

**JOB ORDER CONTRACT BETWEEN  
CITY OF BUCKEYE  
AND  
CONTRACTOR'S NAME HERE**

**Contract Number:**

This JOB ORDER CONTRACT FOR WATER UTILITY PIPELINE AND INFRASTRUCTURE (the "Contract") is made and entered into by and between the City of Buckeye, an Arizona municipal corporation (the "City") and **Contractor's name here** (the Contractor). This Contract is for water utility pipeline and infrastructure as described in Exhibit A and issued as required by award of individual Delivery Orders (the "Project").

**RECITALS**

A. The City issued a Request for Qualifications entitled "Job Order Contracting for Water Utility Pipeline & Infrastructure" (the "RFQ") incorporated herein by reference, seeking proposals from Consultants interested in providing construction services.

B. The Consultant submitted a proposal in response to the RFQ (the "Proposal") attached hereto as Exhibit A and incorporated herein by reference, and the City Desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to construction of major and minor rehabilitation, construction and design services of water, wastewater, reclaimed water and storm drainage pipeline construction in the City, including the possibilities of design services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City of Buckeye and Job Order Contractor agree as follows:

**ARTICLE 1  
CONTRACT TERM**

1. This Contract has a base period of one (1) year and four option periods of one (1) year each that may be exercised if it is in the best interest of City to do so. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City.

2. The Contract Time for each Delivery Order shall start with the Notice to Proceed (NTP) and end with Final Acceptance, as set forth below. The Notice to Proceed will not be issued until prior approval and acceptance by City of the Delivery Order.
3. The Contract Time is identified in the Delivery Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.
4. Time is of the Essence of this Contract, and each Delivery Order issued hereunder, for each Project, and for each phase and/or designed Milestone thereof.
5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Delivery Order and/or this Contract by City. The City will assess liquidated damages as described in each Delivery Order.

**ARTICLE 2**  
**OVERVIEW OF DELIVERY ORDER CONTRACTING UNDER THIS CONTRACT**

1. This Contract establishes an indefinite delivery, indefinite quantity, Delivery Order Contract for such Construction services within the scope of this Contract as City may request from time to time by issuance of an individual Delivery Order for each Project. Unless otherwise specified in a specific Delivery Order, Delivery Orders generally will not include Design Services and that where Design Services are necessary, City will provide them under separate contract. There will be a separate Delivery Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple Projects and therefore multiple Delivery Orders under this Contract.
2. The amount to be paid by the City for the Project under each Delivery Order is the Contract Price for that Delivery Order. The Delivery Order price will include a total amount for each Delivery Order priced for the Work described for that Delivery Order. The Contract Price for any Delivery Order will be established as a Firm Fixed Price, subject to the following:
  - (a) The Contract Price for each Delivery Order shall not exceed \$1,000,000.00 [may be higher if approved via Council Action], including any Change Orders. Therefore, to allow for any potential Change Orders, the maximum initial amount of each Delivery Order will normally not exceed \$1,000,000.00. The expectation for this Contract is that the majority of Delivery Orders will be less than \$100,000.00.
  - (b) The cumulative sum of all Delivery Orders performed by the Contractor during any twelve (12) month term shall not exceed \$1,000,000.00 (unless otherwise approved by the City Council).

(c) There is no limit on the number of Delivery Orders that City may issue to the Contractor during any twelve (12) month term of this Contract or during the entire period this Contract is in effect.

(d) Contractor may not refuse any Delivery Order under this Contract properly issued by City, unless Contractor legitimately claims in writing that the scope of work is poorly defined or hazardous to health or safety.

3. City shall have the right to perform work of the types included in this Contract itself or to have other Contractors perform such work. In addition, as to any Delivery Order, City may elect to have Design Services provided by City's internal consultants or by independent Design Professionals. Such action by City shall not be a breach or otherwise violate the Contract Documents.

4. This Contract does not obligate or require City to offer any Delivery Order to Contractor, no Contract in relation to any specific Work being entered into until a Delivery Order therefore has been fully executed by City and Contractor.

5. This Contract is for a broad range of street maintenance, repair and minor construction work within the planning area of the City of Buckeye. The scope of this Contract will be to provide construction services, including the possibilities of design services, for a broad range of City Street maintenance and construction projects described in Exhibit A of this contract.

6. During the Term of this Contract, City will issue an individual Delivery Order request for proposal to Contractor for each Project. Each Delivery Order will have specific instruction concerning that Delivery Order. The Contractor will follow these specific instructions when preparing a response in the form of a Delivery Order Proposal.

7. The general steps for development of a Delivery Order are:

(a) When City identifies a need for performance of a Project under a Delivery Order; City will issue an RFP to Contractor and also advise Contractor of the nature of the Work to be done. At the same time, City will advise the Contractor if Design Services are required and how those services will be provided. Within two (2) working days of receipt of this notification, Contractor will:

- (i) Visit the proposed site of the Project with City designated representatives; and,
- (ii) Arrange with City to further define the scope of the needed Project.

Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Delivery Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Delivery Order.

(b) City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by City. The Drawings and Specifications developed by the Design Services are subject to approval by City. If there are no Design Services, City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

(c) Upon establishment of the scope of the needed Project, Contractor will prepare its proposal for accomplishment of the Project.

8. Upon award of a Delivery Order, a signed copy of the Delivery Order will be mailed or electronically forwarded to Contractor. Failure by Contractor to pick up or receive the mailed or electronic orders shall not relieve Contractor from the obligation to complete the Work under the Delivery Order in accordance with the terms of this contract or the terms of each Delivery Order.

9. City may provide a verbal Notice to Proceed (NTP) for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Delivery Order. The Contract duration starts with the date on the NTP letter.

### **ARTICLE 3 DEFINITIONS**

“Addenda” written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

“Agreement” means the executed agreement between City and Contractor.

“Change Order” means a written instrument issued after execution of a Delivery Order or this JOC Contract signed by City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s).

“City” means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the services is to be provided pursuant to said Contract.

“City’s Project Criteria” means information developed by or for the City to describe City’s program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor’s performance of the Work. City’s Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

“City’s Representative” means the person designated within this contract.

“Commissioning” means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

“Construction Documents” means the plans, specifications and drawings prepared by the Contractor or a Consultant.

“Construction Drawings” means the detailed drawings approved as part of the approved Construction Documents.

“Contract Documents” means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by City and Contractor to include each Delivery Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor’s approved Variations of the City’s Project Criteria, as contained in Exhibit A.; (vi) City’s Project Criteria; (vii) Contractor’s Proposal(s), except for accepted Variations of the City’s Project Criteria, submitted in response to City’s Project Criteria.

“Contract Price” means the amount or amounts set forth in each awarded Delivery Order subject to adjustment in accordance with this Contract.

“Contract Time” means the Days set forth in each awarded Delivery Order subject to adjustment in accordance with this Contract.

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

“Deliverables” means the work products prepared by the Contractor in performing the scope of work described in each Delivery Order.

“Design Services” means all professional services to be performed or procured by the Contractor or by City to provide required Project design under this Contract and any subsequent amendments.

“Job Order Contractor” means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Delivery Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

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

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

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Request” means the City form used by the Contractor to request payment for Work performed.

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

“Project” means the Work to be completed in the execution of any awarded Delivery Order and as amended and as prescribed as any Scope of Work in identified in each awarded Delivery Order. Project means the Work associated with each awarded Delivery Order issued under this JOC Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Delivery Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

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

“Schedule of Values (SOV)”, means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Delivery Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

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

“Scheduled Substantial Completion Date” means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Delivery Order.

“Site” means the land or locations on which the Project is located, as more particularly described in the Delivery Order.

“Subcontractor” or “Subconsultant” means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

“Substantial Completion” means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes.

“Technical Consultant” means an agent of the City who furnishes project management assistance (if applicable to a Delivery Order).

“Variations of the City’s Project Criteria” means agreed changes to the City’s Project Criteria by both Parties.

“Work” means any design and construction services, including procuring and furnishing materials, equipment, services, Commissioning and labor reasonably inferable from the Construction Documents.

**ARTICLE 4  
DESIGN PHASE AND DESIGN SERVICES**

1. Costs for Preconstruction services will be included in Contractor’s firm fixed price cost proposal.
2. Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Delivery Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor’s price proposal. Normally the City will obtain design services from a consultant or prepare design documents using City staff.

**ARTICLE 5  
CONSTRUCTION SERVICES**

1. JOC Contractor shall perform all Work necessary to construct the Project in accordance with this Contract and the specifications outlined in each Delivery Order, and to render the Project and all its components operational and functionally and legally usable for their intended purpose.
2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Delivery Order under the Contract, including, without limitation, the following:

(a) Construction of the whole and all parts of the Project in full and strict conformity with each Delivery Order;

(b) The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Delivery Order;

(c) The procurement and furnishing of all necessary permits and other permits required for the construction of each Delivery Order;

(d) The creation and submission to City of detailed as-built drawings depicting all as-built construction;

(e) The furnishing of any required surety bonds and insurance as may be required by each Delivery Order;

(f) The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Delivery Order or otherwise reasonably available to Contractor;

(g) The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

## **ARTICLE 6**

### **TIME FOR CONSTRUCTION: THE CONTRACT TIME**

1. After City has awarded each Delivery Order, City shall issue a notice to proceed (NTP) the Work directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). The notice to commence Work shall be issued at least ten (10) days prior to the Commencement Date.

2. Contractor shall commence the Work on the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Delivery Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not



attained by the Scheduled Substantial Completion Date, Contractor shall pay City the amount established in each Delivery Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Delivery Order are material and time is of the essence of each Delivery Order.

**ARTICLE 7**  
**ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR**

1. The intent of this Contract is to require complete, correct and timely execution of all Delivery Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Delivery Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Delivery Order.

2. All Construction Work performed by Contractor shall be in strict compliance with each Delivery Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Delivery Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractor's best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to City that all labor furnished to perform the Construction Work under each Delivery Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Delivery Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Delivery Order, and that the Construction Work will be of high quality, free from faults and defects and in strict conformance with the requirements found in each Delivery Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Delivery Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Delivery Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager, Contracting and Purchasing for his information, and shall comply with, Contractor's Schedule of Construction for each Delivery Order awarded. The Schedule of Construction shall

reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Delivery Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the site, for the benefit of City, an updated copy of the awarded Delivery Order, including one record copy of the Delivery Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the site, for the benefit of City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if specified in the awarded Delivery Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finally updated and delivered to City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Delivery Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Delivery Order. No deviation from, substitution for, or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order, from City. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. City shall also, in its discretion, have the right to review and approve Submittals, and if City so elects, Contractor shall not perform any portion of the Construction Work as to which the City has required submittal and review until such Submittal has been approved by the City. Approval by the City, however, shall not be evidence that Construction Work installed pursuant to the City's approval conforms with the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to City that the warranties are in strict compliance with the requirements of the Contract.
11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.
12. If required in the Delivery Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.
13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.
14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to City the required certificates of inspection, testing or approval.
15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.
16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to City's badge and pass requirements, if any, in effect at the site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for

setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

## **ARTICLE 8 CONTRACT PRICE**

1. City shall pay, and Contractor shall accept, as full and complete payment for all work associated with each Delivery Order the amount approved and awarded to the Contractor as a Delivery Order. Each Delivery Order will be a separate contract under this blanket JOC Contract. The general terms and conditions will be established by this contract and special contract provisions will be established within each Delivery Order.

2. Delivery Order Construction Price, unless changed by Supplemental Agreement or Change Order, represents the absolute limit of obligation or liability that City may ever have insofar as the cost for full and final completion of the Construction Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Delivery Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this Contract and any Special Provisions included in each awarded Delivery Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Management Fee described in this Contract is paid. The services required are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. City agrees to pay Contractor for the Cost of the Construction Work as defined in each Delivery Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Delivery Order and be established as a Firm-Fixed Price Contract.

## **ARTICLE 9 PAYMENT OF THE CONTRACT PRICE**

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

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

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

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

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

- (a) Unsatisfactory job progress as determined by the City.
- (b) Defective Work or materials not remedied.
- (c) Disputed Work or materials.
- (d) Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
- (e) Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
- (f) A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
- (g) The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
- (h) Deficiencies or claims asserted by City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate of Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at

the site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

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

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

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

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

## **ARTICLE 10 SUBSTANTIAL AND FINAL COMPLETION**

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by City in writing, when the Project is sufficiently complete in accordance with the Contract that City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of City, City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the

responsibilities of City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not longer than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Upon Substantial Completion of the Construction Work, and upon execution by both City and Contractor of the Certificate of Substantial Completion, City shall pay Contractor, within thirty (30) days, all sums due Contractor, including such amount of retainage as the City in its sole discretion wishes to pay based upon the value of remaining performance, less the reasonable costs, as determined by City in City's sole discretion, for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and handling all outstanding or threatened claims.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Delivery Order, including Contractor's provision to City of all documents and things required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by City's Certificate for Final Payment, provided that all documents and things required to be delivered to City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish City, in the form and manner required by the City, the following:

(a) an Affidavit of Final Payment and Release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing City from all claims that Contractor had or might have asserted during the performance of this Contract;

(b) if required by City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against City or City's property;

(c) consent of surety to final payment;



(d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and

(e) all product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against City by Contractor except for those claims previously made in writing against City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

### **ARTICLE 11 CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

In addition to payment, City shall undertake to perform the following:

1. City shall provide Contractor with information regarding City's requirements for the Project including any desired or required design or construction schedule.

2. City shall review any documents submitted by Contractor requiring City's decision, and shall render any required decisions pertaining thereto.

3. In the event City knows of any material fault or defect in the Construction Work, nonconformance with the Contract, or of any errors, omissions or inconsistencies in the Design Documents, then City shall give prompt notice thereof in writing to Contractor.

4. City shall provide Contractor access to the site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. City shall perform the duties set forth in this Article 11 in a reasonably expeditious fashion so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with City's construction program and requirements. No review, inspection, or approval by City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations

under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by City pursuant to the Contract shall not constitute a waiver of any of City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by City.

8. City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. City shall furnish to Contractor, prior to the execution of each Delivery Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from City in writing, Contractor shall immediately cease and desist as instructed by City and shall not proceed further until the cause for City's instructions has been corrected, no longer exists, or City instructs that the Construction Work may resume.

12. In the event City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to City that the cause of such instructions will be eliminated or corrected, then City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Paragraph 14(K) and this Paragraph 14(L) are in addition to, and without prejudice to, any other rights or remedies

City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

**ARTICLE 12**  
**DELIVERY ORDER (PROJECT) DOCUMENTATION**

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to City for inspection and copying upon City's request at any time. Additionally, such records shall be made available upon request by City to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

**ARTICLE 13**  
**PERSONNEL, SUBCONTRACTORS AND SUPPLIERS**

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as City deems necessary. City shall promptly reply to Contractor, in writing, stating any objections City may have to such proposed Subcontractors. Contractor shall not enter into a subcontract with an intended Subcontractor with reference to whom City objects. Any consent or failure to reject by City shall in no way relieve Contractor of any of its duties or warranties under the Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship

of agency, employment, contract, obligation or otherwise shall be created between City and any Subcontractor of Contractor, and a provision to this effect shall be inserted into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of its Subcontractors, Suppliers, and consultants.

6. In accordance with Article 3 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from City. Key design and supervisory personnel assigned by Contractor to each Delivery Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Delivery Order RFP issued by the City.

7. If, at any time during the course of the Project, City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction Working on the Project is unsatisfactory, City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to City for delays or inefficiencies the change may cause.

#### **ARTICLE 14 CHANGES AND EXTENSIONS OF TIME**

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by City without invalidating the Contract. Such changes shall be communicated by Change Order, Field Order or supplemental agreement, as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Delivery Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Delivery Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determine the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and City and agrees that it shall at all times in good faith use its best efforts to advance City's interests and agrees to perform the Work in the highest professional manner.

#### **ARTICLE 15 CLAIMS BY CONTRACTOR**

1. Claims by Contractor against City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to City all such documentation, including cost and time records, as and when City may request so that City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against City for compensation in excess of the Construction Price, any liability of City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Delivery Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. City shall not be liable to Contractor

for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which City would not be liable to Contractor under the terms of the Contract. As a condition precedent to City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to City by Contractor in strict compliance with all the requirements of this Article. City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by City and Contractor.

## **ARTICLE 16 UNCOVERING AND CORRECTING CONSTRUCTION WORK**

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of City, or contrary to any provision of the Contract, said Construction Work shall, if required by City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by City, be uncovered for inspection. If such Construction Work conforms strictly with the Contract, the cost of uncovering and proper replacement shall be charged to City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by City as defective or failing to conform to the Contract. Contractor shall pay all costs and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from City. This obligation shall survive final payment by City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. City shall be entitled to a reduction in the Construction Price regardless of whether City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from City, pay City such additional compensation for accepting defective or nonconforming Construction Work.

## **ARTICLE 17 SUSPENSION AND TERMINATION**

1. City may for any reason whatsoever suspend performance under the Contract. City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by City, Contractor shall incur no further expense or obligations in connection with this Contract, and Contractor shall cease its performance. Contractor shall also, at City's direction, either suspend or assign to City any of its open or outstanding subcontracts or purchase orders.

3. In the event City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

- (a) demobilization and remobilization, including such costs paid to Subcontractors;
- (b) preserving and protecting Construction Work in place;
- (c) storage of materials or equipment purchased for the Project, including insurance thereon; and
- (d) performing in a later, or during a longer, time frame than that contemplated by this Contract.

4. If City lifts the suspension it shall do so in writing, and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at City's direction, either terminate or assign to City outstanding orders and subcontracts. Contractor shall settle the liabilities and

claims arising out of any terminated subcontracts and orders. City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to City or its designee. Contractor shall transfer title and deliver to City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;

(b) City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;

(c) Absent agreement to the amount due to Contractor, City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;

(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by City for cause and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.



**ARTICLE 18  
INDEMNITY**

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"), insofar as such Claims (or actions in respect thereof) are caused by the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents, or any tier of Subcontractor in the performance of this CONTRACT. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

**ARTICLE 19  
INSURANCE AND BONDS**

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

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

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

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

5. Minimum Scope and Limits of Insurance. Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.

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

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

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

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

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language: “The City of Buckeye shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor” including automobiles owned, leased, hired or borrowed by the Contractor.”

(c) Workers Compensation and Employers Liability

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

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

(d) Professional Liability

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

(i) The required professional liability coverage must cover work done or to be done or on the behalf of the Contractor.

(ii) In the event that professional liability insurance required by this Contract is written on a “claims made” basis, coverage shall be maintained for two years past completion and acceptance of the Work or services required by this Contract.

(iii) Should any Delivery Order include the services of design as an integral part of the work, any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverage's because of the design-build delivery of the Project.

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

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

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

(b) The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

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

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

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

Christopher A. Williams  
Manager, Contracting and Purchasing  
City of Buckeye  
530 East Monroe Avenue  
Buckeye, Arizona 85326

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

10. Verification of Coverage:

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

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

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

11. Approval. Any modification or variation from the insurance requirements in this Contract shall be approved by the City, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

12. Bonds and Other Performance Security. Contractor shall provide the following performance bond and labor and material payment bond:

(a) Prior to execution of this Contract, the Contractor must provide a performance bond and a labor and materials bond, each in an amount equal to the amount of initial Contract Price designated for construction services set forth in each Delivery Order.

(b) Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the City of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of the Contract.

(c) The bonds shall be made payable and acceptable to the City of Buckeye.

(d) The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official. If one Power of Attorney is submitted, it shall be for twice the total Contract amount. If two Powers of Attorney are submitted, each shall be for the total Contract amount. Personal or individual bonds are not acceptable.

(e) 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.

(f) All bonds submitted for this project shall be provided by a company which has been rated "A- or better" by the A.M. Best Company.

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

**ARTICLE 20**  
**CANCELLATION UNDER A.R.S. § 38-511**

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511, as amended.

**ARTICLE 21**  
**GIFT TO PUBLIC SERVANT**

1. City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

**ARTICLE 22**  
**NONDISCRIMINATION**

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any

individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the Immigration and Nationality Act or any other applicable federal or state laws. Violation of the provisions of this section shall be deemed a material breach of this Contract.

### **ARTICLE 23 MISCELLANEOUS PROVISIONS**

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for City, to:

Christopher A. Williams  
Manager, Contracting and Purchasing  
City of Buckeye  
530 E. Monroe Ave.  
Buckeye, Arizona 85326  
Phone: 623.349.6225

With a copy to:

Gust Rosenfeld, P.L.C.  
One E. Washington, Suite 1600  
Phoenix, AZ 85004-2553  
P: (602) 257-7432  
F :( 602) 254-4878

If intended for Contractor, to:

Contractor's name  
POC  
Address  
City/State/Zip Code  
Phone

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Delivery Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract in to a subsequent fiscal year, and pay for charges hereunder or under any current Delivery Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions (“Eligible Procurement Unit(s)”) are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All Cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and the Consultant and/or Contractor. The exercise of any rights, responsibilities or remedies by Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

10. Israel. Pursuant to Arizona Revised Statute § 35-393.01, Consultant certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel.

#### **ARTICLE 24 E-VERIFY**

1. E-Verify Requirements. To the extent applicable under Arizona Revised Statute § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statute § 23-214(A). The Contractor or subcontractor’s breach of the above-mentioned warranty shall be deemed a material breach of the Contract and may result in the termination of the Contract by the Town of Buckeye. The Town of Buckeye retains the legal right to randomly inspect the papers and records of the Contractor or subcontractor employee who work on the Contract to ensure that the Contractor and its subcontractors are complying with the above-mentioned warranty.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the Town. The Contractor and its subcontractors shall cooperate with Town’s random inspections including granting the Town’s entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

[Signature Page to Follow]



THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names  
this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY:**

THE CITY OF BUCKEYE, ARIZONA  
an Arizona Municipal corporation

By: \_\_\_\_\_  
Jackie A. Meck, Mayor

ATTEST:

\_\_\_\_\_  
Lucinda Aja, City Clerk

RECOMMENDED:

\_\_\_\_\_  
Christopher A. Williams, Manager  
Construction & Contracting

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CONTRACTOR:**

\_\_\_\_\_