

DESIGN/BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN CITY AND CONTRACTOR

(Where the Basis of Payment is the Cost of the Work plus a Fee,
with a Guaranteed Maximum Price Option)

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ARTICLE 1
AGREEMENT

This Agreement is made this 6th day of September in the year 2016 by and between the

CITY:

City of Cottonwood
Cottonwood City Hall
827 North Main Street
Cottonwood, AZ 86326

Organized and operating in Yavapai County, Arizona;

and the **CONTRACTOR:**

Schofield Civil Construction

for Design/Build services in connection with the following **PROJECT:**

The Cottonwood UV Disinfection System Installation project includes Design/Build services for the project components listed below:

- The design services, construction services, and construction as identified in the RFQ for the Cottonwood UV Disinfection System Installation project, to include but not be limited to the following:
- Obtaining all required permits; designing; providing all material, equipment and labor necessary to install new UV Disinfection System at the City Wastewater Treatment Facility located at 1480 W. Mingus Avenue.
- All related site work and utility work associated with the above.

ARTICLE 2**GENERAL PROVISIONS****2.1 TEAM RELATIONSHIP**

The City and the Contractor agree to proceed with the Project on the basis of trust, good faith and fair dealing, and will take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the date of Substantial Completion, as and if they are established by Amendment. The Contractor agrees to procure the architectural and engineering services set forth below, and to furnish construction and administration of the construction of the Work.

2.2 RELATIONSHIP OF THE PARTIES**2.2.1 CONTRACTOR SERVICES**

The Contractor shall provide professional engineering services for the Project in accordance with the terms and conditions of this Agreement. The Contractor's performance of services to the City shall be to carry out the activities of Project design, furnish construction and administration of the construction for the work, and to provide the technical documents and supervision of the design team as necessary to achieve the City's Project objectives.

2.2.2 CITY REPRESENTATIONS

2.2.2.1 The Project Manager for the City of Cottonwood is Mike Traynor. None of the activities of the Project Manager supplant or conflict with the designing, budgeting, or any other services and responsibilities customarily furnished by the Contractor or subconsultants in accordance with generally accepted Design/Build engineering or construction practices except as otherwise modified by this Agreement. The Contractor understands and agrees that the Project Manager is a City employee and is the City's representative to the Contractor and his consultants and subcontractors insofar as this Agreement is concerned. All instructions by the City to the Contractor relating to services performed by the Contractor will be issued or made through the Project Manager. All communications and submittals of the Contractor to the City shall be issued or made through the Project Manager unless the City otherwise directs in writing. The Project Manager will have the authority to establish procedures, consistent with this Agreement, to be followed by the Contractor and to call periodic conferences to be attended by the Contractor, and the Contractor's consultants and subcontractors, throughout the term of this Agreement.

2.2.2.2 The Contractor understands and agrees that it is not a third-party beneficiary of any contract between the City and the Project Manager, and the Contractor waives any rights, claims, or causes of action it may have as an alleged third-party beneficiary of any such contract.

2.2.2.3 Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against the City, the Project Manager, or the Contractor.

2.2.3 CONTRACTOR REPRESENTATION

2.2.3.1 The Contractor shall provide a list of all consultants that the Contractor intends to use relating to the Project. The list shall include such information on the qualifications of the consultants as may be requested by the City. The City reserves the right to review the consultants proposed, and the Contractor shall not retain a consultant to which the City expresses a reasonable objection. The City will pay the Contractor any increased costs of obtaining the services of consultants to replace those rejected by the City unless the rejected consultants lacked the qualifications and/or certifications to provide the services or unless the City can demonstrate a good cause basis for its rejection.

2.2.3.2 The Contractor shall provide to the City a list of the proposed key project personnel of the Contractor and its consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the City. Such key personnel and consultants shall be satisfactory to the City and shall not be changed except with the consent of the City. The City's approval of substituted personnel will not be unreasonably withheld.

2.2.4 ENGINEER

Engineering services shall be provided by Arizona licensed, independent design professionals retained by the Contractor or furnished by licensed employees of the Contractor and as required or as permitted by the laws of the state of Arizona. The person or entity providing engineering services shall be referred to as the Engineer. If the Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Contractor and the Engineer.

2.2.5 EXTENT OF AGREEMENT

This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. In the event language in this document contradicts or is in conflict with any other agreement, written or oral, this agreement language takes precedence.

2.3 DEFINITIONS

2.3.1 The **Contract Documents** consist of:

- a) Change Orders and written amendments to this Agreement signed by both the City and Contractor, including a GMP Amendment if executed;
- b) Amendments;
- c) This Agreement;

- d) Documents approved by the City pursuant to Subparagraphs 3.1.4, 3.1.5 or 3.1.6;
- e) The information provided by the City pursuant to Clause 4.1.2.a;
- f) The Contract Documents in existence at the time of execution of this Agreement which are set forth in Article 15;
- g) The City's Program provided pursuant to Subparagraph 4.1.1.
- h) The City's RFQ for this project;
- i) The Contractor's responses to the City's RFQ to the extent they do not conflict with the above;
- j) The Contractor's Guaranteed Maximum Price Proposal, if any.

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

2.3.2 The **Work** is the Design Phase Services procured in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase Services provided in accordance with Paragraph 3.3, Additional Services that may be provided in accordance with Paragraph 3.7, and other services which are necessary to complete the Project that are in accordance with and are reasonably inferable from the Contract Documents.

2.3.3 The term **Day** shall mean calendar day.

2.3.4 A **Subcontractor** is a person or entity who has an agreement with the Contractor to perform any portion of the Work. The term Subcontractor does not include the Engineer or any separate contractor employed by the City or Project Manager or any separate contractor's subcontractors.

2.3.5 A **Sub-subcontractor** is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

2.3.6 **Substantial completion** of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete and in accordance with the Contract Documents so that the City can safely fully utilize the Project, or a designated portion, for the use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the City and Contractor. The certificate shall state the respective responsibilities of the City and Contractor for security, maintenance, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction.

2.3.7 **Final acceptance/completion** of the Work means 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner's Project specifications and Owner training/start up activities.

2.3.8 The City's **Program** is an initial description of the City's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

ARTICLE 3

CONTRACTOR'S RESPONSIBILITIES

The Contractor shall be responsible for the procurement of the design and the construction of the Work consistent with the City's Program; as such Program may be modified by the City during the course of the Work. The Contractor shall exercise reasonable skill and judgment in the performance of its services to accomplish the goals of the City's program.

3.1 DESIGN PHASE SERVICES

3.1.1 PRELIMINARY EVALUATION

The Contractor shall provide a preliminary evaluation of the Project's feasibility based on the City's Program and other relevant information.

3.1.2 PRELIMINARY MASTER SCHEDULE

The Contractor shall prepare a preliminary Master Schedule of the Work for the City's written approval. The schedule shall show the activities of the City, Engineer and Contractor necessary to meet the City's completion requirements. The schedule shall be updated periodically according to the City's direction with the level of detail necessary to provide clarification as requested by the City in order to assure compliance with the Master Schedule. If an update indicates that a previously approved schedule will not be met, the Contractor shall recommend corrective action to the City in the form of a detailed, realistic, recovery schedule. The work will be scheduled, planned and reported using the Critical Path Method with Primavera, Sure Trak or other approved software.

3.1.3 PRELIMINARY ESTIMATE

When sufficient Project information has been identified or upon City's reasonable demand, the Contractor shall prepare for the City's written approval a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the City's budget, the Contractor shall make written recommendation to the City as to methods for resolving the issue.

3.1.4 SCHEMATIC DESIGN DOCUMENTS

The Contractor shall submit for the City's written approval Schematic Design Documents, based on the City's Program and other relevant information. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale and their relationship to the site and other structures. This submittal shall include an update of the preliminary schedule and a Schematic Design cost estimate. Eight sets of these documents shall be furnished to the City.

3.1.5 DESIGN DEVELOPMENT DOCUMENTS

The Contractor shall submit for the City's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. Ten sets of these documents shall be furnished to the City. The Contractor shall update the schedule and estimate based on the Design Development Documents.

3.1.6 CONSTRUCTION DOCUMENTS

The Contractor shall submit for the City's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications, including City supplied general conditions and general requirements, based upon codes, laws or regulations enacted at the time of their preparation. Construction shall be in accordance with these approved Construction Documents. Twelve sets of these documents shall be furnished to the City prior to commencement of construction.

3.1.7 DESIGN PHASE MEETINGS

Throughout the Design Phase, meetings between the City, the Contractor and Engineer shall be conducted at the discretion of the City as required to fully support the project and the City's needs, but no less than monthly to solicit the City's input into the design and to review the progress of the design. The Contractor or Engineer shall record and distribute meeting minutes of design phase meetings, noting all City directives and requests.

3.1.8 OWNERSHIP OF DOCUMENTS

The City acknowledges the Contractor's construction documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become property of the City upon completion of the construction documents and payment in full of all monies due to the Contractor for the Design Phase Services as identified in this Article, or upon termination of this Agreement at an earlier time and upon City payment of any pro rata amount due Contractor at the time of such termination. The Contractor shall not use the drawings and specifications, therefore, for any purpose not related to the Project without City's consent. The City will not reuse, for matters unrelated to the work and its subsequent usage, or make any modification to the plans and specifications without the prior written authorization of the Contractor. The City agrees to the fullest extent permitted by law, to indemnify and hold the Contractor harmless from any claim, liability or cost (including reasonable attorney's fees and defense cost) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the City or any person or entity that acquires or obtains the plans and specifications from or through the City without the written authorization of the Contractor.

3.2 GUARANTEED MAXIMUM PRICE PROPOSAL

3.2.1 At an appropriate stage of design as established by the City, the Contractor shall, if requested by the City, and at the sole discretion of the City, propose a GMP, which shall be the sum of the estimated Cost of the Work as defined in Article 8 and the contractor's Fee as defined in Article 7. At the City's sole discretion, the City may require multiple GMPs for specific elements of the Project to expedite and/or phase the Work or for such other purpose that may be in the City's best interest. If multiple or phased GMPs are utilized, they shall comply with all requirements set forth in this section 3.2 and all other sections of this Agreement. Acceptance of one GMP does not obligate the City to accept subsequent or any other GMPs, nor does it obligate the City in any manner beyond the GMP actually accepted. The Contractor shall provide the GMP document and a detailed schedule of values in a format that will be provided by the City. The GMP is subject to modification as provided in Article 9.

3.2.2 If a GMP, or any one of multiple of phased GMPs, is not established or agreed to by the City, all references in this Agreement to the GMP shall not be applicable, and the parties shall proceed on the basis of reimbursement of design phase services as set forth in Article 7. No amount shall be paid for construction or construction services not established or agreed to by the City absent a written agreement between the parties to the contrary.

3.2.3 The estimated Cost of the Work may include a contingency, a sum established by the Contractor and approved by the City, for use upon approval by the City to cover costs that are properly reimbursable as a Cost of the Work but are not the basis for a Change Order.

3.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Contractor shall include with the GMP proposal a written statement of its basis, which shall include:

- a. a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP proposal;
- b. a list of allowances and a statement of their basis;
- c. a list of the assumptions and clarifications made by the Contractor in the preparation of the GMP proposal to supplement the information contained in the drawings and specifications;
- d. the date of Substantial Completion upon which the proposed GMP is based, and the Schedule of Work upon which the date of Substantial Completion is based;
- e. a schedule of applicable alternate prices;
- f. a schedule of applicable unit prices;
- g. a statement of Additional Services included, if any; and
- h. the time limit for acceptance of the GMP proposal.

3.2.5 The Contractor shall meet with the City and Project Manager to review the GMP proposal. In the event that the City and Project Manager discover any inconsistencies or inaccuracies in the information presented, the City will promptly give written notice to the Contractor, who shall make appropriate adjustments to the GMP, its basis or both.

3.2.6 Unless the City accepts the GMP proposal in writing on or before the date specified in the GMP proposal for such acceptance and so notifies the Contractor, the GMP proposal shall not be effective.

3.2.7 Prior to the City's acceptance of the Contractor's GMP proposal, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the City may specifically authorize in writing.

3.2.8 Upon acceptance by the City of the GMP proposal, the GMP and its basis shall be set forth in an Amendment. The GMP and the date of Substantial Completion shall be subject to modification by changes in the Work as provided in Articles 6 and 9.

3.2.9 The GMP shall include in the Cost of the Work those taxes which are applicable at the time the GMP is established. If in accordance with the City's express written direction an exemption is claimed for taxes, the City agrees to indemnify, defend and hold the Contractor harmless for any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in accordance with the City's direction relative to the taxes as described in this section only.

3.3 CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase will commence upon the issuance by the City of a written notice to proceed with construction. If construction commences prior to execution of a GMP Amendment, the City's written notice to proceed will list the documents that are applicable to the part of the Work which the City has authorized. No Work shall commence until Contractor secures and provides, to the City, proof of all bonds as required by Arizona law to include, but not be limited to, performance and payment bonds.

3.3.2 In order to complete the Work, the Contractor shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

3.3.3 The Contractor shall give all notices, obtain all approvals and comply with all laws and ordinances legally enacted at the date of execution of the Agreement, which govern the proper performance of the Work. The Contractor shall secure and the City will pay all fees for required permits.

3.3.4 The Contractor shall prepare and submit a Preliminary Master Schedule of Work for the City's written approval. This schedule shall indicate the dates for the start and completion of the various stages of the Project including the dates when information and approvals are required from the City. Schedule software shall be Primavera,

SureTrak or other approved software. At the time a GMP proposal is submitted, a bar graph Construction Progress Schedule for each major element of construction shall also be submitted. Schedule software shall be Primavera, SureTrak, or other approved software. The Progress Schedule is subject to review by the City. The Progress Schedule must be directly related to Substantial and Final Completion and shall indicate the dates for the start and completion of the various components and phases of construction and shall be revised as required by the conditions of the Work, upon request of and subject to review by the City. This shall be done no less than monthly. The contractor shall provide an electronic copy of the original schedule and each monthly update to the Project Manager. Contractor agrees to promptly respond to all inquiries by the City concerning any deviation of the progress of construction from the Progress Schedule and to provide a recovery schedule for approval by the City upon request. Progress payments, in whole or in part, may be withheld if Contractor fails to timely respond to such request or if there is a significant delay from the Progress Schedule.

- a) The Construction Progress Schedule shall illustrate the planned, logical progression of construction activities and shall include all work to be performed under this contract.
- b. The Construction Progress Schedule shall have been derived from a network analysis. The Progress Schedule shall clearly indicate the path of critical activities and shall further indicate activity duration, earliest and latest start and finish dates, and float time for all except critical activities. The Progress Schedule shall also indicate all relationships between activities, shall not contain more than one critical path, and shall be presented in a time scaled graphical format for the project as a whole, with milestone dates shown for various required phases. The schedule will be rejected if the float is not able to be accurately calculated due to faulty activity logic.
- c. The Construction Progress Schedule shall include projected dates of submittal of all items of material for which submittals are required and shall include delivery dates of all items of material and equipment that are critical or have a long lead time. Contractor shall submit a monthly report summarizing all deviations from the Progress Schedule that will or may result in delay of the Project. Contractor shall prepare, not less frequently than monthly, a schedule summary report in a form and of sufficient detail and character as approved by City. The report, at a minimum, shall specify whether the Project is on schedule, and, if not, the reasons therefore, and the new schedule.
- d. Contractor shall also prepare a report not less than thirty calendar days after the GMP proposal is submitted which shall include a complete list of suppliers, items to be purchased from the suppliers or fabricators, time required for fabrication and the scheduled delivery dates for each item.
- e. Contractor shall prepare a monthly updated Construction Progress Schedule. The updated Schedule shall identify the status of all change requests, bulletins, and modifications. Progress Schedule updates shall indicate work completed to date and shall adjust the schedule to reflect

any change in the planned sequence of activities. The Contractor shall at all times manage the Work in substantial conformance with the Progress Schedule. Failure of the Contractor to manage the Work in substantial conformance with the Progress Schedule may be considered as a material default of this Contract. Failure to submit the update when required may delay processing of the Application for payment until acceptable submission is made.

- f. In the event of significant delays, lags or changes in the planned sequence of activities as determined by City, Contractor shall provide to City a revised Progress Schedule indicating proposed rescheduling of activities to achieve completion of the Project by the Substantial completion date.
- g. Additions to or deletions from the Contract authorized by Change Orders shall be reflected in the Progress Schedule.
- h. In conjunction with the Progress Schedule, Contractor shall provide a Procurement Schedule for all major or time critical components to be acquired and incorporated in the Project, which schedule shall be integrated into the Progress Schedule.
- i. The City will hold weekly construction progress meetings at the Site, or other location as designated by the City. The Project Manager will record and distribute the official meeting minutes. The Contractor shall report the progress of the Work in detail with reference to construction schedules. Contractor shall ensure that each currently active subcontractor shall have present a competent representative to report the condition of its work and to receive information.
- j. The Contractor shall provide to the City an anticipated monthly pay draw schedule based on percentage completed or some other approved method to be determined.

3.3.5 In determining responsibility for permit acquisition, the Contractor shall abide by the Permit responsibilities. The Contractor shall secure and the City will pay all fees for required permits.

3.3.6 The Contractor shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state, county and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. The Contractor, directly, or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Contractor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by the City and Project Manager or their employees, agents, separate contractors or tenants, unless said hazards are identified within the Scope of Work as agreed upon within the GMP. The City agrees to cause their employees, agents separate contractors and tenants to abide by and fully adhere to all applicable provisions

of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

3.3.7 The Contractor shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The City and the Project Manager will be afforded access to all Contractor records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Contractor shall preserve all such records for a period of five years after the final payment or longer where required by law.

3.3.8 The Contractor shall document, or provide daily written reports to the City on the progress of the Work. Such reports shall include at a minimum: weather conditions, equipment and manpower on site, and a narrative of each element of Work in progress.

3.3.9 The Contractor shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the City at mutually agreeable intervals.

3.3.10 At all times the Contractor shall maintain the site of the Work in a clean and hazard-free state. Debris and waste materials resulting from the Work shall be removed at the end of each work day. At the completion of the Work, the Contractor shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris including disbursed waste materials.

3.3.11 **The City will be conducting operations within the wastewater treatment plant, nearby buildings and outdoor areas. The Contractor will be required to perform work in a manner that will minimize the disruption of activities. Prior to beginning construction operations, the Contractor shall propose and receive City approval of the perimeter of a work area necessary for safe and efficient operations over which the Contractor shall maintain control during the construction period. Contractor shall not unreasonably encumber the site with materials or equipment. Contractor shall perform in a manner that safeguards the health, safety and welfare of visitors, staff and community.**

3.3.12 Contractor shall maintain at the Site (or other location approved by City) for City one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections (all changes and selections to be approved by City in advance) made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to City and shall be delivered to City upon completion of the Work.

3.3.13 At the date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to City: Record Drawings showing the field changes and selections (all changes and selections to be approved by City in advance) affecting the general construction, mechanical, electrical, plumbing, and all other work, and indicating the Work as actually installed. These shall consist of scaled and accurately drawn markings on a set of reproducible prints of the Drawings

obtained and paid for by Contractor. Contractor shall maintain at the Site one set of Drawings and indicate thereon each field change as it occurs. Within thirty (30) days of Substantial Completion, the Contractor shall furnish a computer disk of the record drawings, drawn in an AutoCAD format approved by the City.

3.3.14 Contractor shall maintain at the Site at all times a daily log ("Daily Log"), which describes daily manpower (by type and trade) working at the Site on the Project, any special or heavy equipment on Site and its use, weather conditions, labor disputes, tests conducted, persons visiting the Site, and any events that might affect the Progress Schedule or the quality of the Work. Contractor shall provide a current copy of the Daily Log to Project Manager at the weekly construction meetings.

3.3.15 Contractor is responsible for completing the Project consistent with City's existing property and other projects. **Contractor accepts full and exclusive responsibility for any damage to any portion of the Project, whether in full or in part, due to cutting, patching, alterations, excavation or other actions which may affect City or the work of other contractors. In the event Contractor feels that an alteration is necessary regarding the above, it is Contractor's affirmative responsibility to request and receive written consent by City for such action.** All parties to this Contract agree that they will perform this provision of this Agreement in good faith and in a commercially reasonable manner.

3.3.16 All areas requiring cutting and patching shall be restored to a completely finished condition, matching adjacent unpatched areas, and acceptable to City.

3.4 HAZARDOUS MATERIAL

3.4.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and /or clean-up. The Contractor shall not be obligated to commence or continue Work until any known or suspected Hazardous Material(s) discovered at the Project site has been removed, or rendered or determined to be harmless by the City as certified by an independent testing laboratory and approved by the appropriate government agency.

3.4.2 If, after the commencement of the Work, a known or reasonably suspected Hazardous Material is discovered at the Project site, the Contractor shall be entitled to immediately stop Work in the affected area. Under such conditions the Contractor shall immediately report the condition to the City and Project Manager and, if required, the government agency with jurisdiction.

3.4.3 The Contractor shall not be required to perform any Work relating to, or in the area of, known or suspected Hazardous Material without written mutual agreement.

3.4.4 The City will be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures will be the sole responsibility of the City, and will be performed in a manner minimizing any adverse

effect upon the Work of the Contractor. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written notification by the City that the Hazardous Material has been removed or rendered harmless.

3.4.5 If the Contractor reasonably incurs actual and direct additional costs and/or is actually delayed in achieving substantial and/or final completion due directly to the presence of known or suspected Hazardous Material, which the Contractor did not in whole or part introduce to the site, the Contractor shall be entitled to an equitable adjustment in the GMP and/or the date of Substantial Completion.

3.4.6 INDEMNIFICATION

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

3.4.6.2 In claims against any person or entity indemnified under this paragraph by anyone directly or indirectly employed by the Contractor, a Subcontractor, or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, employee benefit acts or other insurance.

3.4.7 The terms of this Paragraph 3.4 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

3.5 ROYALTIES, PATENTS AND COPYRIGHTS

3.5.1 The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify and hold the City and Project Manager harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

3.6 WARRANTIES AND COMPLETION

3.6.1 The Contractor warrants that all materials and equipment furnished for the Construction of this Project will be new unless otherwise approved by City; of good quality, in conformance with the Contract Documents, and free from defective workmanship, materials and hazardous materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion of the Work if the warranted items are fully installed, operational, and available for use and if not, at such time after the date of Substantial Completion as they are. The Contractor agrees to correct all construction performed under this Agreement which proves to be defective in workmanship and materials within a period of **two years** from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents or as may be allowed by law.

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

3.6.3 The Contractor shall collect all written warranties and equipment manuals and deliver them to the City.

3.6.4 The Contractor shall perform the checkout of utilities and operations of systems and equipment for readiness, perform their initial start-up and testing, and conduct a training program for City personnel in their operation.

3.7 ADDITIONAL SERVICES

3.7.1 Any Additional Services must be authorized in advance by the City in writing; the Contractor shall furnish or obtain from others the authorized services. The Contractor shall be paid for these additional services by the City as herein provided to the extent they exceed the obligation or reasonably inferable obligation of the Contractor under this Agreement. Examples of potential additional services are as follows:

- a. Providing additional financial feasibility or other special studies other than as required by or reasonably inferable from this Agreement.
- b. Providing additional planning surveys or alternative site evaluations other than as required by or reasonably inferable from this Agreement.
- c. Providing design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the Project, other than general planning and Master Planning for future work as may be indicated by the Program of Requirements.
- d. Making major revisions in Drawing, Specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the City or are due to causes beyond the control and without the fault or negligence or partial fault or negligence of the Contractor or its consultants or agents.
- e. Providing additional soils sampling, classification, and analysis other than as required by or reasonably inferable from this Article. However,

analysis of existing soils information and soils analysis during the Design Phase and recommendations needed during the Construction Phase of the Project are not considered to be additional services under any event.

- f. Preparing to serve or serving as an expert witness for the City in connection with any public hearing (with the exception of those outlined in scope), arbitration proceeding, or legal proceeding wherein the Contractor or Subcontractor of the Contractor is not a party or allegedly at fault; however, preparing to serve or serving as a fact witness for the City or rendering testimony necessary to secure governmental approval of zoning or land-use clearances for the Project shall not constitute an additional service.
- g. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats other than as required by or reasonably inferable from this Agreement.
- h. Providing additional services and costs necessitated by out-of-town travel required of and approved in writing by the City other than visits to the Project and other than for travel required to accomplish the Work and/or as expressly required by the Contract Documents.
- i. Providing any other services not otherwise included in this Agreement, reasonably inferable from this Agreement, or not customarily furnished in accordance with generally accepted Contractual practices consistent with the term of this Agreement.
- j. Providing design and engineering of any work outside the property line if said work is not expressly identified and included in the scope of Work subject to this Agreement.
- k. Providing consultation concerning replacement of Work damaged by fire or other causes and not due in whole or in part to Contractor's action or inaction during construction or furnishing services required in connection with the replacement of such work.
- l. Preparing additional documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the Construction Documents Phase, other than as required by or reasonably inferable from this Agreement.
- m. Providing additional special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the project, other than as required by or reasonably inferable from this Agreement.
- n. Providing extensive analyses of owning and operating costs.
- o. Providing interior design and other similar services required for or in connection with the selection, procurement, or installation of furniture,

furnishings, and related equipment other than as required or reasonably inferable from this Agreement.

- p. Making revisions to design documents after they have been approved by the City when revisions are due to causes beyond the control and not the fault or partial fault of the Contractor.
- q. Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the City.

ARTICLE 4

CITY RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY CITY

4.1.1 The City will provide full information in a timely manner regarding requirements for the Project, including the City's Program and other relevant information.

4.1.2 The City will provide:

- a. all available information describing the physical characteristics of the site, including existing conditions, subsurface and environmental studies, reports and investigations;
- b. inspection and testing services made during construction at the City's own discretion or as mutually agreed; and
- c. unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessment, including legal and other required services.
- d. The City shall furnish all information, requirements, reports, data, surveys and instructions in its possession relative to the Project for Contractor's use as Contractor may deem appropriate.

4.2 CITY RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 The City will provide the Program at the inception of the Design Phase and will review and approve schedules, estimates, Schematic Design Documents, Design Development Documents and Construction Documents furnished during the Design Phase as set forth in Paragraph 3.1.

4.3 CITY RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 The City will review and approve the Schedule of the Work as set forth in Subparagraph 3.3.4.

4.3.2 If the City and Project Manager know or become informed of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the City and Project Manager will give prompt written notice to the Contractor.

4.3.3 For this specific project, the City and Project Manager will communicate with the Contractor's Subcontractors, suppliers and Engineer only through the Contractor. The City and Project Manager will have no contractual obligations to Subcontractors, suppliers, or the Engineer.

4.4 THE PROJECT MANAGER

The City's Project Manager is Mike Traynor.

The Project Manager:

- a. is employed by the City as Project Manager
- b. will be fully acquainted with the Project;
- c. will furnish the information and services required of the City pursuant to Paragraph 4.1 so as not to delay the Contractor's Work; and
- d. will have authority to bind the City in all matters requiring the City's approval, authorization or written notice, unless such authority and/or action is limited by law or City policy to the City Council or City Administration. If the City changes their representative or the representative's authority as listed above, the City will notify the Contractor in advance in writing.

ARTICLE 5

SUBCONTRACTS

Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

5.1 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

5.1.1 There are two ways to select Subcontractors and major Suppliers prior to submission of any GMP Proposal. They are:

- a) A combination of qualifications and price derived through competitive bidding;
- b) Qualitative selection with the subsequent negotiation of a price that is reasonable, a prudent use of public funds and in the City's best interest.

Absent special circumstances documented in writing by the Contractor as set forth below, the combination of qualifications and price derived through competitive bidding process shall be used to select Subcontractors and Major Suppliers. The City has the sole discretion as to whether or not to allow the purely qualitative selection of Subcontractors and Suppliers. In any event, Contractor shall ensure compliance with Arizona Revised Statutes § 34-603(C)(2)(c), (e)(i-ii) and as they may be further modified relative to the selection of Subcontractors and Major Suppliers.

5.1.2 The City may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when the Contractor can demonstrate, in writing, that it is in the best interest of the Project and that the selection process will constitute a prudent use of public funds.

5.1.3 A purely qualification based selection of a Subcontractor(s) or Supplier(s) should only occur prior to the submittal of any applicable GMP Proposal.

5.1.4 The Contractor will prepare a Subcontractor or Supplier selection plan and submit the plan to the City for approval. The Contractor shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation.

5.1.5 The Contractor must receive City approval of the selected Subcontractor(s) or Supplier(s). If the Contractor is to self-perform under this alternative the Contractor must submit a detailed explanation and demonstration of the cost of the work it will self-perform. The Contractor must further provide documentation to demonstrate that for any work that is self-performed, the cost of any such work is a reasonable and prudent use of public funds. The City must approve the Contractor self-performance of any part of the work and the cost therefore prior to accepting any GMP proposal.

5.1.6 The Contractor will negotiate costs for services/supplies from each Subcontractor or Supplier selected under this method.

5.1.7 Within three (3) days of negotiating cost for services/supplies from all Subcontractors or Suppliers selected under this method, the Contractor shall then prepare a report for the City's approval identifying the recommended Subcontractor or Supplier for each category of the Work to be performed. The report shall be in a format approved by the City's representative and shall include, among other things, the amount of each such cost. The Contractor may, at its discretion or at the request of the City's representative, request written verification of any costs selected. The Contractor shall provide an explanation of the qualifying factors for each selection.

5.1.8 In all other cases, Contractor shall select Subcontractors and Major Suppliers pursuant to the following process which includes a combination of qualifications and price derived through competitive bidding or as may otherwise be agreed in writing by the parties. Contractor shall ensure that any such process is fully compliant with the above referenced Arizona law.

5.1.9 The Contractor will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors selected pursuant to a qualifications based procedure, for each trade in the Project for approval by the City and solicit bids for the various construction categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the Contractor may request approval by the City to submit less than three names. Without prior approval by the City, no change in the City-approved Subcontractors will be allowed.

5.1.10 If the Contractor desires to self-perform certain portions of the construction, it shall comply with and be subject to the requirements set forth in paragraph 5.1.5.

5.1.11 If the City objects to any nominated Subcontractor or to any nominated self-performed construction for good reason, the Contractor will nominate a substitute Subcontractor.

5.1.12 The Contractor will distribute drawings and specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

5.1.13 The Contractor shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the Contractor, in addition to bid price, shall consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor bids will be done with the City Representative in attendance to observe and witness the process. The Contractor will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the construction.

5.1.14 Upon completion of the Subcontractor selection process, the Contractor shall submit a summary report to the City of the entire Subcontractor selection process. The report will indicate, by bid process, all Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received and costs negotiated, compliance with Arizona law as cited in paragraph 5.1.1(b) and the selected Subcontractors for each category of Work.

5.1.15 The selected Subcontractors will provide a schedule of values, which will be used to create the overall project schedule of values.

5.1.16 Contractor shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.

5.1.17 Regardless of the selection procedure, the Contractor is responsible for ensuring that the costs of the Subcontractor's and/or Supplier's services are reasonable and a prudent use of public funds.

5.1.18 Regardless of the selection procedure and in any case, the Contractor is solely responsible for the cost and performance of the selected Subcontractors or Suppliers. The City's approvals under this section are not and shall not be construed to be a waiver, in part or in whole of Contractor's responsibility and obligation to perform as set forth in this Agreement or subsequent Construction Agreement or GMP and for the cost or less than the cost set forth in any GMP to which the parties agree.

5.1.19 Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the City provided that:

1. Assignment is effective at the sole option of the City and only upon termination of the Contract for cause, and only for those subcontract agreements which the City determines to accept by notifying the subcontractor in writing, and
2. Assignment is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

5.2 RETAINING SUBCONTRACTORS

The Contractor shall not retain any Subcontractor to whom the City has a reasonable and timely objection. The Contractor shall not be required to retain any Subcontractor to whom the Contractor has a reasonable objection. Any objections shall be made in writing and shall identify the specific nature of the objection.

5.3 MANAGEMENT OF SUBCONTRACTORS

The Contractor shall be responsible for the management of the Subcontractors in the performance of their work.

5.4 ASSIGNMENT OF SUBCONTRACT AGREEMENTS

The Contractor shall provide for assignment of subcontract agreements in the event that the City terminates this Agreement for cause as provided in Paragraph 12.2. Following such termination, the City will notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.

ARTICLE 6

CONTRACT TIME

6.1 COMMENCEMENT OF THE WORK

The Work shall commence on or about the date established by Amendment and shall proceed in general accordance with the Preliminary Master Schedule of Work, or subsequent approved schedules pursuant to articles 3.1.2 and 3.3.4.

6.2 SUBSTANTIAL AND FINAL COMPLETION

6.2.1 At such time as a GMP is accepted, a date of Substantial Completion of the Work shall be established as set forth in an Amendment. If a GMP is not established and the parties desire to establish a date of Substantial Completion, it shall be set forth in an Amendment. If such a date is established, time shall be of the essence of this Agreement.

6.2.2 The Contractor acknowledges that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, or within any proper extension granted in writing by the City, City will suffer damages which are difficult to accurately specify and ascertain. The Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date (such date hereinafter referred to as the "LD Date"), The Contractor agrees to pay Liquidated Damages, and further agrees that the City may deduct any or all sums for liquidated damages from any unpaid monies. Liquidated Damages are agreed to equal the sum of One Thousand dollars per day (\$1,000.00) for each day that actual Substantial Completion extends past the LD Date. All parties agree that the above stated liquidated damages amount and rate is reasonable given the needs, extreme scheduling and space difficulties, and disruption of the City in its educational process should the Work not be Substantially Complete by the LD Date.

6.2.3 Final Acceptance/Completion. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and Contractor will jointly inspect to verify that the remaining items of Work have been completed as set forth in Section 2.3.7. Upon the City's determination that Final Completion has been achieved, the City will issue a Final Acceptance/Completion Letter and payment pursuant to Section 10.2. Contractor understands that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, Contractor shall pay the City (\$1,000.00) as liquidated damages for each Day that Final Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

6.3 DELAYS IN THE WORK

6.3.1 If due to unexpected causes beyond the Contractor's control for which the City is responsible, and not due entirely or in part, to Contractor's or Subcontractors of Contractor's, actions or inactions a delay is incurred in the progress of the Work and Contractor incurs actual direct damages from such delay; then City and Contractor shall engage in negotiations regarding the above. In such case, the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion may be modified by written agreement as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the City and Project Manager or separate contractors employed by the City, preventing the Contractor from performing the Work, Hazardous Materials, differing site conditions not reasonably foreseeable, adverse weather conditions not reasonably anticipated, fire not due to fault or partial fault of the Contractor.

6.3.2 In the event delays to the project are encountered for any reason, all parties agree to undertake reasonable steps to mitigate the effect of such delays.

ARTICLE 7

COMPENSATION

7.1 DESIGN PHASE COMPENSATION

7.1.1 The cost of services performed directly by the Engineer shall be identified in Amendment No. 1, attached hereto, and subsequently as a line item in the GMP, shall be computed separately, and is independent from the Contractor's compensation for work or services directly performed by the Contractor. These costs shall be shown as separate items on the application for payment for both the Design Phase fees, and services through project completion. If an Engineer is retained by the Contractor, the payments to the Engineer shall be as detailed in a separate agreement between the contractor and Engineer and shall be the responsibility of the Contractor.

7.1.2 The City will compensate the Contractor in the amounts specified in Amendment 1 for Design and Preconstruction Services performed during the Design Phase as described in Paragraph 3.1 and preparation of a GMP proposal as described in Paragraph 3.2.

7.1.3 Payments for Design Services will be due and payable within thirty (30) days following approval of the Contractor's monthly invoice to the City. Payments due the contractor remaining unpaid for more than thirty (30) days from the due date of the invoice will bear interest at the legal rate.

7.2 CONSTRUCTION PHASE COMPENSATION

7.2.1 If a GMP is established and accepted by the City pursuant to Amendment No. 2, attached hereto, the City will, up to the amount of the GMP established in a GMP Amendment, and as it may be adjusted under Article 9, compensate the Contractor for Work performed following the commencement of Construction on the following basis:

- a. the Cost of the Work as allowed in Article 8; and
- b. the Contractor's Fee, including General Conditions, as detailed in the GMP Amendment, subject to adjustment as provided in Paragraph 7.4.1. The Contractor's Fee will be paid proportionately to the ratio that the monthly cost of the Work bears to the total estimated Cost of the Work.

The City shall not pay any amount for construction or construction services absent a prior written acceptance of a GMP and a GMP amendment or alternative written agreement between the parties.

7.2.2 The compensation to be paid under this Paragraph will be limited to the GMP established by Amendment, as the GMP may be adjusted under Article 9. In the event

the Cost of the Work plus the Contractor's Fee shall be less than the GMP as adjusted by Change Orders, the resulting savings shall be credited back to the City.

7.2.3 Payment for Construction Phase Services will be as set forth in Article 10. If Design Services continue to be provided after construction has commenced, the Contractor shall also continue to be compensated as provided in Paragraph 7.2, or as mutually agreed.

7.3 CONTRACTOR'S FEE

The Contractor's Fee includes the following if they are directly related to the Work:

- a. salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices, except employees listed in Subparagraph 8.2.2;
- b. general and administrative expenses of the Contractor's principal and branch offices other than the field office, except as may be expressly included in Article 8; and
- c. the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- d. costs related to the Contractor's safety program.

7.4 ADJUSTMENT IN THE CONTRACTOR'S FEE

7.4.1 Adjustment of the Contractor's Fee shall be made as follows:

- a. for changes in the Work as provided in Article 9, the Contractor's Fee shall be adjusted as follows as mutually agreed by the parties:
- b. for delays in the Work not caused, or not caused in part, by the Contractor, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. There will be an equitable adjustment in the Contractor's Fee to compensate the Contractor for increased expenses actually incurred which are directly related to the Project; and
- c. if the Contractor is placed in charge of managing the replacement of an insured or uninsured loss not caused by or the fault of the Contractor, Subcontractors or other parties for whom Contractor and/or Subcontractor are responsible, the contractor shall be paid an additional Fee in the same proportion that the Contractor's Fee bears to the estimated Cost of the Work, or as otherwise agreed to by the parties.

7.5 SEGREGATION OF DESIGN AND ENGINEERING SERVICES

7.5.1 Contractor and City agree that design and engineering services under this Agreement are substantial in relation to the other services required by this Agreement and are not inconsequential or merely incidental to the business of Contractor. Contractor and City further agree that assessment of Arizona Transaction Privilege Taxes on such services is not appropriate and that Contractor shall not charge City and City shall not be responsible for payment of, directly or indirectly, any such taxes arising from the design and engineering services provided under this Agreement. Contractor affirms the need and his obligation to segregate and separately document, account and charge design and engineering services separately from construction services so as to avoid any inappropriate assessment of Arizona Transaction Privilege Taxes on such services. Contractor will indemnify City against the payment of any such taxes arising from the design and engineering services provided under this Agreement in the event such taxes are assessed as a result of Contractor's failure to properly segregate, separate, document, account and charge for said design and engineering services not otherwise required by operation of law. Should the separate accounting and documentation of design and engineering services be found to be void or otherwise barred by law as a means of precluding the assessment of Arizona Transaction Privilege Taxes, the City will be responsible for the payment of applicable taxes provided that any such taxes are not assessed as a result of any act or omission by Contractor.

ARTICLE 8**COST OF THE WORK**

The City agrees to pay the Contractor for the Cost of the Work as defined in this Article. This payment shall be in addition to the Contractor's Fee stipulated in Article 7. However, in no event will the City pay the Contractor total compensation greater than the amount of the GMP established by Amendment, and as it may be adjusted under Article 9.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase Services as provided in Paragraph 7.1.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.2.1 Wages paid for labor in the direct employ of the Contractor in the performance of the Work.

8.2.2 Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below, if such functions are directly related to the Work.

8.2.3 Cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor's

standard personnel policy, insofar as such costs are paid to employees of the Contractor who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.

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

8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection, testing, transportation, storage and handling.

8.2.6 Payments made by the Contractor to Subcontractors for work performed under this Agreement.

8.2.7 Fees and expenses for design services procured by the Contractor except as provided by the Engineer and compensated in Paragraph 7.1.

8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value; and cost less salvage on such items used, but not consumed that remain the property of the Contractor. The Contractor shall reimburse the City for the salvage value of items used or salvage the items to the City.

8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work, whether rented from the Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs at rental charges consistent with those prevailing in the area. Rates for Contractor-owned equipment, quantities of equipment and actual use of equipment shall be subject to the City's prior approval and shall be submitted in the appropriate, detailed, specific, line items in the schedule of values, as part of any GMP proposal for the Work including the use of such equipment. In order for the City to responsibly monitor the equipment costs, the use, non-use or other status of said equipment shall be specifically and fully documented in writing in daily reports as a precondition for payment of said costs. City shall not be required to pay charges for such Contractor-owned equipment at rates invoiced unless the above conditions have been met, the rates are reasonable for the project's geographical area and the invoice reflects actual use as documented in daily reports.

Contractor shall identify all such equipment that may be required under this Contract and the expected amount of time equipment will be used in the performance of this Contract. Contractor shall develop an equipment pricing list, using the Rental Rate Blue Book (Bluebook), or such other rate book as the parties may mutually agree, to develop an equipment pricing list upon which the parties agree. The equipment pricing list shall be attached as an exhibit to any GMP proposal, and shall be used to support the line item amounts for such equipment in the GMP, and as a basis for equipment charges in any change orders. This equipment list shall identify the appropriate Bluebook, or other rate book, ownership rate (monthly, weekly, daily, and hourly) used and written justification therefor. Notwithstanding the foregoing, it remains the Contractor's obligation to demonstrate that the rental charges set forth in the GMP and actually charged are reasonable and appropriate for a project in Cottonwood, Arizona, and charges in excess of those reasonable rates will not be paid.

8.2.10 Cost of premiums for normal and customary contractor's and subcontractor's liability, workman's compensation and builders risk insurance as outlined in Article 11, is to be identified as a separate line item within the GMP. Professional liability insurance cost directly attributable to the actual Cost of Work may be included in the GMP as a separate line item; however, professional liability cost relative to the design phase of this Agreement and overall design liability was included in the design phase cost and shall not be included in the GMP or payable as part of the Cost of Work.

8.2.11 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Contractor is liable.

8.2.12 Permits, fees, and licenses, as well as testing and inspection of all materials as may be required by construction codes or generally accepted industry practice.

8.2.13 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

8.2.14 Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, telephone service at the site and reasonable petty cash expenses at the field office.

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

8.2.16 Cost of removal of all non-hazardous substances, debris and waste materials.

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

8.2.18 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contractor's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

8.3 DISCOUNTS

All discounts for prompt payment shall accrue to the City to the extent payments are made by the City. To the extent payments are made with funds of the Contractor, all cash discounts shall accrue to the Contractor, but shall be appropriately recorded, accounted and available for review by the City. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

8.4 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

8.4.1 Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

- a. conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. the availability of labor, water, electric power, and roads
- c. uncertainties of weather or physical conditions at the site;
- d. the conformation and conditions of the ground; and
- e. the character of equipment and facilities needed preliminary to and during work performance.

ARTICLE 9

CHANGES IN THE WORK

Changes in the Work, which are within the general scope of this Agreement, may be accomplished by Change Order or other written instrument without invalidating this Agreement.

9.1 CHANGE ORDERS

A Change Order is a written instrument, issued after execution of this Agreement, signed by the City and Contractor stating their agreement upon a change and the adjustment in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion. Each adjustment in the GMP resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase Services, other cost of the Work and the Contractor's Fee.

9.2 DETERMINATION OF COST

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

- a. unit prices set forth in this Agreement or as subsequently agreed;
- b. a mutually accepted, itemized lump sum;
- c. costs determined as defined in Paragraph 7.2 and Article 8 and a mutually acceptable Contractor's Fee as determined in Subparagraph 7.4.1.
- d. if an increase or decrease cannot be agreed to as set forth in subparagraphs 9.2.a through 9.2.c and the City issues a written order for the Contractor to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change. If there is a net increase in the GMP, the Contractor's Fee shall be adjusted as set forth in Subparagraph 7.4.1. In case of a net decrease in the GMP, the

Contractor's Fee shall not be adjusted. The Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3 NO OBLIGATION TO PERFORM

The Contractor shall not be obligated to perform changed Work until a Change Order or other written instrument has been executed by the City and Contractor, except as provided in Subparagraph 9.2.d.

9.4 ADJUSTMENT OF UNIT PRICES

If a proposed Change Order alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the City or the Contractor, the unit prices and the GMP shall be equitably adjusted.

9.5 UNKNOWN CONDITIONS

If in the performance of the Work the Contractor finds latent, concealed or subsurface physical conditions which differ from the conditions the Contractor should have reasonably anticipated, or substantially different from available soils reports, or if physical conditions are substantially and materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement at this location (occurrence of shifting and expansive soils, including clay soils and sandstone expressly noted as commonly occurring in these areas), then the GMP compensation for Design and Construction Phase Services, the Contractor's Fee, and/or the date of Substantial Completion may be equitably adjusted by Change Order or other written instrument within ten (10) days after the conditions are first observed for delays actually and directly arising from said conditions.

9.6 CLAIMS FOR ADDITIONAL COST OR TIME

For any claim for an increase in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or an extension in the date of Substantial Completion, the Contractor shall give the City written notice of the claim within ten (10) days after the occurrence giving rise to the claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the City, but which do not proceed, shall be made within ten (10) days after the decision is made not to proceed. Any change in the GMP, compensation for Design Phase Services, the Contractor's Fee, and/or date of Substantial Completion resulting from such claim shall be authorized by Change Order or other written instrument.

9.7 EMERGENCIES

In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or extension of the date of Substantial Completion on account of emergency work shall be determined as provided in this Article.

ARTICLE 10**PAYMENT FOR CONSTRUCTION PHASE SERVICES****10.1 PROGRESS PAYMENTS**

10.1.1 At the last construction meeting of each month after the Construction Phase has commenced, the Contractor shall submit to the City a draft Application for Payment consisting of the Cost of the Work performed up to the last day of the month, including the cost of material stored on the site or at other locations approved by the City, along with a proportionate share of the Contractor's Fee. The format of the application document shall be as provided to the Contractor by the City. Prior to submission of the next Application for Payment, the Contractor shall furnish to the City a statement accounting for the disbursement of funds received under the previous Application. The extent of such statement shall be as agreed upon between the City and Contractor. All payments shall be made pursuant to and in compliance with A.R.S. § 34-609(B)(2-7), (C), (F-K).

10.1.1.1 Ten percent (10%) retainage will be held from each Progress Payment until fifty percent (50%) of the total Project is deemed complete by the City. At the fifty percent (50%) completion, the retention may be reduced to five percent (5%) subject to the relevant Arizona Revised Statutes. All retention shall be withheld pursuant to and in compliance with A.R.S. § 34-609(B)(2-7), (C), (F-K).

10.1.1.2 Any securities submitted by Contractor in lieu of retainage as may be allowed by law, shall be deposited in an escrow account as directed by the City. The City shall be listed as Payee or Multiple Payee with Contractor on said securities.

10.1.2 Within fourteen (14) days after receipt by the City of each monthly Application for Payment which has been certified by the Architect and is approvable by the City, the City will pay directly to the Contractor the appropriate amount for which Application for Payment is made, less amounts previously paid by the City and less amounts sufficient to pay expenses the City reasonably expects to incur in correcting deficiencies which are set forth in writing and provided to the Contractor.

10.1.3 The Contractor warrants and guarantees the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the City upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."

10.1.4 The City's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of the Contract Documents.

10.1.5 Upon Substantial Completion of the Work, the City will pay the Contractor the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Contractor's Fee, less a sum equal to the Contractor's estimated cost of completing any unfinished items and correction of any noted defects as agreed to between the City

and Contractor as to extent and time for completion. The City thereafter will pay the Contractor monthly the amount retained for unfinished items or correction of noted defects as each item is completed.

10.2 FINAL PAYMENT

10.2.1 Final payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Services and the Contractor's Fee shall be due and payable when the Work is fully completed and accepted by the City. Before issuance of final payment, the City will request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

10.2.2 In making final payment the City waives all claims except for:

- a. outstanding liens;
- b. deficient design, improper workmanship or defective materials;
- c. Work not in conformance with the Contract Documents;
- d. terms of any special warranties required by the Contract Documents;
- e. right to audit Contractor records for a period of five years; and
- f. claims previously made in writing and which remain unsettled.

10.2.3 In accepting final payment, the Contractor waives all claims except those previously made in writing and which remain unsettled.

ARTICLE 11

INSURANCE AND BONDS

11.1 INSURANCE REPRESENTATIONS AND REQUIREMENTS

11.1.1 Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

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

obligation to maintain the required insurance at all times during the performance of this Agreement.

11.1.3 All insurance coverage and self insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of the work included in this Agreement, the City, the Project Manager, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

11.1.4 All insurance required herein shall remain in effect until the City has issued a certificate of Final Completion for the entire Work, and the Contractor and the City have agreed in writing that the work is covered under insurance designed for the purpose of providing coverage for the accepted Work while occupied.

11.1.5 Contractor's insurance shall be primary insurance with respect to performance of the work included in this Agreement and in the protection of City as an Additional Insured. The policies required by the Contract Documents shall be endorsed to include the City, the Project Manager, as well as their agents, officials, and employees as insured parties and shall stipulate that the insurance afforded by the policies shall be by primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the City, or their agents, officials or employees shall be excess and not contributory to insurance required herein.

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

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

11.1.8 The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to City. Contractor shall be solely responsible for any such deductible or self-insured retention amount. City, at its option, may require Contractor to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

11.1.9 If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreement with Subcontractor containing the indemnification provisions set forth in Section 11.6 below and insurance requirements set forth herein protecting the City and Contractor. At Contractor's option and at Contractor's risk, Contractor may, subject to the City's prior, written approval, which approval shall not be unreasonably withheld, allow subcontractors to deviate from these insurance requirements due to insurance market availability or affordability issues. Contractor shall

be responsible for executing the agreement with Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

11.1.10 Prior to commencing any work or services under this Agreement, Contractor shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by the insurers of the Contractor, Consultants, and Subcontractors as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City will reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions. Additionally, certificates of insurance submitted without referencing this Agreement will be subject to rejection and returned or discarded. Certificates of insurance shall specifically include the following provisions:

- a. The City, the Project Manager, their agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - (i) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") current Form CG 20 10 or equivalent.
 - (ii) Auto Liability - Under current ISO Form CA 20 48 or equivalent.
 - (iii) Excess Liability - Follow Form to underlying insurance.
- b. Contractor's insurance shall be primary insurance as respects performance of the work included in this Agreement.
- c. All policies, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.
- d. A 60-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.
- e. Certificates of Insurance and any notice of cancellation or material change should be addressed as follows:

11.2 REQUIRED INSURANCE COVERAGE

11.2.1 Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired 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 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO current policy form CG 00 010 or equivalent thereof, including but not limited to, separation of insured’s clause. Further, the policy shall include coverage for the hazards commonly referred to as X (explosion), C (collapse), U (underground). The products and completed operations coverage shall extend for five years past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provision. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, the Project Manager, their agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO current Commercial General Liability Additional Insured Endorsement form CG 20 10, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

11.2.2 If this Agreement is the subject of any professional services or work, or if Contractor engages in or procures any professional services or work adjunct or residual to performing the work under this Agreement, Contractor shall maintain Professional occurrence based Liability insurance covering negligent errors and omissions arising out of the work or services performed by Contractor, or anyone employed by Contractor, or anyone for whose negligent acts, mistakes, errors and omissions Contractor is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims. The Contractor’s professional liability policy shall include a per project endorsement providing that the limits of such insurance specified in Contract Documents shall apply to the project without erosion of such limits by other claims or occurrences.

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

11.2.4 Contractor shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor’s employees engaged in the performance of work or services under this Agreement and

shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

11.2.5 The Contractor shall be responsible for purchasing and maintaining Builder's Risk and Course of Construction insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the City, the Project Manager, the Contractor, the Contractor's subcontractors and sub subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Contractor shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

11.3 CERTIFICATES OF INSURANCE

Prior to commencing the Work under this Agreement, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by this Agreement, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Agreement are in full force and effect. Unless otherwise specified in this Agreement, in the event any insurance policy(ies) required by this Agreement is(are) written on a "claims made" basis, coverage shall extend for three years past completion and acceptance of the Contractor's work or services and as evidenced by annual certificates of insurance. If a policy does expire during the life of the Agreement, a renewal certificate must be sent to the City 30 days prior to the expiration date. All certificates of insurance required by this Agreement shall be identified by project name. The City reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.

11.4 CANCELLATION AND EXPIRATION NOTICE

Insurance required herein shall not expire, be canceled, or materially changed without 60 days' prior written notice to the City.

11.5 FAILURE OF COMPLIANCE

Should the Contractor fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, or should a dispute arise between the City and any insurance company of Contractor over policy coverage or limits of liability as required herein, the City will be entitled to recover from the Contractor all amounts payable, as a matter of law, to the City or any other parties, including, but not limited to the Project Manager, had the required insurance or insurance coverage been in force. Said recovery will include, but is not limited to, interest for the loss of use of such amounts of money, plus all attorney's fees costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Contractor or insurance company to comply with the provisions of the Contract Documents, or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Contractor is responsible as a matter of law.

11.6 INDEMNITY

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

11.7 PERFORMANCE AND PAYMENT BONDS

Bonds shall be provided by Contractor pursuant to and in compliance with A.R.S. § 34-610-611.

11.7.1 After the City and the Contractor have agreed to a GMP but prior to commencing any Construction, the Contractor shall be required to furnish the City with an irrevocable security binding the Contractor to provide faithful performance of the Agreement in the amount of 100% of the percentage of the GMP attributable to Construction, payable to the City. Performance security shall be in the form of a performance bond, as required by Arizona law. If the Contractor fails to execute the security document as required, the Contractor may be found in material default of the Agreement, permitting the City to terminate this Agreement. In case of default the City reserves all rights. All performance bonds shall be executed on State of Arizona approved forms, duly executed by the Bidder as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. The conditions and provisions of the bonds regarding the surety's obligation shall follow the form required under A.R.S. § 34-610-611 and 34-222; Subsection G and Subsection F. The cost of the bonds shall be included in the contract sum. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of bonds A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

11.7.2 After the City and the Contractor have agreed to a GMP but prior to commencing Construction, the Contractor shall be required to furnish the City with an irrevocable security for the protection of all persons supplying labor and material to the Contractor or any subcontractor for the performance of any work related to the Agreement. Payment security shall be in the amount of 100% of the portion of the GMP attributable to Construction and be payable to the City. Payment security shall be in the form of a payment bond, as required by Arizona law. All payment bonds shall be executed on State of Arizona approved forms, duly executed by the Bidder as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. The conditions and provisions of the bonds regarding the surety's obligation shall follow the form required under A.R.S. § 34-222; Subsection

G and Subsection F. The cost of the bonds shall be included in the contract sum. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of bonds A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

11.7.3 The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney.

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

ARTICLE 12

TERMINATION OF THE AGREEMENT AND CITY'S RIGHT TO PERFORM CONTRACTOR'S RESPONSIBILITIES

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 Upon fourteen (14) days' written notice to the City, and if the City fails to cure or initiate reasonable action to cure within fourteen (14) days of said notice, the Contractor may terminate this Agreement for any of the following reasons:

- a. if the Work has been stopped for a forty-five (45) day period
 - (i) under court order or order of other governmental authorities having jurisdiction;
 - (ii) as a result of the declaration of a national emergency or other governmental act during which, through no act, omission or fault of the Contractor, materials are not available; or
- b. if the Work is suspended by the City for sixty (60) days;
- c. if the City materially delays the Contractor in the performance of the Work;
- d. if the City otherwise materially breaches this Agreement.

12.1.2 Upon termination by the Contractor in accordance with Subparagraph 12.1.1, the Contractor shall be entitled to recover from the City payment for all Work executed to the date of termination plus demobilization costs. The City shall not pay any amounts for cost profits or opportunities. The City may subtract reasonable estimates of costs for deficient work from the payments noted above.

12.2 CITY'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATIONS AND TERMINATION BY THE CITY FOR CAUSE

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

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

12.2.3 Upon the appointment of a receiver for the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, the City may terminate this Agreement, without prejudice to any right or remedy otherwise available to the City, upon giving three (3) working days' written notice to the Contractor. If an order for relief is entered under the bankruptcy code with respect to the Contractor, the City may terminate this Agreement by giving three (3) working days' written notice to the Contractor unless the Contractor or the trustee:

- a. Promptly cures all breaches.
- b. Provides adequate assurances of future performance.
- c. Compensates the City for actual pecuniary loss resulting from such breaches.
- d. Assumes the obligations of the Contractor within the statutory time limits.

12.3 TERMINATION BY THE CITY FOR CONVENIENCE

The City may terminate this Agreement, in whole or in part, at any time for the convenience of the City, without prejudice to any right or remedy otherwise available to the City. Upon receipt of notice of termination, the Contractor shall immediately discontinue all services affected as of the stated effective date, unless such notice directs otherwise. In the event of a termination for convenience by the City, the Contractor's sole and exclusive right and remedy shall be to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination minus City's claims. The Contractor shall not be entitled to be paid any amount as profit for unperformed services or any other consideration for the terminated portions of the work.

12.4 SUSPENSION BY THE CITY FOR CONVENIENCE

12.4.1 The City may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the City may determine to be appropriate for its convenience.

12.4.2 Adjustments caused by suspension, delay or interruption shall be made for increases in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion. No adjustment shall be made if the Contractor is or otherwise would have been responsible for or could have mitigated the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

12.5 TERMINATION UPON FAILURE TO OBTAIN GMP

12.5.1 Should there be a failure to establish a GMP and/or should the City elect not to agree to a GMP, this Agreement shall terminate automatically absent any further written agreement between the parties.

12.5.2 Upon such a termination, the City shall pay Contractor fees for design phase services provided under this Agreement, to the date of termination. The City shall not be obligated to pay any other fees, except as may be specifically provided in an addendum or other separate subsequent written agreement of the parties.

ARTICLE 13**DISPUTE RESOLUTION****13.1 MATTERS IN QUESTION/DISPUTE RESOLUTION**

In signing this Agreement, Contractor agrees that any cause Contractor may have against the Owner arising in relation to this Procurement and Project, including but not limited to, contract claims and controversies, including claims related to assignees of Contractor, shall be resolved through an Alternative Dispute Resolution (ADR) process as agreed between the parties. If the parties fail to agree to an ADR procedure or if ADR is unsuccessful then disputes shall be resolved by litigation in which venue shall be in Yavapai County Superior Court and liberal joinder shall be allowed.

13.2 OTHER PARTIES

The parties agree that the Engineer, Design Consultants, or other parties involved in the Project, may be joined in the resolution of disputes, at the request of either party.

ARTICLE 14

MISCELLANEOUS PROVISIONS**14.1 ASSIGNMENT**

Neither the City nor the Contractor shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

14.2 GOVERNING LAW

This Agreement shall be governed by the laws of the State of Arizona and venue shall be the County in which the work is to be constructed.

14.3 SEVERABILITY

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.4 NO WAIVER OF PERFORMANCE

The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition right with respect to further performance.

14.5 TITLES

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

14.6 ASBESTOS FREE MATERIALS

14.6.1 The Project is to be constructed by the Contractor with asbestos free materials. A written, notarized statement on company letterhead is to be submitted to the City by Contractor with the final payment request certifying that the Contractor has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted.

14.6.2 Contractor shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Contractor or any of its subcontractors or agents and were not specified in the design or required by the contract document, Contractor shall be liable for all costs related to the abatement of such asbestos and damages or claims against the City notwithstanding any statute of limitations or other legal bar to any claim by the City.

14.7 EXTENT OF AGREEMENT

This Agreement (i) is solely for the benefit of the parties, (ii) represents the entire and integrated agreement between the parties and (iii) supersedes all prior negotiations, representations or agreements, either written or oral. In the event the terms of this Agreement contradict or conflict with any other agreement, written or oral, the terms of this Agreement shall govern.

14.8 NOTICES AND REQUESTS

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by facsimile transmission to the number set forth below:

If to the City: Doug Bartosh, City Manager
City of Cottonwood
827 North Main Street
Cottonwood, AZ. 86326

If to the Contractor: Tyrel Eckroth
Schofield Civil Construction
23025 N. 15th Avenue, Suite 205
Phoenix, AZ 85027

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.9 FAIR EMPLOYMENT PRACTICES CLAUSE

In connection with the performance of Work under the Contract, the Contractor agrees (as prescribed in A.R.S. Title 41, Chapter 9, Article 4 and except as may be allowed or required by other applicable law) not to discriminate against any employee or applicant for employment because of race, color, religion, or national origin. These provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay for other forms of compensation, and selection or training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, required legal notices or notes to be provided by the City or the Contractor, setting forth the provisions of the nondiscrimination clause. The Contractor further agrees to insert these provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies of raw materials.

14.10 JOB OFFICE

Contractor will be provided a space at only one of the project locations for a job trailer for purposes of this project, if required.

14.11 LEGAL FEES AND COSTS

City will be entitled to recover its attorneys' fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred by City in connection with any effort undertaken by City to enforce any term of this Agreement against Contractor.

14.12 DISSEMINATION OF CONTRACT INFORMATION

Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract or work to be performed under this Contract, without the prior consent of the City.

14.13 NON-AVAILABILITY OF FUNDS

Every payment obligation of the City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the City at the end of the period for which funds are available.

14.14 COMPLIANCE WITH IMMIGRATION LAWS

By entering the contract, Contractor warrants compliance with ARS subsection 41-4401, ARS subsection 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The Contractor shall obtain statements from its Subcontractors certifying compliance with the foregoing requirements and shall furnish the statements to the City upon request. These warranties shall remain in effect through the term of the contract.

The Contractor and its Subcontractors shall also maintain employment eligibility verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under this contract. I-9 Forms are available for download at USCIS.GOV.

Contractor also warrants and certifies by execution of this contract that Contractor and all Subcontractors have or shall, prior to construction, comply and maintain compliance with FINA and A.R.S. § 41-4401 and 23-214 which require compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

ARTICLE 15**EXISTING CONTRACT DOCUMENTS**

The Contract Documents in existence at the time of execution of this Agreement are as follows:

- a.** Amendment No. 1
- b.** This Agreement;
- c.** The information provided by the City pursuant to Clause 4.1.2.a;
- d.** The City's Program provided pursuant to Subparagraph 4.1.1;
- e.** The City's RFQ for this project;
- f.** The Contractor's responses to the City's RFQ to the extent they do not conflict with the above;
- g.** Amendment No. 2 (unexecuted);
- h.** Other Amendments as may be executed by the parties.

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

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first written above.

CITY: CITY OF COTTONWOOD, ARIZONA

BY: _____

Diane Joens

Mayor

CONTRACTOR: Schofield Civil Construction

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

STATE OF ARIZONA)
) SS.
COUNTY OF YAVAPAI)

 This instrument was acknowledged before me this ___ day of _____, 2016
by _____ on behalf of _____.

Notary Public in and for the State of Arizona

STATE OF ARIZONA)
) SS.
COUNTY OF YAVAPAI)

 This instrument was acknowledged before me this ___ day of _____, 2016
by _____ on behalf of _____.

Notary Public in and for the State of Arizona

AMENDMENT NO. 1**DATED SEPTEMBER 6th 2016****DESIGN AND PRECONSTRUCTION FEES UP TO GMP SUBMITTAL****I. Scope**

- A. The Project scope is generally as set forth in THE CITY OF COTTONWOOD REQUEST FOR QUALIFICATIONS For Design Build Services for UV Disinfection System Installation Project and as the parties may subsequently agree in writing.
- B. The Project's scope includes, but is not limited to, site preparation and construction of all infrastructure needed.
- C. The Project's scope includes all design services needed for the Project including, but not limited to, the requisite consultants such as architectural design, mechanical engineering, civil engineering, electrical engineering, and other such services reasonably necessary for this Project.
- D. The scope also includes all construction activity necessary to complete the Project and includes, but is not limited to, permits, fees, inspections and testing, as required; however, the actual cost of the permits, fees, inspections and testing may be treated as reimbursables to save mark up and sales taxes. Budget money may be allocated to allow treatment of these necessary expenses outside of this contract at the City's sole discretion.

II. List of Assumptions

- A. The Project will be delivered using two distinct amendments under this single agreement.
- B. The first phase will be for design services and will include pre-construction services, including scheduling, cost estimating, schematic and design development, value engineering and constructability analysis, and construction documents. The first phase will have cost breakdown as follows:
 - 1. Design services through 30%, 60% and 90% design development;
 - 2. Design services for the balance;
 - 3. Pre-construction services through 30%, 60% and 90% design development;
 - 4. Pre-construction services for the balance up to proposal and possible establishment of the GMP.
- C. The second phase will be for construction services and shall be performed pursuant to an agreed upon GMP or series of GMPs. The GMPs shall fully set forth all factors and assumptions relative to establishing the GMP.

- D. If the City does not accept a GMP, the second phase for construction services, will not be initiated, or if a prior construction services under a phased or multiple GMP has been accepted, subsequent GMPs and the construction services therein will not be performed nor be considered a liability against the City.
- E. All contingencies, cost savings and unused allowances shall be returned to the City for their use, or redirected for additional improvements as needed.
- F. Additional assumptions that may arise must be agreed to by the parties in writing.
- G. Amendment No. 1 and attachments thereto are supplementary to the contract between the parties and do not limit the contract between the parties. In the event of a conflict between Amendment No. 1 and attachments thereto and the contract between the parties, the contract between the parties shall control.

III. List of Clarifications

- A. The following items clarify further Project scope, intent and scope of services:
 - 1. The contract will be between the CITY OF COTTONWOOD AND SCHOFIELD CIVIL CONSTRUCTION.
 - 2. SCHOFIELD CIVIL CONSTRUCTION will contract directly with KIMLEY-HORN AND ASSOCIATES INC., for all design services and will include all consultants, contract administration, and requisite errors and omissions insurance coverage naming TBD as insured with the CITY OF COTTONWOOD as additional insured;
 - 3. SCHOFIELD CIVIL CONSTRUCTION's primary representative on this Project in all stages is Tyrel Eckroth.
 - 4. This represents the foreseeable clarifications at this time. This list can be amended by mutual written agreement by the parties prior to incorporation into the final contract.

IV. Proposed Schedule

- A. Substantial Completion shall occur no later than three (3) months after receipt of Notice to Proceed for the beginning of Construction, and Final Completion within 30 calendar days after Substantial Completion.
- B. Phased delivery of a portion of the units shall be incorporated in to the final schedule as agreed to by the parties.
- C. An initial proposed Project schedule is attached hereto, subject to modification by mutual written agreement of the parties.

V. Design and Pre-construction Services Fee

A. The following are the fees for the design and pre-construction services anticipated for this Project. These and all other fees, costs, and other expenditures relative to this Project shall be provided to the City, without request, pursuant to the open book policy of this agreement.

- 1. Design services through 30% design development \$ TBD;
- 2. Design services through 60% design development \$ TBD;
- 3. Design services through completion, including documents \$ TBD;
- 4. Pre-construction services through GMP \$ TBD;
- 5. Construction Fees at TBD% of the actual Cost of Work.

_____ TBD _____
Date

By: TBD _____

Its: TBD _____

_____ _____
Date

By: _____

Its: _____

AMENDMENT NO. 2

DATED September 6th, 2016

TO DESIGN/BUILD AGREEMENT BETWEEN CITY & CONTRACTOR

Pursuant to Paragraph 3.2 of the Agreement dated September 6th, 2016 between the City of Cottonwood, and the Contractor, Schofield Civil Construction, for the Project as previously described in the agreement and amendments, the City and the Contractor desire to establish a GMP for the Work. Therefore, the City and the Contractor agree as follows.

ARTICLE 1

GUARANTEED MAXIMUM PRICE:

The Contractor’s GMP for the Work, including the Cost of the Work as defined in Article 8 of the Agreement and the Contractor’s Fee as set forth in Paragraph 7.3 is

Two hundred ninety-eight thousand, nine hundred forty-six dollars (\$298,946.00).

The GMP is for the performance of the Work in accordance with the documents listed below, which are part of the Agreement.

EXHIBIT 1 Request for Qualifications , including Addenda, if any,
Dated May 17th, 2016 , 21 pages.

EXHIBIT 2 Drawings and specifications, as annotated,
Dated August 19th, 2016 , 1 page.

EXHIBIT 3 A Guaranteed Maximum Price (GMP) proposal,
Dated August 19th, 2016 , 1 page.

EXHIBIT 4 Assumptions and clarifications,
Dated August 19th, 2016 , 3 pages.

EXHIBIT 5 Allowance items
Dated August 19th, 2016 , 1 page.

EXHIBIT 6 Alternate Prices
Dated August 19th, 2016 , 1 page.

EXHIBIT 7 A Construction Progress Schedule of Work
Dated August 19th, 2016 , 1 page.

EXHIBIT 8 Unit Prices
Dated August 19th, 2016 , 1 page.

ARTICLE 2

DATE OF SUBSTANTIAL COMPLETION:

The date of Substantial Completion of the Work is: _____

PLEASE NOTE: TIME IS OF THE ESSENCE. SEE SECTION 6.2.2 FOR EXPLANATION OF THE APPLICATION OF LIQUIDATED DAMAGES FOR EACH DAY AFTER THE DATE OF SUBSTANTIAL COMPLETION THAT THE WORK IS NOT SUBSTANTIALLY COMPLETE.

CONTRACTOR: _____

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

CITY: _____

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

August 19th, 2016

Schofield Civil Construction
23025 N. 15th Avenue Ste. 205
Phoenix, AZ 85027

Re: Procurement for UV Wastewater Disinfection System Installation

Dear Tyrel—Schofield Civil Construction:

We are pleased to inform that you were the highest ranked firm in our recent procurement for the City of Cottonwood UV Wastewater Disinfection System Installation (hereinafter Project). The next step in this process is for us to attempt to negotiate a contract with the highest ranked firm.

In order for us to proceed with this negotiation phase, please provide us with a proposal containing your understanding of the following elements:

1. Scope;
2. List of Assumptions;
3. List of Clarifications;
4. Proposed Schedule;
5. Design and Pre-construction Services Fee;
6. Construction Fee for Construction Phase Services; and any other matters that you believe should be included in Amendment No. 2 to the Agreement.

Please contact me with any questions.

Sincerely,

Jeff Cook, Purchasing/Contract Admin.