstration to the City that all systems are in place, functional, and displayed to the City or its representative; (4) installation of all materials and equipment; (5) City review and acceptance of all systems; (6) City review and acceptance of draft O&M manuals and record documents; (7) City operation and maintenance training completed; (8) HVAC test and balance completed [provide minimum 30 days before projected substantial completion]; (9) completed landscaping and site work; and (10) final cleaning.

"Supplier" means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with Contractor or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase work by Contractor or any Subcontractor.

"Work" means the entire completed construction or the various separately identifiable parts of the construction, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

[END OF TEXT- SIGNATURE PAGE TO FOLLOW]

CITY OF SCOTTSDALE, ARIZONA

CONTRACT NO. 2026-072-COS

CONTRACT

This Contract has been properly executed by the parties above named, on the date and year written above, to be retained by the City Clerk.

Contractor agrees that this Contract, as awarded, is for the stated Work and understands that payment for the Work will be made on the basis of the indicated amount, per the terms and conditions of this Contract.

CITY OF SCOTTSDALE, an
Arizona municipal corporation

CONTRACTOR: J. Banicki Construction, Inc.,
an Arizona corporation

By: _____
Lisa Borowsky, Mayor

By: _____

Name: _____

ATTEST:

Title: _____

Ben Lane, City Clerk

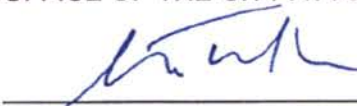
RECOMMENDED:

Jenn Myers, MPA, CPPO, NIGP-CPP, CPPB
Purchasing Director

Alison Tymkiw, Senior Director - City Engineer

George Woods
Safety & Risk Management Director

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY



Luis E. Santaella, City Attorney
By: Lydia Tulin, Assistant City Attorney

EXHIBIT A

**STATUTORY PERFORMANCE BOND
PURSUANT TO TITLE 34, CHAPTER 6,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract Amount)**

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal) as Principal, and _____, a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Scottsdale, County of Maricopa, State of Arizona in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City of Scottsdale, dated the _____ day of _____, 2026, for Bid No. (bid number), Project No. (project number), (project name), which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and Contracts 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 Contracts 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, Arizona Revised Statutes, and all liabilities on this Bond will be determined in accordance with the provisions of Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this Contract. The prevailing party in a suit on this bond will recover as part of the judgment reasonable attorney fees that may be fixed by a Judge of the Court. The performance under this bond is limited to the construction to be performed under the contract and does not include any design services, preconstruction services, financial services, maintenance services, operations services or any other related services included in the contract.

WITNESS our hands the _____ day of _____, 2026.

PRINCIPAL

BY:

SURETY (SEAL)

AGENCY OF RECORD

AGENCY ADDRESS

EXHIBIT B

STATUTORY PAYMENT BOND

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

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

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and _____ a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Scottsdale, County of Maricopa, State of Arizona, in the amount of _____ Dollars (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City of Scottsdale dated the _____ day of _____, 2026, for Bid No. (bid number), Project No. (project number), (project name), which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

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

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

WITNESS our hands the _____ day of _____, 2026.

PRINCIPAL

BY:

SURETY (SEAL)

AGENCY OF RECORD

AGENCY ADDRESS