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PURCHASING ITEM FOR COUNCIL AGENDA
15-089

1. Agenda Item Number: 6.1

2. Council Meeting Date: October 23, 2014

TO: **MAYOR & COUNCIL**

THROUGH: **CITY MANAGER**

3. Date Prepared: October 8, 2014

4. Requesting Department: Municipal Utilities

5. SUBJECT: Construction Manager at Risk Contract for pre-construction services to Sundt-McCarthy, an Arizona Joint Venture, for the Ocotillo Water Reclamation Facility expansion and related facilities.

6. RECOMMENDATION: Staff recommends City Council award a Construction Manager at Risk Contract to Sundt-McCarthy, an Arizona Joint Venture, for the Ocotillo Water Reclamation Facility (OWRF) expansion and related facilities, Project No. WW1301.251, in an amount not to exceed $1,080,756.

7. BACKGROUND/DISCUSSION: This contract is for pre-construction services for a new treatment system and supporting areas, to expand the OWRF. The new treatment system and supporting areas will be located immediately to the north and west of the existing OWRF, located at 3333 South Old Price Road. Currently, the OWRF has a ten million gallon per day (MGD) capacity. This initial phase of construction will add five MGD treatment capacity. The future phases will accommodate build-out capacity.

This project scope of work consists of: attending meetings with Staff and Designer, providing constructability studies and reviews, providing value engineering, project planning and scheduling, assist in the coordination of contract documents, and prepare Guaranteed Maximum Price (GMP) packages, to include revisions if necessary.

Construction related contracts for the OWRF expansion will be awarded separately.

8. EVALUATION PROCESS: The selection process was followed according to State law for design services. Four (4) Statements of Qualifications were received from qualified firms on July 10, 2014, and three (3) were selected for interviews.

The Committee held interviews on July 30, 2014, with Archer Western Contractors, PCL Construction, Inc., and Sundt-McCarthy, an Arizona Joint Venture. The Committee's ranking is below:

1. Sundt-McCarthy, an Arizona Joint Venture
2. PCL Construction, Inc.
3. Archer Western Contractors
4. Kiewit Infrastructure West Co. – Not Interviewed

9. FINANCIAL IMPLICATIONS:

Cost:	$1,080,756
Savings:	N/A
Long Term Costs:	N/A

Fund Source:

Account No.:	Fund Name:	Program Name:	CIP Funded:	Amount:
611.3910.6814.6WW621	Wastewater Bonds	Water Reclamation Facility Improvements	Yes	$1,080,756

10. PROPOSED MOTION: Move City Council award a Construction Manager at Risk Contract for pre-construction services to Sundt-McCarthy, an Arizona Joint Venture, for the Ocotillo Water Reclamation Facility (OWRF) expansion and related facilities, Project No. WW1301.251, in an amount not to exceed $1,080,756.

ATTACHMENTS: Contract, Location Map

APPROVALS	
11. Requesting Department John Knudson, Utilities Engineering Manager	**13. Department Head** Dave Siegel, Municipal Utilities Director
12. Transportation & Development Bob Fortier, Capital Projects Manager	**14. City Manager** Rich Dlugas

CONSTRUCTION MANAGER AT RISK
PRE-CONSTRUCTION SERVICES CONTRACT

PROJECT TITLE. **Construction Manager At Risk Pre-Construction for Ocotillo Water Reclamation Facility (OWRF) Expansion and Related Facilities**
PROJECT NO. **WW1301.251**

THIS CONTRACT, made and entered by and between CITY of Chandler, a municipal corporation, hereinafter designated "CITY" and **Sundt-McCarthy, an Arizona joint venture,** duly qualified to do business in the State of Arizona. hereinafter individually and collectively designated the "Construction Manager At Risk" or "CM@Risk."

RECITALS

WHEREAS, CITY intends to design and build structures and facilities to be known as the **Ocotillo Water Reclamation Facility (OWRF) Expansion and Related Facilities** to be located at **3333 South Old Price Road;** and

WHEREAS, the Project will be performed in two phases. Phase I will include the pre-construction phase services and the preparation and submission of the Guaranteed Maximum Price (GMP). Phase II will include the construction of the **OWRF Expansion**; and

WHEREAS, this is a CM@Risk contract for Phase I of the Project which required that the CM@Risk be selected on the basis of demonstrated competence and qualifications for the type of professional services to be rendered without regard to fees and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, CM@Risk has represented to the CITY that CM@Risk has expertise and ability and is qualified to provide these pre-construction services and Construction Management Services and also to construct the Project and based on this representation the CITY engages CM@Risk to provide the services described herein; and

WHEREAS, the Mayor and CITY Council of the CITY of Chandler are authorized and empowered by the provisions of the CITY Charter to execute Contracts for Professional Services; and

WHEREAS, to undertake the design of said Project the CITY has entered into a contract with **Carollo Engineers, Inc.** hereinafter referred to as the "Project Designer."

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter contained, it is agreed by and between the CITY and CM@Risk, as follows:

ARTICLE 1 – DEFINITIONS:

"CM@Risk'" means the Arizona joint venture entity Sundt-McCarthy (Taxpayer Identification Number 47-1611389), with whom the City has entered into this Contract to provide services as detailed in this Contract.

"CM@R's Representative" means the person designated as such in this Contract.

"Data Sheet" means the sheet listing Project information contained in the RFP.

"Guaranteed Maximum Price" or "GMP" means the sum of the maximum Cost for the construction of this Project, including but not limited to, the CM@Risk's construction fee; general conditions fee; taxes, bonds, insurance costs; and any contingency as proposed and approved pursuant to Subsection 3.2.8.

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

"Project" means all of the work and services to be performed pursuant to this contract and the construction of the **Ocotillo Water Reclamation Facility Expansion and Related Facilities** all as more particularly described herein or in Exhibit A attached hereto and incorporated herein by reference.

ARTICLE 2 - PROJECT TEAM - CM@RISK KEY PERSONNEL:

The CM@Risk will be an integral member of the Project Team, consisting of CM@Risk, representatives from the CITY, the Project Designer, and other consultants, as required.

2.1 Key Personnel
Prior to the start of these Contract Services, the CM@Risk shall submit to the CITY for approval detailed résumés of key personnel, including any Subconsultants, that will be involved in performing services to be provided by CM@Risk.

2.2 Prior Approval for Change
At any time hereafter that the CM@Risk desires to change key personnel as described in Exhibit C, while performing under this Contract, the CM@Risk shall submit the qualifications of the new personnel to the CITY for prior approval.

2.3 Key Personnel Listed
Key personnel shall include, but are not limited to, principal-in-charge, pre-construction manager, project manager (CM@Risk's Representative), superintendent and those persons specifically identified to perform services of cost estimating, scheduling, value engineering, procurement planning and administration of the Work.

2.4 CM@Risk's Representative
CM@Risk's Representative/project manager shall be reasonably available to CITY and shall have the necessary expertise and experience required to supervise the contract services. CM@Risk's Representative shall be the single point of contact between the CITY and the CM@Risk. He shall communicate regularly with CITY and shall be vested with full authority to act on behalf of and legally bind the CM@Risk

2.5 Sundt-McCarthy makes the following representations to the CITY:

a) Sundt-McCarthy, the CM@R, is a joint venture of Sundt Construction, Inc. and McCarthy Building Companies, Inc. lawfully organized pursuant to Arizona law to bid on and perform the Ocotillo Water Reclamation Facility (OWRF) Expansion and Related Facilities project for the City of Chandler.
b) Pursuant to the joint venture agreement, Sundt and McCarthy are jointly and severally liable for the entire performance of this Pre-Construction Services Contract.
c) Pursuant to the joint venture agreement, the CM@R Representative identified herein is fully authorized to bind the joint venture.

ARTICLE 3 – SCOPE OF WORK; CM@RISK'S SERVICES AND RESPONSIBILITIES:

Generally, it will be the responsibility of the CM@Risk to integrate the design and construction phases, utilizing its skills and knowledge of general contracting, to develop schedules; prepare detailed project construction estimates; study labor conditions; and, in any other way deemed necessary, to contribute to the development of the project during the pre-construction/design phase.

3.1 Relationship of City and CM@Risk

A. For the fee set forth in Article 6, the CM@Risk undertakes to act as the CITY'S fiduciary and to furnish professional pre-construction and construction management services during the design of the Project.

B. The CM@Risk accepts a relationship of trust and confidence between itself and the CITY and undertakes to act as the CITY's fiduciary in all matters related to the Project. The CM@Risk agrees to furnish its best skills and best judgment to cooperate with the CITY and Project Designer during the design of the Project, and in all ways to further the interests of the CITY and the Project. The CM@Risk shall furnish value engineering, constructability reviews and comments, estimates, and supporting comment to the Project Designer and CITY to provide a quality and complete project, consistent with the available budget, all as more particularly described herein.

C. Because of the CM@Risk's fiduciary duties to the CITY, the Project will be an "open book" job whereby the CITY may attend any and all meetings of the CM@Risk entities and the Project Designer relating to the Project, and the CITY or its designated auditors or accountants shall have access to any and all records of the CM@Risk or maintained by the CM@Risk relating to the Project. Open book shall include the unit cost of labor and material provided by subcontractors and shall be provided to the CITY.

3.2 Pre-Construction Services

The CM@Risk shall provide the following pre-construction services:

3.2.1 Project Review

A CM@Risk shall meet with the CITY REPRESENTATIVE and other CITY team members, the Project Designer and other design team members to fully understand the Program, the design documents, the Project scope and all other pertinent aspects of the Project.

B. The CM@Risk shall become an integral part of the Project Team that will coordinate the development and progress of the design and construction processes.

C. CM@Risk shall visit the Site, become familiar with local conditions under which the work is to be performed and correlate personal observations with requirements of the Contract Documents.

D. The CM@Risk shall develop written project procedures, in cooperation with the CITY REP that will be used as a guide for the management and coordination of this Project through the life of the Project.

3.2.2 Consultation During Project Development

The CM@Risk shall attend regularly scheduled meetings with the Project Designer and consultants during the Design Phases established by the contract between the CITY and the Project Designer, to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing. The CM@Risk shall provide written recommendations on construction feasibility.

3.2.3 Value Analysis

A. The CM@Risk shall, after a complete review of the Project Program, evaluate the designs available at the time of the CM@Risk's commencement of Pre-Construction services, and obtain an understanding of the intent of the CITY and the Project Designer, provide value analysis services and offer cost savings suggestions and best value recommendations to the CITY. All recommendations must be fully reviewed with the Project Designer and CITY, and approved by the CITY prior to implementation.

B. Value analysis efforts shall result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value analysis studies shall include life cycle cost analysis as may be required to assist the Project Designer to achieve an appropriate balance between costs, aesthetics and function.

C. Value analysis efforts shall also take into consideration applicable constructability issues.

D. CM@Risk shall promptly notify the CITY and Project Designer in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.

E. All value analysis studies must be provided on a timely basis within the design schedule.

F. Value analysis studies shall be continuous as the design is being developed.

G. The CM@Risk shall conduct value analysis throughout the project and provide the CITY estimates as appropriate and shall conduct major value analysis at completion of the schematic design phase and at the design development phase (utilizing the Design Development documents), which analysis shall include, but not be limited to, the items noted below:

1. Develop value analysis concepts for consideration at the session noted in #2 below (it is anticipated that the Project Designer will be concurrently conducting a similar activity).

2. Brainstorming session(s) with design team.

3. Written cost studies shall be produced and submitted to the CITY within two (2) weeks of the brainstorming session.

4. Written pro/con evaluation of the cost studies shall be provided with the cost studies.

5. Formal presentation of the written study to the Design Team shall be conducted by the CM@Risk firm.

6. A final written value analysis study document including a summary of value analysis items, applicable cost adjustments, selected items and their corresponding cost adjustments shall be presented to the Design Team.

H. In between the milestones for major value analysis studies, the CM@Risk shall periodically provide a tracking report which identifies the increases or decreases in costs due to value engineering or scope changes. It shall be the responsibility of the CM@R to keep the CITY and Project Designer informed as to the major trend changes in costs relative to the CITY's budget.

3.2.4 Schedule

A. Within ten (10) days from the Notice to Proceed on this contract, the CM@Risk shall establish a detailed CPM (Critical Path Method) schedule of the pre-construction/design phase of the Project. Within thirty (30) days from the Notice to Proceed on this contract, the CM@Risk shall establish a detailed CPM schedule of the construction phase of the Project. Both schedules shall be established with concurrence of the CITY and the Project Designer. The CM@Risk shall monitor this schedule during the pre-construction/design phase, insure that this schedule is updated, and advise the CITY of any deficiencies in adherence to this schedule by any party.

B. The CM@Risk shall utilize standard software to prepare, provide, and maintain appropriately detailed design phase CPM schedules.

C. Scheduling software shall allow for integration of all aspects of the design processes and provide for coordination of all work to be performed. The scheduling software shall be capable of producing and coordinating logic developed network diagrams, and tabular reports.

D. The Project schedule shall be sufficiently detailed to allow for a realistic projection of design activity sequences and durations. Updated schedules will be required at the end of each Design phase established by the contract between the CITY and the Designer, and after major value engineering decisions.

3.2.5 Constructability Review

CM@Risk shall review the design throughout the pre-construction phase as to constructability, including without limitation, all issues identified in the CM@Risk's proposal. With respect to each such issue, the CM@Risk shall submit a written report to both the CITY and the Project Designer. At a minimum, each such written report shall contain: (1) a description of the constructability issue with background information; (2) a summary of the CM@Risk's in-depth study/research; and (3) written recommendations for addressing the issue.

3.2.6 Construction Cost Model/Estimates

A. The CM@Risk shall develop a project budget/cost model (independent from any similar cost estimate required of the Project Designer such as the Statement of Probable Construction Costs) which shall be updated as needed but at a minimum at the end of each design phase (concepts, schematic, design development, and final construction documents) during which the CM@Risk is performing Pre-Construction Services. (Hereinafter: CM@Risk Cost Model Update). Due to variability in economic conditions, all cost models are to be construction based not data based; that is, the CM@Risk is to obtain pricing of trade work directly from the market place.

B. Each CM@Risk Cost Model Update must contain a statement of the total amount determined under that construction cost model to be the total construction costs for the facility (including alternates, CM@Risk General Conditions, CM@Risk fees, and CM@Risk contingency) in accordance with the Project Designer's Program.

C. The Amount Available for Construction is the sum set out on the Data Sheet and excludes designer fees and other reserves retained by the CITY.

D. In the event that the CM@Risk's Statement of Probable Construction Costs exceed the Amount Available for Construction, the CITY may direct the CM@Risk to (and the CM@Risk shall without additional compensation to the CM@Risk) work in conjunction with the Project Designer to redesign the facility as necessary to maintain the Project Program within the Amount Available for Construction.

E. Each CM@Risk Cost Model Update and the Designer's Probable Construction Costs will be reviewed by the Project Designer and the CITY for reasonableness and compatibility with the Amount Available for Construction. Meetings and negotiations between CITY, Project Designer and the CM@Risk will be held to resolve questions and differences that may occur between the Designer's Probable Construction Costs and the CM@Risk Cost Model Update. The CM@Risk shall work with the CITY and the Project Designer to reach a mutually acceptable joint Probable Construction Cost.

F. If requested by the CITY, the CM@R shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the CITY in the financing process.

3.2.7 Coordination of Contract Documents

A. The CM@Risk shall review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect costs, construction feasibility or schedules. The CM@Risk shall notify the Project Designer and the CITY in writing, as appropriate, upon observing any features in the plans or specifications, which appear to be ambiguous, confusing, conflicting or erroneous.

B. The CM@Risk shall review the final documents to see that all comments have been incorporated.

C. All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM@Risk during the review process shall be deemed to be

corrected, and any associated costs shall be included in the CM@Risk's Guaranteed Maximum Price (GMP).

3.2.8 Construction Guaranteed Maximum Price (GMP)

A. Within 10 days after final review submission of the construction documents to CITY or at any sooner time requested by the CITY, the CM@Risk shall develop and provide to CITY a GMP proposal based on the design documents as completed at that time. Such GMP proposal will include all construction costs, and all other projected costs, including, without limitation, any CM@Risk contingency and General Conditions allowance but not including any CITY Construction Contingency. The GMP proposal shall include a schedule of values which shall specify all of the following: (a) unit or lump sum prices for work to be performed by CM@Risk (may be by CSI code, total costs, and cost per square feet of building); (b) each anticipated subcontract amount; (c) a separately identified CM@Risk's fixed fee as a fixed percentage of the GMP including home office overhead and profit; (d) General Conditions, and (e) all project related costs, i.e., taxes, bonds, personnel payroll benefits, etc. The final GMP shall state all qualifications and assumptions used to prepare the final GMP.

B. The GMP must not exceed the Amount Available for Construction as set forth on the Data Sheet.

C. In the event that the GMP exceeds the Project Construction Budget, the CITY reserves the right to direct the CM@Risk to (and the CM@Risk shall) work in conjunction with the Project Designer to redesign the Facility as necessary to maintain the Project Program and meet the Project Construction Budget as follows:

1. After consultation with the CITY, the CM@Risk shall coordinate and cooperate with the Project Team to alter and redraft Construction Documents as necessary to accomplish the required reduction in cost.

2. The CM@Risk shall develop and provide to CITY a GMP in connection with the redrafted and altered Construction Documents to accomplish the necessary reductions in cost.

3. The CM@Risk shall analyze the Project Designer's originally submitted and as altered and redrafted Construction Documents, and make recommendations to the CITY as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the Project Construction Budget.

D. Notwithstanding anything in the RFQ to the contrary, the CM@Risk shall perform the work set forth in this Sub Section 3.2.8 without additional compensation.

E. CITY has the right to reject any GMP as originally submitted, or as adjusted. In that event, this Contract will terminate according to its terms.

F. The CM@Risk's detailed construction cost estimates and GMP will be reviewed by the Project Designer and the CITY for reasonableness and compatibility with the Project Construction Budget. Meetings and negotiations between CITY, Project Designer and the CM@Risk will be held to resolve questions and differences that may occur between the Project Construction Budget and the CM@Risk's construction cost estimate and corresponding GMP. If indicated by the Project Construction budget limitations or other circumstances, the CM@Risk shall work with the CITY and Project Designer to reach a mutually acceptable GMP.

G. Upon acceptance by the CITY of a GMP, the CITY shall prepare and the CM@Risk shall execute a mutually acceptable Construction Contract reflecting the GMP and requiring CM@Risk to perform construction in accordance with the approved plans and specifications for that price. Within 10 days after the execution of the Construction Contract

as provided herein, CM@Risk shall provide the CITY with a Performance Bond and a Labor and Material Payment Bond each for 100% of the GMP in conformity with state law.

3.2.9 Phased GMPs.

The CM@Risk may be requested to provide individual GMP proposals for specific construction phases of the Project. These individual phase GMP proposals shall be based on the specific phase construction documents, and will be prepared in accordance with the procedures identified in this Section.

3.2.10 Non-Acceptance of the GMP and Termination of CITY-CM@Risk Contract

The CITY, at its sole discretion, may decline to accept the CM@Risk's GMP for the construction or for any Construction Phase and thereupon without penalty; this Contract shall terminate according to its terms at the end of the Pre-Construction Phase of the Project.

ARTICLE 4 - PHASED CONSTRUCTION:

LONG LEAD TIME PROCUREMENT

4.1 Recommendations for Phasing
If phased construction is appropriate and the CITY and Project Designer approve, the CM@Risk shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work. The CM@Risk shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, and any other factors pertinent to saving time and cost.

4.2 Recommendation for long-lead time items
The CM@Risk shall recommend to the CITY and the Project Designer a list and a schedule for the procurement by the CITY of long-lead time items which will be required to meet the Project Schedule.

4.3 Bid for Procurement
If the CITY determines that it is in its own best interest to have the CM@Risk procure such long-lead time items, the CITY may, at its sole discretion, direct the CM@Risk to solicit bids.

4.4 Purchase by CM@Risk
Upon approval by the CITY of the funding and of the terms and conditions of the purchase of said long-lead material, the CITY will authorize the CM@Risk to issue purchase orders for the material. If necessary the Contract Price will be adjusted.

4.5 City Procurement
If the CITY determines that it is in its own best interest to procure such long-lead time items, items may be procured by the CITY on terms and conditions acceptable to the CM@Risk. Upon the CITY's acceptance of the CM@Risk's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the CITY to the CM@Risk, who shall accept responsibility for such items as if procured by the CM@Risk.

4.6 Option not to Procure
If the CITY chooses not to procure long lead-time items prior to acceptance of a GMP, the Design Professional shall list the items and a delivery schedule in the Construction Documents and such required delivery schedules shall be taken into consideration in determining the Contract Time for the Construction Contract.

ARTICLE 5 – STANDARD OF CARE AND CORRECTIONS:

5.1 CM@Risk Responsibility
The CM@Risk shall be responsible for the completeness and accuracy of reviews, reports, supporting data,

and other pre-construction work prepared or compiled by CM@Risk pursuant to this Contract and shall correct such work, at the sole expense of CM@Risk. The fact that the CITY has accepted or approved the CM@Risk's work shall in no way relieve the CM@Risk of any such responsibilities. Notwithstanding, any contrary provision herein, the CM@R is a construction professional and as such is not responsible for the professional design or engineering services or work products of the CITY'S Project Designer.

5.2 Competent Staff

The CM@Risk will maintain an adequate and competent staff of qualified persons, as may be determined by the CITY, throughout the performance of this Contract to ensure acceptable and timely completion of the scope of services. If the CITY objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk shall take prompt corrective action acceptable to the CITY and, if required, remove such personnel from the Project and replace with new personnel agreed to by the CITY.

ARTICLE 6 - CONTRACT PRICE:

6.1 Fees

For services rendered by CM@Risk as described herein CITY shall pay CM@Risk a fee not to exceed the sum of **One Million Eighty Thousand Seven Hundred Fifty Six** dollars (**$1,080,756**) at the rates shown in and in accordance with the fee schedule attached hereto as Exhibit B and made a part hereof by reference. Payment will be made monthly on the basis of progress reports. An Application and Certification for Payment Sheet must be submitted to CITY which shall be accompanied by a progress report, detailed invoices and receipts, if applicable. This submittal shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any deliverables submitted, and as to any sub-consultants, their actual requests for payment plus similar narrative and listings of their work.

6.2 Taxes

The Contract Price is deemed to include all transaction privilege, sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

ARTICLE 7 - CONTRACT TIME:

7.1 Contract Time

Following receipt of a "Notice to Proceed" with the Pre-construction Services, CM@Risk shall complete all Pre-construction Services and submit the final GMP to CITY within a maximum of **Two Hundred Seventy (270)** calendar days of the date indicated on the Notice to Proceed.

7.2 Production Schedule

CM@Risk shall complete all services specified herein in accordance with the CPM Progress Schedule and progress milestones included in such CPM Schedule. In the event delays are experienced beyond the control of CM@Risk, the completion date may be extended as mutually agreed upon by CITY and CM@Risk.

ARTICLE 8 – DISPUTE RESOLUTION:

8.1 Arizona Law

This Contract shall be governed and interpreted according to the laws of the State of Arizona.

8.2 Jurisdiction and Venue

The parties agree that this Contract is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Contract shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

8.3 Fees and Costs

Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Contract is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent

(10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

ARTICLE 9 - REPRESENTATIVES OF THE PARTIES:

9.1 City Representatives

A. CITY designates the individual listed below as the Capital Projects Manager which individual has the authority and responsibility for avoiding and resolving disputes pursuant to Article 8: Robert Fortier, Capital Projects Manager, Mail Stop # 407, P.O. Box 4008, Chandler, AZ 85244-4008, 480-782-3343.

B. CITY designates the individual listed below as its CITY's Representative, who shall be the single point of contact for CM@Risk, and who has the authority and responsibilities set forth herein: **Gina Ishida-Raybourn, Project Manager, Engineer, 215 East Buffalo Street, Chandler AZ 85225, 480-782-3349.**

9.2 CM@Risk Representatives

A. CM@Risk designates the individual listed below as its Principal-in-charge ("CM@Risk's Principal-in-charge"), which individual has the authority and responsibility for avoiding and resolving disputes: **Mike Hoover, Senior Vice President and Chief Operating Officer.**

B. CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibilities set forth herein: **Greg Ayres, Sundt Vice President.**

ARTICLE 10 - SUSPENSION AND TERMINATION:

10.1 TERMINATION FOR CAUSE:

This Contract may be terminated by CITY for cause should the CM@Risk fail to perform any provision of this Contract, including without limitation, for any of the following reasons:

(a) The CM@R abandons Work;
(b) The CM@R assigns or attempts to assign its rights or obligations under this Contract or any part thereof to any third-party (without the prior written consent of CITY;
(c) The CM@R is adjudged bankrupt of insolvent, makes a general assignments for the benefit of creditors, has a trustee or receiver appointed for its property, or files a petition to take advantage of any debtor's act;
(d) The CM@R fails or refuses to perform any obligation under the Contract, or fails to remedy such nonperformance within seven (7) days after its occurrence;
(e) The CM@R fails to comply with any applicable Laws and fails to remedy such nonperformance within seven (7) days after its occurrence;
(f) The CM@R fails to achieve the required dates for performance required pursuant to the Contract.

10.2 TERMINATION FOR CONVENIENCE:

CITY may at any time and for any or no reason, at its convenience, terminate this contract or any part of the services to be rendered pursuant thereto by written notice to CM@Risk specifying the termination date. Immediately after receiving such notice, CM@Risk shall discontinue advancing the work under this Contract and shall deliver to the CITY all drawings, notes, calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by the CITY.

CM@Risk shall receive, as compensation in full for services performed to date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of CM@Risk fee described in this Contract under paragraph 3 and shall be in the amount to be agreed mutually by CM@Risk and the

CITY. The CITY shall make this final payment within sixty (60) days after CM@Risk has delivered the last of the partially completed items.

10.3 OWNERSHIP OF INSTRUMENTS OF SERVICE UPON TERMINATION FOR CAUSE AND/OR FOR CONVENIENCE:

Upon Termination for Cause or for Convenience, the CITY shall have ownership of the Instruments of Service.

ARTICLE 11 – INDEMNIFICATION:

To the fullest extent permitted by law, but only to the extent caused by the negligence, recklessness or intentional wrong conduct, the CM@R, its co-venturers, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Contract or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by the CM@R or by any of subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Contract, including but not limited to, any injury or damages claimed by any of CM@Risk and its subcontractor's employees.

ARTICLE 12 – INSURANCE:

1. General.

A. At the same time as execution of this Contract, the CM@R shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD forms must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY. Except, however, the A.M. Best rating requirement shall not be deemed to apply to required Worker's Compensation coverage.

B. The CM@R and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, the insurances set forth below.

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

D. The City in no way warrants that the minimum insurance limits contained in this Contract are sufficient to protect CM@Risk from liabilities that might arise out of the performance of the Contract services under this Contract by CM@Risk, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and CM@Risk is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the CM@Risk from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract.

F. Use of Subcontractors: If any work is subcontracted in any way, CM@Risk shall execute a written Contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of CM@Risk in this Contract. CM@Risk is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope and Limits Of Insurance. The CM@R shall each provide coverage with limits of liability not

less than those stated below.

A. Commercial General Liability-Occurrence Form. The CM@R must each maintain "occurrence" form Commercial General Liability insurance with a limit of not less than $2,000,000 for each occurrence, $4,000,000 aggregate. Said insurance must also include coverage for Products and Completed Operations, Independent Contractors, Personal Injury and Advertising Injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

B. Automobile Liability for Any Auto or Owned, Hired and Non-Owned Vehicles
Vehicle Liability: The CM@R must maintain Business/Automobile Liability insurance with a limit of $1,000,000 each accident on their owned, hired, and non-owned vehicles assigned to or used in the performance under this Contract. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

C. Workers Compensation and Employers Liability Insurance: The CM@R must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of their employees engaged in the performance under this Contract and must also maintain Employers' Liability insurance of not less than $1,000,000 for each accident and $1,000,000 disease for each employee.

D. Professional Liability. If the Contract is the subject of any professional services or work performed by the CM@R, or if the CM@R engages in any professional services or work adjunct or residual to performing the work under this Contract, the CM@R must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the CM@R, or anyone whose acts, mistakes, errors and omissions the CM@R is legally liable, with a liability limit of $1,000,000 each claim and $2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and CM@Risk, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

3. Additional Policy Provisions Required.

A. Self-Insured Retentions Or Deductibles. Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

B. City as Additional Insured. The policies are to contain, or be endorsed to contain, the following provisions:

1. The CM@R's Commercial General Liability and Automobile Liability policies, to the full limits of liability purchased by Sundt for the CM@R, are to contain, or be endorsed to contain, the following provisions: The City of Chandler, its officers, officials, agents, and employees, and McCarthy Building Company, Inc., its officers, officials, agents, and employees, are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CM@R including the City's general supervision of the the CM@R ; Products and Completed Operations of the CM@R; and automobiles owned, leased, hired, or borrowed by the CM@R.

2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by CM@Risk even if those limits of liability are in excess of those required by this Contract.

3. CM@Risk's insurance must contain broad form contractual liability coverage.

4. The CM@R's insurance coverage must each be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CM@R and must not contribute to it.

5. The CM@R's insurance must each apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Coverage provided by the CM@R must not be limited to the liability assumed under the indemnification

provisions of this Contract.

7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CM@R for the City.

8. The CM@R, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. The CM@R must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Contract insurance requirements, including naming the required Additional Insureds.

9. 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 this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, the CM@R must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the required insurance provisions.

ARTICLE 12 – NOTICE:

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) three (3) days after the date of the postmark of deposit by first class United States mail, registered or certified mail, postage prepaid to the address indicated below or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

To CITY OF CHANDLER	City of Chandler - Capital Projects P.O. Box 4008, Mail Stop 407 Chandler, AZ 85244-4008 480-782-3307
Copy to City's Representative:	Gina Ishida-Raybourn P.O. Box 4008, Mail Stop 407 Chandler, AZ 85244-4008 480-782-3349
To CM@Risk Representative:	Greg Ayres Sundt Construction, Inc. 2620 South 55th Street Tempe AZ 85282
To Project Designer	Russell Wachter Carollo Engineers 4600 East Washington Street, Suite 500 Phoenix, AZ 85034

ARTICLE 13 – GENERAL PROVISIONS:

13.1 Interpretation and Intent

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

B. The CITY's Standard Construction General Conditions are incorporated herein by reference to the extent they are applicable to this Contract and to the extent the terms and conditions therein do not conflict with the terms and conditions of this Contract.

C. The Contract Documents form the entire Contract between CITY and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other Contracts have been made by the parties except as specifically stated in the Contract Documents.

13.2 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party. Any change in the scope of work, either additions or deletions shall not be effective and there shall be no additional payment therefore except approved in writing and signed by a duly authorized representative of each party.

13.3 Time is of the Essence. CITY and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

13.4 Mutual Obligations. CITY and CM@Risk commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

13.5 Cooperation And Further Documentation. The CM@Risk agrees to provide the CITY such other duly executed documents as shall be reasonably requested by the CITY to implement the intent of the Contract Documents.

13.6 Assignment. Neither CM@Risk nor CITY shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.7 Successorship. CM@Risk and CITY intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.8 Conflict In Language. All services performed shall conform to all applicable CITY of Chandler codes, ordinances and requirements as outlined in the Contract Documents.

13.9 Third Party Beneficiary. Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the CITY and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of CITY and the CM@Risk and not for the benefit of any other party.

13.10 Governing Law. The Contract and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

13.11 Independent Contractor. The CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the CITY the right to direct the CM@Risk as to the details of accomplishing the work or to exercise a measure of control over the work means that the CM@Risk shall follow the wishes of the CITY as to the results of the work only. These results shall comply with all applicable laws and ordinances.

13.12 CITY's Right Of Cancellation. All parties hereto acknowledge that this Contracts is subject to cancellation by the CITY of Chandler pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

13.13 Survival. All warranties, representations and indemnifications by the CM@Risk shall survive the completion or termination of the Contract Documents.

13.14 Covenant Against Contingent Fees. The CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an Contract or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the CITY Council, or any employee of the CITY of Chandler has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the CITY of Chandler shall have the right to annul this Contract without liability, or at its discretion

to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

13.15 No Waiver. The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

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

13.17 Work Product.

A. All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original Mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this Contract (collectively referred to as documents) are to be and remain the property of the CITY and are to be delivered to the CITY before the final payment is made to the CM@Risk. In the event these documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk shall not unreasonably withhold, the CITY agrees to hold the CM@Risk harmless to the extent permitted by law from the legal liability arising out of the CITY's alteration, modification, or adaptation of the documents.

B. The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its subconsultants or personnel, during the course of performing the Contract Documents or arising out of the Project shall belong to the CM@Risk.

C. With this Contract, the CM@Risk and its subconsultants hereby grant a license to the CITY, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the documents, works or deliverables developed or created as a result of the Project and this Contract. This license also includes the making of derivative works. In the event that the derivative works require the CITY to alter or modify the documents, then the provisions of subsection apply.

ARTICLE 14 - DATA CONFIDENTIALITY

14.1 Data

As used in the Contract Documents, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CM@Risk in the performance of the Contract Documents.

14.2 Confidentiality

The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of the Contract Documents is confidential and proprietary information belonging to the CITY.

14.3 Written Consent Required

The CM@Risk shall not divulge data to any third party without prior written consent of the CITY. The CM@Risk shall not use the data for any purposes except to perform the services required under this Contract Documents but may use and disclose such data as necessary to accomplish the services to be provided herein. These prohibitions shall not apply to the following data provided the CM@Risk has first given the required notice to the CITY:

A. Data which was known to the CM@Risk prior to its performance under the Contract Document unless such data was acquired in connection with work performed for the CITY;

B. Data which was acquired by the CM@Risk in its performance under this Contract and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or

C. Data, which is required to be disclosed by virtue of law, regulation, or court order to which the CM@Risk is subject.

14.4 Notice to CITY
In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other contract with the CITY, the CM@Risk shall first notify the CITY as set forth in this section of the request or demand for the data. The CM@Risk shall give the CITY sufficient facts so that the CITY can be given an opportunity to first give its consent or take such action that the CITY may deem appropriate to protect such data or other information from disclosure.

14.5 Copies to CITY
Unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the CITY, the CM@Risk shall promptly deliver, as set forth in this section, a copy of all data to the CITY. All data shall continue to be subject to the confidentiality agreements of the Contract Documents.

14.6 Duty of CM@Risk
The CM@Risk assumes all liability for complying with this Section 15 regarding the confidentiality of the data in its possession and agrees to compensate the CITY if any of the provisions of this section are violated by the CM@Risk, its employees, agents or subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm that justifies injunctive relief in court.

ARTICLE 15--CONFLICT OF INTEREST

CM@Risk stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.

Pursuant to A.R.S. Section 38-511, the City may cancel this contract within three (3) years after its execution without penalty or further obligation by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Chandler is, at any time while the contract is in effect, an employee of the other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

15.1 Notice to CITY
To evaluate and avoid potential conflicts of interest, the CM@Risk shall provide written notice to the CITY, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the CITY. Such notice shall be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below.

15.2 Adverse Actions
Actions that are considered to be adverse to the CITY under the Contract Documents include but are not limited to:

A. Using data as defined in the Contract acquired in connection with the Contract Documents to assist a third party in pursuing administrative or judicial action against the CITY;

B. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the CITY; and

C. Using data to produce income for the CM@Risk or its employees independently of

performing the services under The Contract Documents, without the prior written consent of the CITY.

15.3 No Conflict
The CM@Risk represents that except for those persons, entities and projects identified to the CITY, the services to be performed by the CM@Risk under the Contract Documents are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the CITY.

15.4 Failure
The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of the Contract Documents.

ARTICLE 16 – COMPLIANCE WITH ARIZONA PROCUREMENT LAW

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty (Exhibit C) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.

The provisions of this Article must be included in any contract the CM@Risk enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In accordance with A.R.S. §35-393.06, the CM@Risk hereby certifies that the offeror does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, the CM@Risk hereby certifies that the offeror does not have scrutinized business operations in Sudan."

IN WITNESS WHEREOF, two (3) identical counterparts of this contract each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein below named, on this ____ day of October, 2014.

CITY	**CONSTRUCTION MANAGER AT RISK**
CITY OF CHANDLER, an Arizona municipal corporation	Sundt-McCarthy, an Arizona joint venture
_____	By: _____
MAYOR Date	Signature

performing the services under The Contract Documents, without the prior written consent of the CITY.

15.3 No Conflict

The CM@Risk represents that except for those persons, entities and projects identified to the CITY, the services to be performed by the CM@Risk under the Contract Documents are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the CITY.

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In accordance with A.R.S. §35-393.06, the CM@Risk hereby certifies that the offeror does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, the CM@Risk hereby certifies that the offeror does not have scrutinized business operations in Sudan."

IN WITNESS WHEREOF, two (3) identical counterparts of this contract each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein below named, on this ____ day of October, 2014.

CITY

CITY OF CHANDLER, an Arizona municipal corporation

_____

MAYOR Date

CONSTRUCTION MANAGER AT RISK

Sundt-McCarthy, an Arizona joint venture

By: _____

Signature

APPROVED AS TO FORM:

City Attorney by: (ll)

ATTEST:

City Clerk

ATTEST: If Corporation

N/A
Secretary

Sundt Construction, Inc., an Arizona corporation

By:

ATTEST: If Corporation

By: , ESQ.

McCarthy Building Company, Inc., a Missouri corporation duly authorized to do business in Arizona

By:

ATTEST: If Corporation

By:

APPROVED AS TO FORM:

City Attorney by: (kk)

ATTEST:

City Clerk

ATTEST: If Corporation

Secretary

Sundt Construction, Inc., an Arizona corporation

By:

ATTEST: If Corporation

By:

McCarthy Building Company, Inc., a Missouri corporation duly authorized to do business in Arizona

By:

ATTEST: If Corporation

By:

EXHIBIT A
PROJECT DESCRIPTION

A new five (5) million gallon per day (MGD) water reclamation facility located just north of the existing ten (10) MGD capacity Ocotillo Water Reclamation Facility (OWRF) will be designed and built as an expansion of the existing OWRF. There will be joint facilities common to both WRFs included in the scope of work. Additionally, upgrades are necessary to the existing OWRF and also included.

The City of Chandler will be using CM@Risk for pre-construction and construction services, and will require the CM@Risk to cooperate with the Project Designer throughout the pre-construction and construction phases of the Project. Both the Project Designer and the CM@Risk will be a part of the Design/Constructability Team working together to develop the design that best meets the CITY's needs and budget.

In addition to the services outlined in the body of this Contract, the CM@Risk shall provide pre-construction services during the design phase of the project as follows:

- Be a part of the design/constructability team and will participate in the project review, and consult with City staff and the project designer during project development and design.
- Provide value analysis services; value engineering and offer cost savings suggestions and best value recommendations.
- Provide project planning and scheduling.
- Provide constructability studies and reviews.
- Assist in the coordination of contract documents.
- Prepare GMPs with assumptions and bid item descriptions; negotiate GMPs with CITY; revise and make adjustments in scope or pricing as agreed; prepare revised GMPs for final approval
    - Anticipate (2) GMP packages
- Attend regularly scheduled meetings with CITY, the Project Designer, and other project team members during the design phase and accompany the CITY, the Project Designer, or other project team members to meetings with public or private agencies or individuals

EXHIBIT B
FEE SCHEDULE

Task	Description	Cost
1	Regular Team Meetings (Design Meetings)	$ 113,664
2	Owner Bi-Weekly Meeting	$ 50,784
3	Constructability Review and Value Analysis	$ 192,640
4	Evolution Log	$ 25,760
5	Schedule Development & Maintain Design Phase Schedule	$ 27,048
6	Schedule - Develop Preliminary Construction Schedule	$ 18,800
7	Cost Model 90% - Improvement Project	$ 48,100
8	GMP - Improvement Project	$ 57,300
9	Cost Model - Expansion 30%	$ 86,660
10	Cost Model - 60% & 90% Expansion	$ 218,400
11	GMP - Expansion	$ 109,200
12	As-Built Development and 3D scanning	$ 18,400
	Direct Labor Total:	$ 966,756
	Allowances	
	Plan Production & Printing	$ 6,000
	Scanning Equipment	$ 8,000
	Underground Utility Locating	$ 100,000
	Allowance Total:	$ 114,000
	Total Not-to-Exceed - CMAR Preconstruction Services:	$ 1,080,756

EXHIBIT C

GENERAL CONDITIONS

GENERAL CONDITIONS

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ARTICLE 1 - DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 Addenda: Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change, the bidding Documents or the Contract Documents.

1.2 Agreement: same as Contract.

1.3 Application for Payment: The form prepared by and acceptable to CITY which must be used by CONTRACTOR to request progress or final payments and which must include supporting documentation such as updated Construction Progress Schedule as required by the Contract Documents.

1.4 Architect: The person, firm or corporation, including their representatives, retained by CITY to design and engineer the project, to draft specifications, plans and perform other project design functions. The Architect will generally be referred to as the Project Designer in these General Conditions.

1.5 Change Order: A written order to CONTRACTOR signed by CITY and agreed to in writing by CONTRACTOR, authorizing an addition, deletion or revision in the Work and/or a change in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract. A Change Order is the only mechanism for adjusting the Contract Price or the Contract Time of the Contract.

1.6 CITY: The City of Chandler, OWNER of the project.

1.7 City Engineer: The person named as such by the City of Chandler.

1.8 CITY REPRESENTATIVE: The person or firm authorized by the CITY to represent it during the performance of the Work by the CONTRACTOR; who is CONTRACTOR'S point of contact for the CITY. The CITY REPRESENTATIVE is also known as and may sometimes be referred to as CITY REP, the Engineer, Resident Engineer, or the Onsite Resident Project Representative.

1.9 Construction Progress Schedule: Sometimes referred to as the Work Schedule, is the schedule prepared and submitted by CONTRACTOR which tracks the progress of the Work as more fully explained and defined herein.

1.10 Contract: The entire and integrated written agreement, including all the Contract Documents, between the CITY and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

1.11 Contract Documents: The Contract Documents are those documents listed in paragraph 3.1 herein.

1.12 Contract Price: The moneys payable by CITY to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Contract (subject to the provisions of Paragraph 1.41 in the case of Unit Price Work).

1.13 Contract Time: The number of days or the date stated in the Contract to: (i) achieve Substantial Completion; (ii) to complete the Work through any designated milestones; and (iii) to complete the Work so that it is ready for final payment as evidenced by the written recommendation of the CITY REP for final payment.

1.14 CONTRACTOR: The person, firm or corporation with whom CITY has entered into the Contract. Whenever the Project is to be constructed under multiple direct contracts, the term "CONTRACTOR" shall mean the appropriate prime CONTRACTOR. Whenever a specific prime CONTRACTOR is referred to, terms such as "General CONTRACTOR", "Electrical CONTRACTOR", etc., will be used.

1.15 Day: A calendar day of twenty-four hours measured from midnight to the next midnight.

1.16 Drawings: That part of the Contract Documents prepared by the Project Designer which graphically shows the character, intent and scope of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

1.17 Effective Date of the Contract: The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

1.18 Engineer: The person, firm or corporation, including their representatives, retained by CITY to design and engineer the project, to draft specifications, plans and perform other project design functions. The engineer will generally be referred to as the Project Designer in these General Conditions.

1.19 Field Order: A written order issued by CITY REP which requires CONTRACTOR to perform minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Times.

1.20 General Requirements: Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

1.21 MAG Standard Specifications: The Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments (MAG), latest edition in effect at the time of Bid Opening.

1.22 MAG Standard Details: The Uniform Standard Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments (MAG), latest edition in effect at the time of the Bid Opening.

1.23 Milestone: A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

1.24 Modifications:

a) A written amendment of the Contract Documents signed by both parties.
b) A Change Order.
c) A Field Order.

A Modification may only be issued after the Effective Date of the Contract.

1.25 Notice of Award: The written notice by CITY to the apparent successful Bidder stating that upon compliance by the apparent successful Bidder with the conditions precedent enumerated therein, within the time specified, CITY will sign the Contract.

1.26 Notice to Proceed: A written notice given by CITY to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform their obligations under the Contract Documents.

1.27 Plans: Same as Drawings.

1.28 Project: The total construction of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.

1.29 Project Designer: The person, firm or corporation retained by CITY to design and engineer the project, to draft specifications, plans and perform other project design functions. References in the Contract Documents to the Project Designer, Architect, Design Engineer or Engineer, all generally mean the Project Designer.

1.30 RFI: Request for Information. Document submitted by the general contractor to the CITY REP requesting additional information regarding project plans and specifications..

1.31 Samples: Physical examples furnished by the CONTRACTOR to illustrate materials, equipment or workmanship, and to establish standards by which some portions of the Work will be judged.

1.32 Schedule of Values: A list prepared by CONTRACTOR showing the Work divided into component parts including quantities and unit prices aggregating the Contract Price and showing the anticipated monthly progress payment amounts that will become due.

1.33 Shop Drawings: All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

1.34 Special Provisions: Same as Supplementary (Special) Conditions.

1.35 Specifications: That part of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.36 Subcontractor: An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.37 Substantial Completion: The time at which the Work (or specified part thereof) has progressed to the point where, in the opinion of the CITY REP, the Work (or specified part thereof) is sufficiently complete, in accordance with Contract Documents, so that the Work (or specified part thereof) can be utilized for the purposes for which it was intended. The terms "beneficial occupancy"/ "beneficial use" are sometimes used for Substantial Completion.

1.38 Supplementary Conditions: That part of the Contract Documents which amends or supplements these General Conditions sometimes referred to as Special Conditions.

1.39 Supplier: A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.40 Underground Facilities: All underground pipelines, conduits, ducts, cables, fiber optic facilities, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.41 Unit Price Work: Work to be paid for on the basis of unit prices.

1.42 Warranty Period: One year from date of Final Acceptance (not Substantial Completion).

1.43 Work: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents including any and all obligations, duties and responsibilities necessary to complete the construction assigned to, or undertaken by, the CONTRACTOR pursuant to the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

1.44 Work Change Directive: Sometimes referred to as a Construction Change Directive. A written order to CONTRACTOR issued on or after the Effective date of the Contract and signed by CITY, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive may not change the Contract Price or the Contract Times, but is evidence that if appropriate, the change ordered or documented by a Work Change Directive may be converted to a Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.45 Utility: Same as underground facility.

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Delivery of Bonds, Insurance Certificates and Preliminary Schedule

A. Within ten days of Notice of Award, CONTRACTOR shall execute the Contract and deliver it together with those items listed below to CITY.

B. When CONTRACTOR delivers the executed Contract to CITY, CONTRACTOR shall also deliver to CITY such Bonds and certificates of insurance with endorsements (and other evidence of insurance requested by CITY) as CONTRACTOR may be required to furnish.

C. As evidence of Workmen's Compensation Insurance, CONTRACTOR shall provide a letter of certification from the Industrial Commission of Arizona that the CONTRACTOR is insured by the State Compensation Fund or is an authorized self-insurer or a certificate of insurance issued by an insurance company authorized by the Insurance Department of Arizona to write Workmen's Compensation and Occupational Disease Insurance in the State of Arizona.

2.2 Copies of Documents

CITY shall furnish to CONTRACTOR up to five copies (unless otherwise provided in the Contract Documents) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.3 Commencement of Contract Time/Notice to Proceed

Notice to Proceed may be given at any time within sixty days after the Notice of Award. The Contract Times will commence to run on the date indicated in the Notice to Proceed.

2.4 Contractor Review of Contract Documents.

Before commencing any work, CONTRACTOR shall carefully study and compare all the Contract Documents, Plans and Specifications and shall check and verify pertinent figures therein and all applicable quantities to determine if there are any conflicts, errors, discrepancies or any other reasons why the project can or should not be constructed as shown therein. If CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, or between the Contract

Documents and the physical conditions at the site of the Work or in any survey, or any other reason why the project can or should not be constructed as shown, CONTRACTOR shall report it to CITY REP in writing at once and before proceeding with the Work. The CITY REP on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the CONTRACTOR or make appropriate modifications to the Contract Documents. In the event such conflicts, errors, discrepancies or other reasons why the project can or should not be constructed as shown on such Contract Document, are later found to exist which the CONTRACTOR should reasonably have learned from such study and CONTRACTOR failed to inform CITY REP, then CONTRACTOR shall bear all cost arising therefrom..

2.5 Starting the Project

Work shall start on the date set forth in the "Notice to Proceed" as the date upon which Contract Times commence to run and shall be pursued diligently in accordance with the Construction Progress Schedule found acceptable by CITY REP or an acceptable revision/update. The work shall be completed within the time set forth in the Contract and as modified by subsequent Change Orders. No Work shall be done at the site prior to the date on which the Contract Times commence to run.

2.6 Construction Progress Schedule

A. Within ten (10) days of the date of execution of this Contract (unless otherwise specified in the Supplementary Conditions) CONTRACTOR shall submit to CITY REP for review for acceptability, a comprehensive Construction Progress Schedule in Critical Path Method (CPM) format, indicating the starting and completion dates of the various activities of the Work including any Milestones specified in the Contract Documents.
   1) This Schedule shall contain a detailed representation of all activities for the project, both on-site construction and major procurement. All significant activities together with the resource loading requirements for each and all items appearing on the schedule of values or bid schedule for progress payments shall be shown on the Construction Progress Schedule or in attached reports to the Construction Progress Schedule.

   2) Dependencies between activities shall be indicated so that it may establish as to the effect the progress of any one activity would have on other activities and on the schedule.

   3) This schedule shall contain activities for submission, review and approval of all required submittals.

   4) An amount of time shall be established prior to the final completion date for "punch list and cleanup." No other activities shall be scheduled during this period. Punch list and cleanup must be shown on the Construction Progress Schedule and must be entirely completed prior to the expiration of ;the Contract Time.

   5) CITY has estimated an amount of time reasonably required to complete the Project and based the Contract Time on this estimation. In the event CONTRACTOR believes the Contract Time is too short, CONTRACTOR shall so advise CITY prior to submitting a bid on the project to allow CITY to reevaluate the Contract Time. CONTRACTOR'S Construction Progress Schedule shall not show a "CONTRACTOR contingency" or CONTRACTOR float" at the end of the construction contract time. Damage claims are prohibited and will not be paid to CONTRACTOR by CITY based on CONTRACTOR'S failure to meet an early completion date shown on CONTRACTOR'S submitted Construction Progress Schedule. (i.e., float within the Contract Time is owned by CITY and while it may be used by CONTRACTOR it may not be claimed to CITY'S detriment.)

   6) For all items of materials and equipment that are critical or which may require long lead times to acquire, the Construction Progress Schedule shall show dates for submission, review and approval of submittals, ordering and delivery.

7) Computer generated reports detailing the early/late start dates, early/late finish dates and dependencies shall be submitted by CONTRACTOR together with the CPM schedule.

B. Within ten (10) days of receipt of CITY REP comments, CONTRACTOR shall make all required corrections, adjustments and additions to complete the Construction Progress Schedule and resubmit it to CITY REP for review.

C. The Comprehensive Construction Progress Schedule will be acceptable to CITY REP if it is in CPM format and if it complies with the requirements set forth herein and provides a realistic and orderly progression of the Work to completion within any specified Milestones and Contract Times. Such Acceptance by CITY REP or any revision or correction made at the request of CITY REP, does not impose on CITY responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve CONTRACTOR from CONTRACTOR'S full responsibility therefor. Acceptance of CONTRACTOR'S Work Progress Schedule by CITY, does not constitute approval of the times listed thereon nor constitute any extension of the Contract Time.

D. The Construction Progress Schedule shall be prepared by CONTRACTOR and the scheduling of Construction shall be the responsibility of the CONTRACTOR. The requirement for the Schedule is included to assure adequate planning and execution of the Work and to assist CITY REP in evaluating progress of the Work.

E. The Construction Progress Schedule submitted and signed by CONTRACTOR, when found acceptable by CITY REP, becomes a part of the Contract Documents and CONTRACTOR may not change, modify or deviate from such schedule without the consent of CITY REP.

F. If, at any time after CONTRACTOR'S Construction Progress Schedule has been found acceptable, CONTRACTOR desires to or it becomes necessary to make any changes to such schedule, CONTRACTOR shall submit such changes to CITY REP for review. CONTRACTOR shall revise and submit for review an updated schedule whenever it is demonstrated that the time for completion of the Project or for any of the Milestones shown on the Contract Documents, has changed by ten (10) or more days.

G. An updated Construction Progress Schedule must also be submitted by CONTRACTOR with each pay application. The updates shall include all past performance history and actual dates activities started and finished from the beginning of the project; and (2) the City reserves the right to accept or reject each update and, if rejected, the Contractor must revise and/or correct the update and resubmit within 7 days of Contractor's receipt of City comments. Failure to comply with this requirement may be cause for rejection of Contractor's next monthly progress payment application, as provided for in 15.2.

H. CONTRACTOR shall complete the Project in accordance with the Construction Progress Schedule as it may be adjusted from time to time as provided herein.

2.7 Other Submittals

A. Within ten (10) days of the date of execution of this Contract (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to CITY REP for review and acceptance, a preliminary schedule of Shop Drawings submissions. Within ten (10) days after receipt of CITY REP'S comments, CONTRACTOR shall submit the corrected and completed schedule of Shop Drawings Submissions for approval. CONTRACTOR'S schedule of Shop Drawings and Sample submittals will be acceptable to CITY REP if it provides a workable arrangement for reviewing and processing the required submittals.

B. Within ten (10) days of the date of execution of this Contract (unless otherwise specified in the Supplementary Conditions), CONTRACTOR shall submit to CITY REP for review and acceptance, a preliminary schedule of values of the Work, and the anticipated amount of each monthly progress payment that will become due CONTRACTOR in accordance therewith. The Schedule of Values shall include quantities and unit prices aggregating the Contract Price, and for lump sum items shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Within ten days after receipt of CITY REP's comments, CONTRACTOR shall submit the corrected and completed Schedule of Values of the Work. CONTRACTOR'S schedule of values will be acceptable to CITY REP if it complies with the requirements herein and if it provides a reasonable allocation of the Contract Price to component parts of the Work.

C. No application for payment on the Project will be accepted and no payment will be made until CONTRACTOR has submitted an acceptable and complete Construction Progress Schedule, Schedule of Shop Drawing Submissions and Schedule of Values of the Work.

2.8 Pre-Construction Conference

Within sixty days after the Notice of Contract Award, and before CONTRACTOR starts the Work at the site, CITY will hold a Pre-Construction conference for discussion of the schedules referred to above, to establish lines of communication, procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, to establish a working understanding and communication system among the parties as to the Work, and coordination of work among the various utilities. CONTRACTOR, CONTRACTOR'S Resident Superintendent and CONTRACTOR'S designated safety officer shall attend this Pre-Construction conference which will also be attended by the Project Designer, CITY REP and representatives from any company whose facilities may be affected by the Project.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND REUSE

3.1 Contract Documents

A. The Contract Documents establish the rights and obligations of the parties and include the Contract, Addenda (which pertain to the Contract Documents), CONTRACTOR'S Bid or Proposal (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Contract, the accepted Construction Progress Schedule, the Notice to Proceed, the Performance Bond, the Payment Bond, Project Design, Engineering and Specifications, these General Conditions, the Supplementary Conditions, Special Provisions, Specifications, Contract Drawings, as the same may be more specifically identified in the Contract, Change Orders, Work Change Directives, Field Orders and the written interpretations and clarifications of the Project Designer or CITY REP and Modifications issued after execution of the Contract. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text data, graphics, and the like that may be furnished by CITY to CONTRACTOR are not Contract Documents.

B. The Contract Documents also include those parts of the Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction (MAG Standard Specifications and Details), which address matters not otherwise covered by or addressed in these General Conditions, the City Standard Specifications and Details, the Project Specifications or the Construction Contract and said MAG Standard Specifications and Details are incorporated herein only to the extent they do not conflict with or modify any of those documents named herein above in paragraph 3.1A.

3.2 Intent

A. The Contract Documents comprise the entire Contract between CITY and CONTRACTOR concerning the Work. They may be altered only by a written Modification.

B. The Contract Documents are complementary and intended to be interpreted as a whole; what is called for by one plan note, drawing detail, contract provision, etc., is as binding as if called for by all.

C. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be provided by CONTRACTOR whether or not specifically called for at no additional cost to CITY.

D. Clarifications and interpretations of the Contract Documents shall be issued by the Project Designer through the CITY REP.

E. The Specifications may describe or the Drawings may show the general arrangement of an item of material or equipment when the actual details of said arrangement will vary with the source of the material or equipment. In such cases, CONTRACTOR shall bear all direct and indirect costs to accommodate the item of material or equipment furnished, whether the item of material or equipment is furnished by a manufacturer named in the Specifications or is furnished as an approved substitute "or equal" item of material or equipment.

F. When words in the Specifications or on the Drawings, which have a well-known technical or trade meaning, are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning.

3.3 Reference Standards

A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

B. The provisions of any such standard, specification, manual or code, or any instruction of a Supplier shall not change the duties or responsibilities of CITY, CONTRACTOR, Project Designer or CITY REP, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction assign to CITY, CONTRACTOR, Project Designer, or any of their agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 Reporting and Resolving Discrepancies

A. If during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, or between the Contract Documents and any provision of any law or regulation applicable to the performance of the Work or of any standard, specification, manual or code, any survey, or of any instruction of any Supplier, CONTRACTOR shall report it to CITY REP in writing at once and before proceeding with the Work affected thereby (except in an emergency as required by paragraph 6.13). However, CONTRACTOR shall not be liable to CITY for failure to report any such conflict, error or discrepancy unless CONTRACTOR knew or should reasonably have known thereof. On receipt of any such

notice, CITY REP will promptly investigate the circumstances and give appropriate instructions to the CONTRACTOR. Until such instructions are given, any Work done by the CONTRACTOR after discovery of such conflict, error or discrepancy which is directly or indirectly affected by such conflict, error or discrepancy will be at CONTRACTOR'S own risk and CONTRACTOR shall bear all cost arising therefrom.

B. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1) the provisions of any standard, specification, manual, code or instruction (whether or not specially incorporated by reference in the Contract Documents); or

2) the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation);

3) provided, however, when any of the Contracts Documents incorporate by reference standards, specifications or other documents, the printed provisions contained in the Contract Documents take precedence over any provisions incorporated by reference.

C. In a case of a discrepancy or conflict, the order in which the various contract documents shall govern is as follows from highest to lowest: Technical Specifications; Plans; Supplementary Conditions (sometimes referred to as Special Conditions); General Conditions; City of Chandler standard specifications and standard details.

D. Figured dimensions on Drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale details shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials and workmanship. The specification calling for higher quality material or workmanship shall prevail.

3.5 Re-Use of Documents

Neither CONTRACTOR nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the Project Designer; and they shall not re-use any of them on extensions of the Project or any other project without written consent of CITY and the Project Designer and specific written verification or adaptation by the Project Designer.

ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands

CITY shall furnish, as indicated in the Contract Documents the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by CITY, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in CITY'S furnishing these lands or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Article 13. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment (marshalling yard).

4.2 Physical Conditions, Investigations and Reports

A. CONTRACTOR is to protect all existing facilities during construction. Utility poles that may be affected by the construction activities shall be protected by the CONTRACTOR. CONTRACTOR shall notify the appropriate Utility Company or agency of any construction that may affect their facilities.

B. The Supplementary Conditions identify any reports of investigations and tests of subsurface and latent physical conditions at the site, and any reports of conditions that otherwise may affect cost, progress or performance of the Work which have been utilized by Project Designer in preparation of the Drawings and Specifications. These reports are not intended to constitute any explicit or implicit representation as to the nature of the subsurface and latent physical conditions which may be encountered at the site or to constitute explicit or implicit representations as to any other matter contained in any report. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.

4.3 Differing Subsurface or Physical Conditions; Underground Facilities

4.3.1. Underground Facilities

A. The existence and number of facilities as shown on the plans are estimated from information furnished by the particular utility. CONTRACTOR is responsible for field verification and location of all utilities prior to the start of construction. No field work shall be allowed to start until CONTRACTOR has arranged for and Blue Stake has located all affected utilities. In addition CONTRACTOR shall expose and physically locate all potentially conflicting utilities prior to construction. The actual locations of the utilities shall be compared to locations shown on the plans and any required changes in alignment and grade shall be made at the time of construction in consultation with CITY REP. It is generally recognized and CONTRACTOR should anticipate that information from Blue Stake or information from utility companies during project design, frequently fails to disclose all underground facilities. The fact that more utility lines or other underground facilities are located in the Project Site than shown on the Project Plans does not constitute an "unforeseen Condition" and such undisclosed underground facilities do not differ materially from the conditions which CONTRACTOR should expect. The provisions of Sections 105.4, 105.6, 107.11 and 109.8.1 of the MAG Uniform Standard Specifications for Public Works Construction apply and are incorporated herein by reference.

B. The project requires considerable coordination with utility companies such as Arizona Public Service, Quest, Cox, SW Gas and Salt River Project. The provisions of Sections 105.4, 105.6, 107.11 and 109.8.1 of the MAG Uniform Standard Specifications for Public Works Construction strictly apply and no claims for delays due to utility work on the project will be allowed.

C. Utilities damaged shall be repaired at the CONTRACTOR'S expense.

4.3.2 Unforeseen Conditions

The provisions of Section 104.2.2 of the MAG Uniform Standard Specifications for Public Works Construction strictly apply.

4.4 Reference Points

CITY shall provide engineering surveys to establish reference points for construction which in CITY'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of CITY. CONTRACTOR shall report to CITY REP whenever any reference point is lost

or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for replacement or relocation of such reference points by a licensed surveyor.

4.5 Hazardous Environmental Conditions

A. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Document to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

B. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition. CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.13); and (iii) notify CITY and CITY REP (and promptly thereafter confirm such notice in writing.) CITY shall promptly consult with CITY REP concerning the necessity for CITY to retain a qualified expert to evaluate such condition or take corrective action, if any.

C. CONTRACTOR shall be responsible for any and all civil or criminal penalties, fines, damages, or other charges imposed by any regulatory agency or court for sewage discharges that are in violation of applicable statutes and laws and that are a result, direct or indirect, of work performed under this Contract. CONTRACTOR shall also be responsible for reimbursement to CITY for administration, reporting, and tracking expenses required as a result of any spill event. In the event the regulatory agency or court imposes a probationary period, CONTRACTOR shall post bond for the probationary period to ensure that all such costs are reimbursed to CITY. This responsibility shall apply whether penalties are imposed directly on CONTRACTOR or any of its subcontractors, or the City of Chandler. CONTRACTOR shall defend and indemnify CITY against such penalties. Regulatory agencies may include, but are not limited to, the Arizona Department of Environmental Quality (ADEQ) and the United States Environmental Protection Agency (USEPA).

ARTICLE 5 – PERFORMANCE AND PAYMENT BONDS

A. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. With the performance and payment bonds CONTRACTOR shall provide a copy of the surety company's Certificate of Authority certified by the Arizona Department of Insurance. These Bonds shall remain in effect at least until one year after the date of final payment, except as otherwise provided by law. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by the Bidding Documents or Supplementary Conditions and be executed by such sureties as:

1) Are licensed to conduct business in the State of Arizona and have an agent for service of process in Arizona, and

2) Are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and

3) Are acceptable to the City of Chandler.

All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

B. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent, or CONTRACTOR'S right to do business is terminated in any state where any part of the Project is located, or it ceases to meet the requirements of paragraph A above, CONTRACTOR shall within five (5) days thereafter substitute another Bond and surety, both of which shall be acceptable to CITY.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision and Superintendence

A. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be solely responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence of procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to CITY REP and the Project Designer except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR. At the Pre-construction Conference CONTRACTOR shall provide to CITY REP the name of the person assigned as CONTRACTOR'S resident superintendent and said resident superintendent shall attend the Pre-Construction Conference with CONTRACTOR.

C. Whenever the resident superintendent is not present at a particular part of the Work where the CITY REP or Project Designer may desire to inform the CONTRACTOR relative to interpretation of the Drawings and Specifications or to disapproval or rejection of materials or Work performed, the CITY REP or Project Designer may provide such information in writing to the foreman or other worker in charge of the particular part of the Work in reference to which the information is given. Information so given shall be as binding as if given to the superintendent.

D. CONTRACTOR shall be solely responsible for coordination of all of the Work. CONTRACTOR shall supervise, direct and cooperate fully with all Subcontractors, manufacturers, fabricators, suppliers, distributors, installers, testing agencies and all others whose services, materials or equipment are required to ensure completion of the Work within the Contract Time.

E. CONTRACTOR shall also coordinate their Work with the work of others to assure compliance with schedules.

F. CONTRACTOR shall attend and participate in all project coordination or progress meetings and report on the progress of all Work and compliance with schedules.

6.2 Labor, Materials and Equipment

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site.

B. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without CITY'S written consent given after prior written notice to CITY REP. If it shall become absolutely necessary to perform Work at night or on Saturdays, Sundays or legal holidays, the CITY REP shall be informed at least 24 hours in advance of the beginning of performance of such Work. Only such Work shall be done at night as can be done satisfactorily as determined by the CITY REP and in a first-class manner. Good lighting and all other necessary facilities for carrying out and inspecting the Work shall be provided and maintained at all points where such Work is being done. Further, unless such non-normal work hours are performed at CITY'S request or required by the Contract Documents, CONTRACTOR shall pay to CITY all additional costs incurred by CITY by reason of such non normal working hours. Expenses incurred by CITY for overtime compensation for City Staff, CITY REP and/or Project Designer and staff will be charged to CONTRACTOR at the rate of $40.00 per hour for CITY on-site inspection staff and at actual cost plus ten percent administrative overhead for all others. Such costs may be deducted by CITY from any payments due to CONTRACTOR. Provided, however, if overtime work or work during other than normal hours is at the request of CITY and not due to CONTRACTOR delay, CITY will pay the cost of CITY overtime expenses.

C. CONTRACTOR shall provide and assume full responsibility for services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the execution, testing, start-up, and completion of the Work.

D. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of CITY. If required by CITY REP, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. When the quality of material or equipment is not specifically set forth in the Contract Documents, the best available quality of material or equipment available within a reasonable distance of the project shall be provided.

E. All materials and equipment shall be stored, applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents; but no provisions of any such instructions will be effective to impose on CITY or PROJECT DESIGNER responsibility for the means, methods, techniques, sequences or procedures of construction or for safety precautions incident thereto.

F. CONTRACTOR shall maintain sufficient competent personnel, drafting equipment and supplies at their disposal for the purpose of preparing layout and coordination drawings. These drawings shall supplement the Contract Documents, and the work and Shop Drawings as necessary to correlate the work of various trades. Where such drawings are to be prepared by the mechanical, electrical, plumbing, or heating and ventilating Subcontractors, CONTRACTOR will ensure that each Subcontractor has the required personnel and facilities.

6.3 Substitutes and "Or-Equals"

Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier, distributor or specific professional/building certifications or standards, the specification or description is intended to establish the type, function, appearance and quality required. Unless the specification contains or is followed by words reading that no like, equivalent, or "or-equal" item or indicating that no substitution is permitted, other items of material or equipment or material or equipment of other manufacturers, fabricators, suppliers, distributors or certifications may be submitted to CITY REP for review as specified below.

A. Requests for review of substitute items of material and equipment will not be accepted by CITY REP from anyone other than CONTRACTOR.

B. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to CITY REP for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S timely achievement of final completion, whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain a statement that CONTRACTOR agrees to pay all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change.

C. CITY REP may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute. CITY REP will be allowed a reasonable time within which to evaluate the proposed substitute and to obtain a recommendation from the Project Designer. CITY REP will be the sole judge of acceptability and no substitute will be ordered or installed without CITY REP'S prior written acceptance.

D. CITY REP may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

E. CITY REP will record time required by CITY REP, the Project Designer and CITY'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Drawings or Specifications occasioned thereby. Whether or not CITY REP accepts a proposed substitute, CONTRACTOR shall reimburse CITY for the charges of CITY REP, the Project Designer and CITY'S consultants for evaluating any proposed substitute that does not meet the requirements of the Drawings and Specifications occasioned thereby. CITY may deduct any such charges from any payments due to CONTRACTOR.

6.4 Conformity with Contract Documents and Allowable Deviations

The Work shall conform to the lines, grades, dimensions, tolerances, and material and equipment requirements shown on the Drawings or set forth in the Specifications. Although measurement, sampling, and testing may be considered evidence as to such conformity, the CITY REP shall be the sole judge as to whether the Work or materials deviate from the Drawings and Specifications, and CITY REP's decision as to any allowable deviations therefrom shall be final.

6.5 Concerning Subcontractors

A. CONTRACTOR shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom CITY or the Project Designer may have reasonable objection. A Subcontractor or other person or organization identified in writing to CITY and the Project Designer by CONTRACTOR prior to the Notice of Award and not objected to in writing by CITY or the Project Designer prior to the Notice of Award will be deemed acceptable to CITY and the Project Designer. If CITY or the Project Designer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by CONTRACTOR after the Notice of Award, CONTRACTOR shall submit an acceptable substitute and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. CONTRACTOR shall not be required to employ any SUBCONTRACTOR, other person or organization against whom CONTRACTOR has reasonable objection. Acceptance of any Subcontractor, other person or organization by CITY or the Project Designer shall not constitute a waiver of any right of CITY or the Project Designer to reject defective work.

B. CONTRACTOR shall be fully responsible for all acts and omissions of their Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between CITY or the Project Designer and any Subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of CITY to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. CITY may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR or amount of specific Work done.

C. The Divisions and Sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

D. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate Contract between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY.

6.6 Patent Fees And Royalties

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of CITY or the Project Designer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the Contract Documents. CONTRACTOR shall indemnify and hold harmless CITY and the Project Designer and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

6.7 Permits

A. Unless otherwise specified in the Contract Documents, CITY will, upon appropriate cooperation from CONTRACTOR, obtain and provide to CONTRACTOR those permits issued by the City of Chandler. CONTRACTOR shall obtain all other construction permits and licenses. CONTRACTOR shall pay all other governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of bid opening. CONTRACTOR shall also pay all charges of utility service companies for connections to the Work, and CITY shall pay all charges of such companies for capital costs related thereto, such as plant investment fees and system development fees.

B. Work in any public easement or right-of-way shall be done in accordance with the requirements of a permit issued by the public agency in whose easement or right-of-way the Work is located in addition to conforming to the Drawings and Specifications. If a permit is not required, the Work shall conform to the standards of the public agency involved in addition to conforming to the Drawings and Specifications.

C. City of Chandler permits and permits from all applicable governing jurisdictions (i.e. Maricopa County and Arizona Department of Transportation) are required while performing work on City contracts. CONTRACTOR shall pay all permit fees as required by the other governing jurisdictions.

D. Construction water and landfill fees will not be waived and must be paid for by the CONTRACTOR. The system development fees for water and sewer shall be paid for by the CITY unless shown in the itemized Bid Schedule.

6.8 Laws and Regulations, and Government Policies

A. CONTRACTOR shall give all notices and comply with all laws, ordinances, standard details and specifications, rules and regulations applicable to the Work whether adopted by a City, State or Federal governmental agency.

B. If CONTRACTOR observes that the Specifications or Drawings are at variance with applicable laws or regulations, CONTRACTOR shall give CITY REP prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such laws, ordinances, rules and regulations, and without such notice to CITY REP, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.

C. The CONTRACTOR shall comply with the Immigration Reform and Control Act of 1986 (IRCA). The CONTRACTOR understands and acknowledges the applicability of the IRCA activities. The CONTRACTOR agrees to comply with the IRCA while performing their work and to permit City inspection of CONTRACTOR personnel records to verify such compliance.

D. The CONTRACTOR shall report immediately any discovery of archeological ruins or artifacts. Excavation must stop immediately so that the CITY can decide on the pertinent steps to follow such discovery.

E. If the project is Federally or State funded, additional requirements are generally associated with the project implementation. CONTRACTOR'S attention is directed to the fact that the Contract may include those additional requirements.

F. Spills of oil, gas, chemicals or any hazardous materials must be reported by the CONTRACTOR immediately. Approved mitigation measures shall be taken by the

CONTRACTOR as expediently as possible. Hazardous wastes shall not be discharged into the City's sanitary or storm sewer systems. See also § 4.5.

6.9 Taxes

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes in effect at the time of bid submittal and required to be paid by CONTRACTOR, in accordance with the law of the state of Arizona. When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the Project, CONTRACTOR shall assist CITY in applying for and obtaining such tax credits and exemptions which shall be paid or credited to CITY.

B. CONTRACTOR shall obtain a current City of Chandler privilege tax license before Notice to Proceed is issued.

6.10 Use of Premises

A. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

B. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the work or adjacent property to stresses or pressures that will endanger it.

6.11 Record Documents

A. CONTRACTOR shall maintain one record copy of all Specifications, Drawings, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, written interpretations, and clarifications, in good order, in a safe place at the construction site and shall annotate them to show all changes made during the construction process. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings shall be available to CITY REP and the Project Designer for examination and/or reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to CITY REP for CITY.

B. CONTRACTOR shall also maintain, revise and provide accurate field data on a red-lined set of contract drawings, which are to be kept current and submitted as complete at the conclusion of the construction. These record drawings will be reviewed and used as documentation for periodic progress payments, and upon project completion, for the preparation of "as built" file drawings by the Project Designer. All record "as built" information shall be submitted on 4 mil photo mylar and shall be 24" x 36" in size. Final payment will not be issued until all record drawings and as built information are submitted by CONTRACTOR, and certified to be complete by the Project Designer and/or CITY REP.

6.12 Safety and Protection

A. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1) All employees on the Work and other persons who may be affected thereby;

2) All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and

3) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property, utilities and other underground facilities when prosecution of the Work may affect them. CONTRACTOR shall cooperate with the owner in the protection, removal, relocation or replacement of such property. All damage, injury or loss to any property referred to in Paragraph A above, caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY or anyone employed by CITY or anyone for whose acts it may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and CITY REP has issued a notice to CITY and CONTRACTOR in accordance with Paragraph 14.9 that the Work is acceptable.

C. CONTRACTOR shall designate in writing and submit at the Pre-construction Conference the name of a responsible member of their organization, the designated Safety at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to CITY.

D. The right of CITY REP to conduct construction review or observation of the CONTRACTOR'S performance will not include review or observation of the adequacy of the CONTRACTOR'S safety measures in, on, or near the construction site.

6.13 Emergencies

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY REP, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY REP prompt written notice of any significant changes in the Work or deviations from the Contract documents caused thereby.

6.14 Shop Drawings and Samples

A. CONTRACTOR shall submit Shop Drawings to CITY REP for review and approval in accordance with the acceptable schedule of Shop Drawing and Sample submittals (see Paragraphs 2.6 & 2.7) and the procedures specified in the Contract Documents. All Shop Drawings shall have been checked by and stamped with the approval of CONTRACTOR, after checking and verifying all field measurements, and marked with identification as CITY REP may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable Project Designer to review the information as required.

B. CONTRACTOR shall also submit Samples to CITY REP for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All Samples shall have been checked by and stamped with the approval of CONTRACTOR, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.

C. At the time of each submission, CONTRACTOR shall in writing call to the attention of CITY REP and Project Designer, all deviations that the Shop Drawings or Samples may have from the requirements of the Contract Documents.

D. CITY REP will review and approve or when applicable cause the Project Designer to review and approve, with reasonable promptness, but in no case more than twenty one (21) days, Shop Drawings and Samples. Provided, however, such review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents, and shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make all corrections required by CITY REP and Project Designer and shall return the required number of corrected copies of Shop Drawings and resubmit new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by Project Designer or CITY REP on previous submittals. CONTRACTOR'S stamp of approval on any Shop Drawing or Sample shall constitute a representation to CITY and the Project Designer that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that CONTRACTOR has reviewed or coordinated each Shop Drawing or Sample with the requirements of the Work and the Contract Documents.

E. Where a Shop Drawing or Sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved by CITY REP and/or Project Designer.

F. Review and approval of Shop Drawings or Samples by CITY REP and/or the Project Designer shall not relieve CONTRACTOR from responsibility for any deviations from the Contract Documents unless CONTRACTOR has in writing called attention to such deviation at the time of submission and CITY REP or PROJECT DESIGNER has given written concurrence and approval to the specific deviation, nor shall any concurrence and approval by CITY REP or Project Designer relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or Samples.

6.15 Continuing the Work

CONTRACTOR shall carry on the Work and maintain the progress schedule during all disputes or disagreements with CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as CONTRACTOR and CITY may otherwise agree in writing.

6.16 Progress Schedule

A. CONTRACTOR shall adhere to the Construction Progress Schedule established in accordance with Paragraph 2.6, as it may be adjusted from time to time as provided below.

B. CONTRACTOR shall submit to CITY REP for acceptance (to the extent indicated in Paragraph 2.6) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the Progress Schedule then in effect and additionally will comply with any applicable provisions of the Contract Documents.

C. Proposed adjustments to the Progress Schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment.

6.17 Errors or Discrepancies Noted by Contractor

It is the duty of CONTRACTOR to promptly notify CITY REP in writing of any design, materials, or specified method that CONTRACTOR believes may prove defective or insufficient. If CONTRACTOR knows or should have known that a defect or insufficiency exists in design, materials, or specified method and fails to promptly notify CITY REP in writing of this belief, the CONTRACTOR waives any right to assert that defect or insufficiency in design, materials, or specified method at any later date in any legal or equitable proceeding against the CITY or in any subsequent arbitration or settlement conference between the CITY and the CONTRACTOR. CITY REP, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the CONTRACTOR.

6.18 Contractor's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to CITY that all Work will be in accordance with the Contact Documents and will not be defective.

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by CITY REP, nor the issuance of a letter of Substantial Completion, nor any payment or issuance of a certificate by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor the issuance of a notice of acceptability by CITY REP pursuant to Section 15.9, nor any correction of defective Work by CITY shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

C. All representations, warranties and guarantees made in the contract documents shall survive final payment and termination or completion of this Contract.

6.19 Reimbursement For Additional Project Designer Services

A. The Work to be accomplished under these Contract Documents has been designed for CITY by a registered Professional Engineer and/or licensed Architect (Project Designer) retained by CITY for this purpose. It is understood that normal Construction Administration for the purpose of interpretation of the Contract Documents is provided by CITY. Should any services of the Project Designer be required to assist in the corrections of errors or omissions by CONTRACTOR, or services of the Project Designer be required because of changes in structure or equipment where CONTRACTOR has requested approval of substitute methods or material, or any other items detailed herein below, those services will be provided by the Project Designer at the standard hourly rates previously negotiated with CITY and shall be paid for by the CONTRACTOR.

B. The Project Designer shall be reimbursed by CONTRACTOR for the Project Designer's additional services to the Project through no fault of CITY or the Project Designer including, but not limited to, the following conditions:

1) Additional site visits, investigations, inspections, design work and/or reports by the Project Designer which are required due to damages to existing facilities or completed work caused by the CONTRACTOR in his performance, CONTRACTOR'S negligence, or CONTRACTOR'S work which is rejected as defective or as failing to conform to the Contract Documents

3) Project Designer Construction Phase Services rendered on the project during the time the project remains incomplete after the Contract date of final completion will be charged to CONTRACTOR at a rate previously negotiated CITY.

4) All retesting required due to the failure of CONTRACTOR'S work to meet the requirements of the Contract Documents shall be at CONTRACTOR'S expense. All standby and travel time by the CITY'S testing lab, the Project Designer or CITY'S REP due to CONTRACTOR'S inability to be prepared for testing at the agreed upon time shall be at the CONTRACTOR'S expense.

C. City may withhold from any payment otherwise due to CONTRACTOR any amounts necessary to pay the Project Designer for such additional services as provided herein above.
D. CONTRACTOR shall not be required to bear additional costs incurred by CITY due to errors by the Project Designer.

ARTICLE 7 COOPERATION WITH OTHERS:

7.1 Contractor Responsible to Resolve Conflicts

A. The provisions of MAG Uniform Standard Specifications for Public Works Construction Sections 105.6, 105.6.1, 105.6.2, 107.11 and 109.8.1 strictly apply and shall be read together with Section 4.3.1 herein.

B. It shall be the responsibility of CONTRACTOR to ascertain the need for bracing or shoring of utility poles during the construction of the Project and no additional compensation will be allowed for such bracing or shoring.

C. In general, the contract will indicate various utility items, certain of which are to be relocated or adjusted by the utility owner and others, by the Contractor. Any work performed separate from this Contract by CONTRACTOR for any utility company, shall be paid for by the utility company and will not be a part of this Contract with CITY.

7.2 Notifications Requirement in the Event of Any Damage to or Dislocation of Underground Facilities

In the event of any damage to or dislocation of any underground facility, CONTRACTOR shall immediately notify the owner of such facility and shall not attempt to repair any facility, except those intended for the conveyance or storage of water and sewage. The excavation shall be left open until the arrival of representatives of the owner. The owner of the damaged facility will dispatch its representative promptly to examine the underground facility and, if necessary, make repairs.

7.3 Cooperation Between Contractors

CITY reserves the right at any time to contract for and perform other or additional work on or near the work covered by the contract. When separate contracts are let within the limits of any one project, each CONTRACTOR shall conduct his work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed by City. Each Contractor involved shall assume all liability, financial or otherwise, in connection with his contract and shall protect and save harmless the CITY from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by such Contractor because of the presence and operations of other Contractors working within the limits of the same project. Each Contractor shall arrange their work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. Each Contractor shall join their work with that of others in an acceptable manner and shall perform it in proper sequence to that of the others. CITY will not honor any claim for extra compensation due

to delays, extra work, or extension of time caused by any other Contractors working within the limits of the same project.

ARTICLE 8 - STATUS OF CITY'S REP AND THE PROJECT DESIGNER DURING CONSTRUCTION

8.1 City's Representative

A. The term CITY'S REPRESENTATIVE (CITY REP) refers to the person or firm appointed by CITY to be on the project site daily to oversee the construction on the CITY'S behalf. CITY REP performs those functions of the person sometimes referred to as the "owner's representative," "resident engineer," "resident project representative," "onsite construction manager," or the "construction administrator." Sometimes the CITY REP will be a City employee, sometimes the CITY REP will be the same person or firm that designed the project, i.e., the Project Designer, and sometimes a different architect or engineer, but in any case, the CITY REP will represent the CITY and has only the authority granted by CITY, whether through an employment relationship or through a contract for professional services.

B. CITY may also appoint one person or firm to be CITY REP for certain phases or portions of the Project and another different person or firm to be CITY REP for other phases or portions of the Project. Frequently the CITY REP for that portion of a Project known as the "offsite improvements" will be a City Offsite Inspector.

C. The CITY REP may appoint persons to assist in observing the performance of the Work, and in the performance of the duties of CITY REP but in such case prior permission of CITY must be obtained and CITY shall provide written notice to CONTRACTOR. An assistant to the CITY REP may sometimes be referred to as the Owner's Field or Onsite Representative.

D. The duties and responsibilities and the limitations of authority of CITY REP during construction are set forth in the Contract Documents. Generally, unless otherwise specifically stated in the Contract Documents the CITY REP may perform the following functions:

1) Observe the performance of the Work, inform CITY of the progress of the Work and endeavor to guard CITY against defects and deficiencies in the Work.

2) Arrange, schedule and attend pre-construction conferences, progress meetings and other job conferences as may be required, and notify in advance those who are expected to attend. Prepare and circulate minutes of project meetings including coordination meetings.

3) Review the CONTRACTOR'S Progress Schedules, schedule of Shop Drawings, and other schedules prepared by the CONTRACTOR and determine their acceptability.

4) Review Contractor's initial cost breakdown with Schedule of Values and/or Bid Schedule Unit Price List and with concurrence from the Project Designer recommend approval.

5) Assist CITY in acquiring materials testing laboratory and inspection services.

6) Receive and record the date of receipt, and monitor transmission of Shop Drawings, samples, and test data submitted by the CONTRACTOR, forward the Shop Drawings and other submittals requiring such review to the Project Designer and/or other agencies or persons, receive from the Project Designer such submittals after review and record the date of such receipt, and transmit them back to CONTRACTOR as necessary. All such transmittal dates shall be recorded in the Submittal log.

7) Provide "on-site" observation regarding conformance of the work with the contract documents. Observe and document work and any delays and identify and reject defective or deficient work. Observe and approve or reject construction materials and equipment to determine their general compliance with the Contract Documents.

8) Advise the Project Designer when it is believed Work should be corrected, rejected, uncovered for observations, or requires special tests or inspections.

9) Arrange for CITY instigated inspections and tests (CONTRACTOR shall arrange for general inspections and materials testing.) Verify that tests, equipment and system start-up and operating and maintenance instructions are followed and conducted by the CONTRACTOR in the presence of the appropriate personnel, as required by the Contract Documents, and that the CONTRACTOR maintains adequate records thereof.

10) Observe, record, and report to CITY and the Project Designer, information concerning CITY instigated test procedures and start-ups.

11) Schedule, assist and accompany other City staff, the Project Designer and inspectors representing other agencies having jurisdiction over the Project, visiting the Work Site and record and report the outcome of these inspections.

12) Prepare progress reports.

13) Issue Field Orders.

14) Issue Work Change Directives.

15) Prepare all Change Orders and supplemental agreements in the form and manner approved by the CITY, for authorized alterations to the Work as provided for under the Contract Documents. Recommend to and obtain from CITY approval or denial of Changes to Contract Times or Price.

16) Verify and approve quantities of work put in place during the preceding month as requested in Contractor's application for payment.

17) Verify Contractor reimbursable field costs, if any, for authorized overtime and time and material work and amount of construction "work in place" completed each month for purpose of Contractor's application for payment.

18) Investigate and furnish to CITY and the Project Designer information relating to the CONTRACTOR'S claims and furnish CITY with documents, calculations and other information relevant to such claims together with recommendations with regard to payment of such claims.

19) Furnish CITY and the Project Designer with monthly reports as required, of the progress of the Work and of the CONTRACTOR'S compliance with the approved Progress Schedule, schedule of Shop Drawing submissions and other schedules.

20) Review the CONTRACTOR'S Application for Payment and certify that the Work has progressed to the point indicated by the CONTRACTOR, that to the best of the knowledge, information and belief of CITY REP, based on observations and review, the Work is in accordance with the Contract Documents, and that the CONTRACTOR is entitled to the payment of the amount certified.

21) Respond to general RFI's for general clarification and interpretation and consult, when appropriate with Project Designer or refer RFI to Project Designer for response.

22) Review the Project Designer's interpretation of the Contract Documents for subsequent presentation to Contractor and resolve unanticipated field problems by "on-site" inspections.

23) Maintain orderly files for correspondence, reports or job conferences, Shop Drawing and sample submissions, reproductions of original Contract Documents including Addenda, authorized alterations to the Contract Documents, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, clarification letters, and other alterations to the Contract Documents, interpretations of the Contract Documents, progress reports, and other Project related documents.

24) Review Contractor's completion documents.

25) Prepare, with assistance from the Project Designer, punch list items.

26) Recommend to CITY substantial completion.

27) Perform Final Inspection with assistance from the Project Designer.

28) Recommend, with concurrence of the Project Designer, to CITY Final Completion.

29) Issue certificates of completion.

8.2 The Project Designer

The duties and responsibilities and the limitations of authority of the Project Designer during construction are set forth in the Contract Documents and shall not be extended without written consent of CITY and the Project Designer. Generally, unless otherwise specifically provided in the Contract Documents, the Project Designer will perform the following functions:

A. Design the Project and prepare all Projects Plans and Specifications.

B. Assist in Bidding, respond to pre-bid questions and requests for clarifications.

C. Attend Pre-bid Conference.

D. Issue any necessary Addenda.

E. Respond to RFI's and as determined necessary by CITY REP, issue such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

F. Correct Design defects.

G. Review and approve Shop Drawings

H. Review Contractor's initial schedule of values cost breakdown and with concurrence from CITY REP recommend approval.

I. Review Construction Progress Schedule and comment on acceptability.

J. Provide advice when requested regarding approval or denial of Changes to Contract Times or Price.

K. In the event of a claim or dispute by CONTRACTOR, interpret the requirements of the Contract Documents and judge the acceptability of the Work thereunder.

L. Assist CITY REP to prepare punch list items.

M. Assist CITY REP with Final inspection.

N. Recommend, with concurrence of CITY REP, to CITY Final Completion.

8.3 Contractor's Contact For All Communication

All communication to CITY or to the Project Designer from CONTRACTOR shall be through CITY REP.

8.4 Rejecting Defective Work

Both CITY REP and the Project Designer have authority to disapprove or reject Work which they determine to be defective, and also have authority to require special inspection or testing of the Work as provided in Article 13, whether or not the Work is fabricated, installed or completed. Final authority regarding acceptance of Work rests with CITY, who will act after receiving the recommendations of CITY REP and the Project Designer.

8.5 Limitations on Responsibilities of the Project Designer and/or CITY REP

A. Neither authority to act granted under this Article or elsewhere in the Contract Documents nor any decision made by CITY REP or the Project Designer in good faith, either to exercise or not exercise such authority, shall give rise to any duty or responsibility of CITY to CONTRACTOR, any Subcontractor, any manufacturer, fabricator, supplier or distributor or any of their agents or employees or any other person performing any of the Work.

B. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of CITY REP or the Project Designer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The word "provide" shall be understood to mean furnish and install. The use of any such term or adjective never indicates that either the Project Designer or CITY REP shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Paragraphs C and D below.

C. Neither CITY REP nor the Project Designer will be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and they will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract documents.

D. Neither CITY REP nor the Project Designer will be responsible for the acts or omissions of CONTRACTOR or of any Subcontractors, or of the agents or employees of any CONTRACTOR or Subcontractor, or of any other person at the site or otherwise performing any of the Work.

ARTICLE 9 – CONDITIONS OF THE SITE

9.1 Dust Control

A. CONTRACTOR shall keep suitable equipment on hand at the job site for maintaining dust control on the project and shall employ appropriate equipment for that purpose, in accordance with the requirements of the "Maricopa County Environmental Services Department Air Pollution Control Regulations".

B. CONTRACTOR, especially if earth-moving operations are involved, shall be responsible for obtaining an Air Quality Permit from Maricopa County prior to starting the work. County permit fees shall be paid for by the CONTRACTOR.

9.2 Clean Up

A. CONTRACTOR is responsible for keeping the sidewalks, streets, alleys, and adjacent areas around the Project site free from debris, obstacles, mud, dirt, etc. CONTRACTOR shall immediately and continuously clean up any and all mud or dirt tracked onto streets or sidewalks by construction traffic.

B. During progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. Failure of the CONTRACTOR to comply with the CITY REP cleanup orders may result in an order to suspend Work until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension.

C. Excess or unsuitable material, broken asphaltic concrete, and broken portland cement concrete resulting from the construction shall be removed from the project and disposed of by the CONTRACTOR. Disposal of material within the Chandler City Limits or Planning Area must be approved by the CITY REP.

D. Construction silt, mud, and/or debris resulting from construction operation shall be prevented by the CONTRACTOR from being discharged into City storm drains, retention basins or street right-of-way.

E. Earthwork stockpiles are not to exceed 6 feet in height. Any earthwork stockpile, even less than 6 feet, must be removed within seven days of City notification if dust suppression efforts fail to maintain satisfactory airborne contaminant control.

F. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery, temporary construction facilities and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents. CONTRACTOR shall also leave the public right-of-way, all streets, sidewalks, utility easements and any affected private property in a neat and clean condition with all damages including landscaping repaired and restored.

G. If CONTRACTOR is instructed by CITY REP to perform project clean up or street sweeping operations and fails to do so to CITY's satisfaction within two working days, CITY may procure project clean up services and/or commercial street sweeping services and charge such costs including City administrative time to CONTRACTOR.

9.3 Repair of landscaped areas and Re-Seeding of Seeded Areas

Any seeded area that has been damaged as a result of construction shall be leveled, raked and re-seeded or re-sodded by the CONTRACTOR at CONTRACTOR'S expense.

9.4 Traffic Control

Traffic Control shall be provided as required by the City of Chandler Traffic Barricade Design, Technical Design Manual #7. Any restriction to streets, sidewalks and alleys requires either a Street Closure Permit or permission to close or restrict from the City in accordance with said Technical Design Manual #7.

9.5 Property, Rights in Materials

A. Nothing in the Contract shall be construed as vesting in the CONTRACTOR any right of property in the materials used after they have been attached or affixed to the Work or the soil, or after payment has been made for materials delivered to the site of the Work, or stored subject to or under the control of the CITY. All such materials shall become the property of the CITY upon being so attached or affixed or upon payment for materials delivered to the site of the Work or stored subject to or under the control of the CITY.

B. Soil, stone, gravel, and other materials found at the site of the Work and which conform to the Drawings and Specifications for incorporation into the Work may be used in the Work. No other use shall be made of such materials except as may be otherwise described in the Drawings and Specifications.

9.6 Access

Access shall be maintained to adjacent properties at all times during construction. Where property has more than one point of access, no more than one access shall be restricted or closed at any one time. Access to adjacent private driveways shall be maintained during all non-working hours.

9.7 Notification of Property Owners

All property owners that may be affected by the proposed construction activities shall be notified of the scope, duration of the construction activities and possible interference with their day-to-day activities by CONTRACTOR prior to start of construction. In addition, individual residential or commercial interferences, such as driveway restrictions, water outages, and all other work adjacent to residence/business, require 48-hour notification in advance of specific adjoining work. Notification may be through door hangers or other procedures approved by the CITY.

9.8 Construction Signs

A. It shall be the responsibility of CONTRACTOR to furnish and erect construction signs in accordance with Project Specifications. The signs shall be professionally prepared and subject to approval by the CITY REP, shall be maintained by CONTRACTOR for the duration of the project and shall be removed by CONTRACTOR during the final project clean up.

B. The number of signs required, the size, shape, installation requirements and information to be included for construction signs is established on the detail sheet, provided, however, signs will be a minimum of 4 foot by 8 foot and will be installed so that the bottom of the sign is at least 4 foot above grade. No direct payment will be made for furnishing and erecting construction signs. The cost thereof shall be included in other items for which direct payment is made. Sign locations shall be determined by CITY REP.

C. All required construction signs shall be installed by CONTRACTOR within seven days of Notice to Proceed.

9.9 Water for Construction Purposes

A. If CONTRACTOR desires to use water from City mains, CONTRACTOR shall make application to the City Finance Department for a fire hydrant meter and pay the required deposit. CONTRACTOR may not take water from City mains until a meter is installed.

Contractor shall pay for such water as billed by the City Utility Department. City will not directly reimburse Contractor for such construction water costs as Contractor's cost should have been included in other unit or lump sum bid prices..

B. For conservation reasons, water flooding of trenches for backfilling purposes using potable water is discouraged.

9.10 Relocation of Existing Water Meters

When a service line has been extended and a line setter installed in a meter box, City forces will re-install meter. No compression fittings shall be utilized.

9.11 Water Turn-On or Turn-Off

A. CONTRACTOR shall coordinate all water line turn-ons and turn-offs through the CITY REP. Application shall be made to the Municipal Utility Department and CONTRACTOR shall pay the established charges. The City will close existing valves, but will not guarantee a bone-dry Shutdown.

B. CONTRACTOR shall notify all customers affected by the turn-off not less than forty-eight (48) hours in advance. Notification shall be in writing, shall give the reason for the turn-off and shall give the estimated time and duration that water service will be interrupted. CONTRACTOR is also notified that water turn-off will not be permitted on the day before and after Thanksgiving Day and Christmas Day.

C. No direct payment will be made to CONTRACTOR for turn-ons or turn-offs. Costs associated therewith shall be included in other items for which direct payment is made.

ARTICLE 10 – CONSTRUCTION PHOTOGRAPHS

10.1 Pre-construction Video

The CONTRACTOR shall furnish a pre-construction video recording of the entire project site showing the existing conditions of all pavement, concrete, piping, equipment, structures, landscaping, building, and other site features. The pre-construction video shall be in color VHS format. Two (2) copies of the VHS tape(s) shall be submitted to the CITY REP and approved prior to mobilization or initiating any construction activities. The CONTRACTOR shall notify the CITY REP at least 48 hours prior to making the recording so that the CITY REP may accompany the recorder.

10.2 Ground Level Construction Photographs

A. The CONTRACTOR shall furnish progress photographs of the project. The photographer selected by the CONTRACTOR shall be approved by the CITY REP and shall be either a commercial photographer or an individual experienced and equipped for such photography. The CONTRACTOR shall submit to the CITY REP three (3) representative prints of photos taken by the selected photographer for approval of the photographer's qualifications prior to taking the first photographs.

B. The CONTRACTOR shall deliver to the CITY REP all negatives and three 4" x 6" color glossy prints of each view of the photographs taking during that period with each application for payment. If the current photographs do not accompany the application, the application shall not be reviewed and shall be returned to the CONTRACTOR as incomplete. The number of photographs required to be taken per each application for payment shall be specified in the Supplementary Conditions for each Project but shall not be less than ten (10) photographs.

C. Processing and reproduction work shall be accomplished in accordance with standard practice to ensure that the negatives and subsequent prints are clear and sharp in detail, of

good tonal quality and uniform in range of density. Photos shall be taken by a 35 mm camera or a 2-1/4" x 2-1/4" format camera and shall be protected in appropriate professional enclosures. The photographs shall be taken at regular intervals which provide a step-by-step progress of each Project area.

D. The negatives and photographs shall be identified by use of typewritten labels affixed to the negative enclosure and to the back of the photograph. The label shall provide a description of the view, the direction from which the photograph was taken, the name of the project, CITY'S project number, the name of CONTRACTOR and the date of the photography. The stationing shall also be included for all pipeline installations.

E. CONTRACTOR shall furnish adjustable, hard-back photo album covers for each set for storage of the mounted photos. Photo albums shall be labeled as to Project title.

10.3 Aerial Construction Photographs

A. Unless otherwise specified in the Supplementary Conditions, CONTRACTOR shall engage a professional aerial photographer to photograph the site prior to construction mobilization, at three-month intervals during construction, and following final inspection. The photos shall be taken from two elevations, 1:6400 and 1:3600. The 1:6400 shall center the Project in one 9-inch image. The 1:3600 shall center the Project in two 9-inch images. The 9" square negatives and the following prints shall be provided:

Interval	**Prints**	**Total Prints**
3 month intervals	3 of 9"x9" @ 1:6400	9 – 9" x 9"
	3 of each 9"x8" overlapping image @ 1:3600	Every 3 months

B. The pilot must be well qualified, possessing a minimum of 250 hours of photographic map flying experience. The photographer shall possess a minimum of 250 hours of experience representing actual time spent in executing vertical aerial photography on photographic assignments. Oblique photography is also considered as qualifying experience.

C. The airplane to be used shall be entirely capable of stable performance at the necessary altitude and air speeds, and shall be equipped with all essential navigational and photographic instruments and accessories, and all maintained in operational condition during the period of the contract. No windows shall be interposed between the camera lens system and the terrain. The camera lens system shall not be in the direct path of any gases or oil from the aircraft engines.

D. All photography shall be made with a single lens precision aerial mapping camera equipped with a "high-resolution, distortion-free type lens," calibrated by the National Bureau of Standards. The calibrated focal length of the lens (the focal length at which the values of lens distortion, irrespective of sign, are held to the minimum within 45 degrees of the optical axis) shall be 153 millimeters, plus or minus 3 millimeters. The camera shall function properly at the necessary altitude and under the expected climatic conditions, and shall expose a 9-inch square negative. The lens-cone shall be so constructed that the lens, focal plane at calibrated focal length, fiducial markers and marginal data markers comprise an integral unit or are otherwise fixed in rigid orientation with one another. Dimensional changes brought about by variations of temperature or other conditions shall not be of such magnitude as would cause deviation from the calibrated focal length in excess of plus or minus 0.05 millimeter or would preclude determination of the principal point location to which plus or minus 0.003 millimeter.

E. All prints shall be made on double weight, semi-matte paper stock. They shall be sharp and clear, shall contain all highlight and shadow detail, and shall be evenly tone. They shall be permanently fixed, thoroughly washed, processed through flattening solution and dried without pressing, rolling, or excessive heating and trimmed to image area.

F. Aerial film will be of a quality that is equal or superior to 4 mil Kodak Aerocolor Negative film 2445 (Ester Base). Only fresh, fine-grained aerial film shall be used. The negatives shall be exposed and developed in such a manner that they shall be sharp and clear, and contain all highlights and shadow detail. They shall be free of any defects which, in the opinion of the CITY REP, render them unsuitable for their intended purpose.

G. Negatives and 9"x9" prints shall be enclosed in plastic enclosures and labeled by use of typewritten labels affixed to the negative enclosure and to the back of the print. The label shall include the name of the Project, CITY'S Project number, the name of CONTRACTOR and the date of the photography. Labels shall also be affixed to the larger prints.

H. CONTRACTOR shall furnish adjustable, hard-back photo album covers for each set of 9"x9" prints for storage. Photo albums shall be labeled as to Project title, CITY'S index number, and of CONTRACTOR.

10.4 Procedures

A. Photographic exposures shall be taken during the construction period. CITY REP may vary the specified frequency so that significant progress or changes can be recorded on the photographs.

B. The ground level construction photographs shall be of aesthetic composition and shall depict the progress of the work from the beginning of construction through and including the finished product.

C. All buried piping of greater than four (4) inches in diameter shall be photographed prior to backfill. CITY REP will establish when increased photograph frequency is required, but in no case shall photographs represent sections of new piping installations greater in length than 200 linear feet.

ARTICLE 11 - CHANGES IN THE WORK

11.1 Field Orders

CITY REP may authorize minor changes in the Work not involving an adjustment in the Contract Price or the Contract Times, which are consistent with the overall intent of the Contract Documents. These may be accomplished by a written Field Order on the standard form approved by CITY and executed by CITY REP. Such Field Orders shall be binding on CITY, and also on CONTRACTOR who shall perform the change promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor as provided in Article 12 or Article 13.

11.2 Change Order at City's Request

Without invalidating the Contract, CITY may, at any time or from time to time, order additions, deletions or revisions in the Work. If such addition, deletion or revision will cause a change in the Contract Price or Contract Times, (including to any Milestones), CITY REP using a standard form approved by CITY, will submit a Request for Proposal to CONTRACTOR requesting CONTRACTOR to respond within five (5) days by providing, in writing on the standard form approved by CITY to CITY REP, CONTRACTOR'S proposed time and price changes. Such Proposal shall contain a detailed cost breakdown substantiating all proposed charges and an

explanation for any requested extension to the Contract Times and will also contain the number of days for which the proposal will remain valid.

A. If CITY agrees to the proposal submitted by CONTRACTOR, CITY REP shall, within the time specified in the proposal, obtain the authorized signature of CITY on a Change Order using the standard form approved by CITY and return the executed Change Order to CONTRACTOR for signature by CONTRACTOR.

B. If CITY and CONTRACTOR cannot agree on the changes to the Contract Price and/or Contract Times warranted by the proposed Change Order, CITY may perform any additional work itself, may contract with others to perform any additional work, may order CONTRACTOR to comply with the change to the work and determine the Change in Contract Price in accordance with Article 12 herein, or may determine not to proceed with the proposed Change Order. In such case, where the parties are unable to agree, and CITY desires CONTRACTOR to perform the Change, CITY will issue a Work Change Directive (Change Order executed only by CITY), but noting the appropriate method to determine Contract Price changes, i.e., unit prices, and cost of work based on time and materials as set forth in Article 12, or through alternate dispute resolution pursuant to Article 17 herein. If CONTRACTOR disputes or disagrees with the method noted by CITY and/or if the method selected is through dispute resolution, CONTRACTOR should submit written notice of such dispute to CITY REP within two (2) days of receipt of the Change Order executed by CITY.

C. Upon receipt of the executed Change Order or Work Change Directive, CONTRACTOR shall proceed with the change to the Work involved. All such Work shall be performed under the applicable conditions of the Contract Documents.

11.3 No Payment Without Written Authorization

Additional Work performed without authorization of a written executed Change Order or a written executed Field Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except as otherwise specifically provided herein.

11.4 No Change Order for Adjusted Quantities

CONTRACTOR is responsible for performing its own independent quantity takeoffs during the bid process. Actual field measured quantities and/or quantities verified by registered land surveyor stamped calculations upon request from the City will be paid to the contractor at the unit rates established in the bid schedule. No adjustment in unit prices will be made for quantities actually used that differs from that shown in the bid proposal. Sections 109.4.1, 109.4.2, and 109.4.3 of "MAG Uniform Standard specifications for Public Works Construction," as revised in the version adopted in the Chandler City Code, do not apply to this contract.

11.5 Notice on Bond

If notice of any changes affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the surety, it will be CONTRACTOR'S responsibility to notify the surety, and the amount of each applicable Bond shall be adjusted accordingly. CONTRACTOR shall furnish proof of such adjustment to CITY.

ARTICLE 12 - CHANGE OF CONTRACT PRICE

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work.

12.1 Written Document Required to Change

The Contract Price may only be changed by a written Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to CITY REP within two (2) days of

the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered as soon as CONTRACTOR can determine the cost but no later than within fifteen (15) days of completion of any additional work required due to such occurrence unless CITY REP allows an additional period of time to ascertain accurate cost data. However, MAG Standard Specifications Section 104.2.2 C) shall be strictly applied.

12.2 Value of Work

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the ways listed herein:

A. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the units involved.

B. By mutual written agreement to a lump sum amount, CONTRACTOR shall furnish an itemized cost breakdown together with supporting data including the quantities used in computing the lump sum.

C. On the basis of the Cost of the Work (determined as provided in Paragraph 12.4) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraph 12.5).

D. Through the use of the alternate dispute resolution process set forth in Article 17 herein.

12.3 Work Verification

A. Whenever the cost of any Work is to be determined pursuant to Paragraph 12.4.A and 12.4.B, CONTRACTOR will submit in a form acceptable to CITY REP, daily work sheets showing an itemized labor, material and equipment cost breakdown together with supporting data. No payment will be made for Work not verified by CITY REP.

B. Whenever it is necessary to determine the Cost of the Work because CITY and CONTRACTOR do not agree on an appropriate price for a change in the Work, CITY will incur additional costs to document the time, materials and equipment performed or used at the Site for such Work. CONTRACTOR shall reimburse CITY for all such additional costs to CITY in the event such documenting of time, materials and equipment charges result in a price equal to or less than the amount offered by CITY to CONTRACTOR for such work. CITY'S additional costs will include but not be limited to the cost to CITY for additional time of CITY REP and/or assistants to document CONTRACTOR'S time and materials.

12.4 Cost of the Work

A. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Paragraph 12.4.B.

   1) Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by CITY and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above only to the extent authorized in writing by CITY.

2) Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.

3) Payment made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by CITY, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to CITY who will then determine which bids will be accepted. If a Subcontractor provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR'S Cost of the Work except as modified herein. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

4) Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.

5) Supplemental costs including the following:

   a. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.

   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, and which are consumed in the performance of the Work, and cost less market value of each item used, but not consumed, which remain the property of CONTRACTOR.

   c. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof -- all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work. The "Rental Rate Blue Book for Construction Equipment" published by Primedia Information, Inc., (Dataquest Blue Book) shall be used to determine hourly equipment rates (without operators) for Actual Cost Work (MAG 109.5.1 modification) in accordance with the following formula:

      HERR = f X [(Monthly Rate)/ 176] + HOC,
      Where:
      Monthly rate = Blue Book Monthly Rate, Adjusted with Factor for Blue Book Equipment Year of Manufacture
      HERR = The Hourly Equipment Rental Rate
      F = Regional Climate Adjustment Factor = 0.9 (for all Equipment)
      HOC = Blue Book Hourly Operating Cost

Overhead and profit are included in the above established equipment hourly rate that CITY will be compensating CONTRACTOR for actual cost work. Equipment hours will be recorded to the nearest one-half hour.

Standby equipment time for equipment not operating to perform change order work and when equipment cannot be used elsewhere for other contract work shall be calculated as follows:

SBR = F x (MERR/176) x ½,
Where
SBR = Standby Equipment Rate
F = Regional Climate Adjustment Factor = 0.9 (For All Equipment)
MERR = Blue Book Monthly Equipment Rental Rate, Adjusted With Factor for Blue Book Equipment Year of Manufacture

Overhead and profit are included in the above established equipment hourly rate that the City will be compensating the contractor for actual cost work. Equipment hours will be recorded to the nearest one-half hour.

When double or triple shifting is required, the following equipment rates shall apply:

Double Shift (16 Hours/Day): The first 8-Hour shift shall be at the rates established above. The second 8-Hour shift shall be at 50% of the hourly rate established for one 8-Hour shift.

Triple Shift (24 Hours/Day): The first two 8-Hour shifts shall be at the rates established above. The third 8-Hour shift shall be at 50% of the hourly rate established for the second 8-Hour shift.

For all actual cost work, payment for "stand-by" will be limited to not more than eight hours in a 24-hour day or 40 hours in a normal week. No compensation shall be allowed for equipment that is inoperable due to breakdown or with equipment utilization on work other than the actual cost work for which compensation is being tracked. In addition, no payment shall be allowed for equipment that is not operating because work has been suspended by the contractor for the contractor's reasons. Leased equipment expenses will be compensated as specified in ADOT Specifications, Section 109.04(D)(3)(c). Transportation, freight time and/or other costs including overhead and profit on leased equipment will not be included as part of the actual cost change order work compensation.

d. Sales, user or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by any governmental authority.

e. Deposits lost for causes other than CONTRACTOR'S negligence, royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the execution of the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof,

CONTRACTOR shall be paid for services a fee proportionate to that stated in Paragraph 12.5.

g. The cost of utilities, fuel and sanitary facilities at the site associated with the additional work.

h. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

B. The term **Cost of the Work** shall not include any of the following:

1) Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks and other personnel employed by CONTRACTOR, whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the Work, and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.4.A.1 -- all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

2) Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

3) Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4) Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).

5) Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

6) Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 12.4.A.

12.5 Contractor's Fee

The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profit shall be determined in accordance with MAG Specifications Section 109.5 except as modified herein for "actual cost work" and as follows:

A. A mutually acceptable fixed fee.

B. If a mutually acceptable fixed fee cannot be agreed upon, the fee will be based on the following portions of the cost of work:

1) For costs incurred under Paragraphs 12.4.A.1 and 12.4.A.2, the CONTRACTOR'S Fee shall not exceed a total of fifteen percent (ten percent for overhead and five percent for profit). CITY reserves the right to furnish materials and equipment as CITY deems advisable, and the CONTRACTOR will not be paid the CONTRACTOR'S Fee for such materials and equipment.

2) For costs incurred under Paragraph 12.4.A.3, the CONTRACTOR'S Fee shall not exceed a total of five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed a total of fifteen percent.

3) No fee shall be payable on the basis of costs itemized under Paragraph 12.4.A.4, 12.4.A.5 and 12.4.B.

4) The amount of credit to be allowed by CONTRACTOR to CITY for any such change which results in a net decrease in cost, will be the amount of the net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease.

5) When both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee shall be computed on the basis of the net change in the Contract Price.

12.6 Cash Allowances

It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors, manufacturers, fabricators, suppliers or distributors and for such sums within the limit of the allowances as may be acceptable to CITY. Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. CONTRACTOR agrees that the original Contract Price includes such sums as CONTRACTOR deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

12.7 Hindrances and Delays

A. Except as provided in Paragraph B, below, no increase in the contract price nor additional payment shall be paid nor due to CONTRACTOR for hindrances or delays from any cause during the progress of any portion of the work included in this Contract; but such delays may entitle CONTRACTOR to an extension of the Contract Time in accordance with the provisions of Article 13 hereof.

B. The parties agree to negotiate for the recovery of damages related to expenses actually incurred by the Contractor for a delay under the following circumstances:
   1) If the CITY is solely responsible for the delay which is unreasonable under the circumstances, and
   2) Which delay was not within the contemplation of the parties and was not foreseeable at the time the Contract was entered into, and
   3) The CONTRACTOR can show the impact of the delay on the critical path as indicated on the approved Construction Progress Schedule.

   The maximum compensation for any delay meeting the above requirements shall not exceed the daily amount specified for liquidated damages by the then current version of "MAG Uniform Standard specifications for Public Works Construction."

ARTICLE 13 - CHANGE OF THE CONTRACT TIMES

13.1 Written Document Required

The Contract Times, including any Milestones, may only be changed by a written Change Order. Any claim for any extension in the Contract Time shall be based on written notice delivered to CITY within two (2) days of the occurrence or the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days of the

conclusion of such occurrence unless CITY REP allows, in writing, an additional period of time to ascertain more accurate data.

A. Notice of the extent of the claim must state the amount of additional time requested, the cause of the delay and its impact on critical path work items, the date of the occurrence causing the delay, and must include all other evidence reasonably available or known to the CONTRACTOR which would support the extension of time requested. Minimum required supporting data/criteria will include CPM computer software print outs at acceptable time periods as required by City staff to show the true schedule impact during the delay period.

B. Requests for extensions of time failing to include the information specified in this Article and requests for extensions of time which are not received within the time specified above, shall result in the forfeiture of the CONTRACTOR'S right to receive any extension of time requested.

C. Acceptance of the daily reports by CITY REP shall not be deemed an admission of the CONTRACTOR'S right to receive an extension of time or a waiver of the CITY'S right to strictly enforce the time provisions contained in the Contract Documents.

D. If CONTRACTOR and CITY REP are unable to agree on CONTRACTOR'S request for an extension of time, the dispute shall be resolved through the alternate dispute resolution process provided herein.

13.2 Delays Beyond Contractor's Control

Where CONTRACTOR is prevented from completing any critical path work items within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended if a claim is made therefor, as provided herein. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by CITY, fires, floods, labor strikes, epidemics, abnormal weather conditions, or acts of God.

13.3 Delays Within Contractor's Control

The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

13.4 Delays Beyond City's and Contractor's Control

Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both CITY and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR'S sole and exclusive remedy for such delay. No change to the Contract Price for extended overhead nor any other costs will be granted for delays beyond CITY'S control.

13.5 Rain

Time extensions for rain may be granted only for conditions in excess of normal rainfall, which impacts ongoing activities at the site that have successive following activities that must be accomplished in a required sequence for completion of the project within the specified period. These would be generally labeled as Critical Path Activities. For the purposes of this contract, normal weather conditions, such as average days of rain per month, will be determined by meteorological data obtained from the National Weather Service for station 021514, CHANDLER HEIGHTS, ARIZONA. When it is established that rain in excess of normal rainfall justifies a time extension, a no cost time extension will be granted by the City. The contractor is expected and may be directed to perform other work on the project not effected by heavy rains.

ARTICLE 14 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.1 Notice of Defects

Prompt written notice of all defective Work of which CITY, CITY REP or the Project Designer have actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided herein.

14.2 Access to Work

CITY, CITY REP and the Project Designer and agents of each of them, testing agencies and governmental agencies with jurisdictional interests shall be provided access to the Work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for such access.

14.3 Tests and Inspections

A. CONTRACTOR shall give CITY REP timely (at a minimum, twenty-four hours) notice of readiness of the Work for all required inspections, tests or approvals. CONTRACTOR shall give timely notice to CITY REP in advance of backfilling or otherwise covering any part of the Work so that CITY REP may, if desired, observe such part of the Work before it is concealed. Whenever CONTRACTOR varies the normal period during which Work or any portion of it is carried on each day, CONTRACTOR shall give timely notice to CITY REP so that CITY REP may, if desired, be present to observe the Work in progress. If CONTRACTOR fails to give such timely notice, any Work done in the absence of CITY REP will be subject to rejection. If CONTRACTOR gives such notice to CITY REP, but then is not ready for such inspections, tests, approvals or observations at the time so noticed, CONTRACTOR shall reimburse CITY for all costs incurred by the attendance of CITY REP or other CITY representatives.

B. If any law, ordinance, rule, regulation, code, or orders of any public body having jurisdiction requires any Work (or part thereof) to be inspected, tested or approved, CONTRACTOR (unless another party is specified in the Contract Documents) shall assume full responsibility therefor, pay all costs in connection therewith and furnish CITY REP the required certificates of inspection, testing, or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required by the Specifications in connection with CITY'S acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by CITY (unless otherwise specified).

C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to CITY and by the Project Designer if so specified.

D. Neither observations by CITY REP, the Project Designer nor inspections, tests or approvals by others shall relieve CONTRACTOR from their obligations to perform the Work in accordance with the Contract Documents.

14.4 Uncovering Work

A. If any Work that is to be observed, inspected, tested or approved is covered without written concurrence of CITY REP, it must, if requested by CITY REP be uncovered for observation. Unless CONTRACTOR has given CITY REP timely notice of CONTRACTOR'S intention to cover such Work and CITY REP has not acted with reasonable promptness in response to such notice, CONTRACTOR shall furnish all necessary labor, material and bear all the expenses of such uncovering, exposure, observation, inspection and testing and of

satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued.

B. If CITY REP considers it necessary or advisable that Work covered with the concurrence of CITY REP or Work covered after CITY REP failed to act with reasonable promptness in response to a written notice from CONTRACTOR, be observed, inspected or tested by CITY REP or others, CONTRACTOR, at CITY REP'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as CITY REP may require, that portion of the Work in question and CONTRACTOR shall bear all costs. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if CONTRACTOR makes a claim therefor as provided in Articles 11 and 12.

14.5 City May Stop the Work

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.

14.6 Correction or Removal of Defective Work

A. If required by CITY REP, CONTRACTOR shall promptly, without cost to CITY and as specified by CITY REP, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CITY, remove it from the site and replace it with non-defective Work. CONTRACTOR shall correct any Work which may be displaced in correcting, removing or replacing defective Work. No compensation will be allowed CONTRACTOR for such removal, replacement or remedial Work. CONTRACTOR shall reimburse CITY for costs incurred by CITY due to such correction or removal including but not limited to additional expenses for inspection, testing or observation and/or for repeated reviews by the CITY REP or Project Designer.

B. Upon failure on the part of the CONTRACTOR to comply within a reasonably prompt time with any written order of CITY REP to correct or remove defective Work, CITY REP shall have authority to cause nonconforming materials or rejected Work to be remedied, removed, or replaced at the CONTRACTOR'S expense and to deduct the costs from any moneys due or to become due the CONTRACTOR.

14.7 Correction Period - One Year Guarantee

A. If, within one year after the date of the Certificate of Final Acceptance, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY'S written instructions, either correct such defective Work, or, if it has been rejected by CITY, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR. Such action by the CITY will not relieve the CONTRACTOR of the guarantees required by this Article or elsewhere in the Contract Documents.

B. If, in the opinion of the CITY, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the CITY or to prevent interruption of operation of the CITY, the CITY will attempt to give the notice required by this Article. If the CONTRACTOR cannot be contacted or does not comply with the CITY'S request for correction within a reasonable time as determined by the CITY, the CITY may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention; and the costs of such correction or attention shall be charged against the CONTRACTOR. Such action by the CITY will not relieve the CONTRACTOR of the guarantees required by this Article or elsewhere in the Contract Documents.

C. This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer or supplier gives a guarantee for a longer period. The CONTRACTOR agrees to act as co-guarantor with such manufacturer or supplier and shall furnish the CITY all appropriate guarantee or warranty certificates upon completion of the Project. No guarantee period, whether provided for in this Article or elsewhere, shall in any way limit the liability of CONTRACTOR or their sureties or insurers under the indemnity or insurance provisions of these General Conditions and the Supplementary Conditions.

14.8 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, CITY prefers to accept it, CITY may do so. If any such acceptance occurs prior to final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after final payment, an appropriate amount shall be paid by CONTRACTOR to CITY.

B. CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense, a special performance guarantee or other surety prior to acceptance of defective work.

14.9 City May Correct Defective Work

If CONTRACTOR fails within a reasonable time after written notice of CITY REP to proceed to correct defective Work or to remove and replace rejected Work as required by CITY in accordance with Paragraph 14.6, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), CITY may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising CITY'S rights under this Paragraph, CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, CITY may exclude CONTRACTOR from all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR, but which are stored elsewhere. CONTRACTOR shall allow CITY, CITY REP, agents and employees such access to the site as may be necessary to enable CITY to exercise CITY'S rights under this Paragraph. All direct and indirect costs of CITY in exercising such rights shall be charged against CONTRACTOR in an amount verified by CITY REP, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work or others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in CONTRACTOR'S performance of the Work attributable to the exercise by CITY or CITY'S rights hereunder.

14.10 Correction or Removal of Unauthorized Work

A. Any Work done beyond the lines and grades shown on the Drawings or established by the Project Designer or any changes in, additions to, or deductions from the Work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered remedied, removed, or replaced at the CONTRACTOR'S expense.

B. Upon failure on the part of the CONTRACTOR to comply promptly with any order of the CITY REP, CITY shall have authority to cause unauthorized Work to be remedied, removed, or replaced at the CONTRACTOR'S expense and to deduct the costs from any moneys due or to become due the CONTRACTOR.

ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION

15.1 Schedule of Values

The Schedule of Values established as provided in Paragraph 2.7 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CITY REP. Progress payments on account of Unit Price Work will be based on the number of units completed.

15.2 Application for Progress Payment

A. On or before the first day of each calendar month after actual construction is started (but not more often than once a month), CONTRACTOR shall submit to CITY REP for review a completed Application for Payment signed by CONTRACTOR, covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as CITY REP may reasonably require. An Application for Payment will not be considered complete unless it is accompanied by an updated Construction Progress Schedule and a certification that the on-site, red lined, as built drawings are up to date. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably, securely stored at the site or at another location (such as a bonded warehouse) agreed to in writing, the Application for Payment shall also be accompanied by such data, satisfactory to CITY, as will establish CITY'S title to the material and equipment and protect CITY'S interest therein, including applicable insurance. Each subsequent Application for Payment shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR'S obligations reflected in prior Applications for Payment.

B. Applications for Payment may only be submitted to that specific person named in the Contract as the CITY REP, and not to any other agent or representative of CITY, nor to the Project Designer.

C. The amount of retainage with respect to progress payments will be as stipulated in the Contract and will be in accordance with state law.

15.3 Contractor's Warranty of Title

A. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to CITY at the time of payment, free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens"), provided that this shall not preclude the CONTRACTOR from installing metering devices or other equipment of utility companies or municipalities, the title of which is commonly retained by the utility company or municipality.

B. No materials, supplies, or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein, or any part thereof, is retained by the seller or supplier.

C. Nothing contained in this Article shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the CONTRACTOR for their protection, or any right under any law permitting such persons to look to funds due the CONTRACTOR in the hands of the CITY. The provisions of this Article shall be inserted in all subcontracts and material contracts, and notices of its provision shall be given to all persons furnishing materials for the Work when no formal contract is entered into for such materials.

15.4 Review of Applications for Progress Payments

A. An Application for Payment will be deemed approved and certified for payment after seven (7) days from the date of submission by CONTRACTOR unless CITY REP, on or before the expiration of such seven days, prepares and issues to CONTRACTOR a specific written finding setting forth those items in detail in the Application for Payment that are not approved for payment under the Contract. CITY may withhold an amount from the progress payment sufficient to pay the expenses CITY reasonably expects to incur in correcting any deficiencies set forth in the written finding.

B. Progress Payments shall be paid on or before fourteen (14) days after the Application for Payment is certified and approved.

C. Within five (5) work days after receipt of each Application for Payment, CITY REP with advice and assistance from the Project Designer, shall either provide to CITY a written recommendation for payment, or return the Application to CONTRACTOR indicating in writing CITY REP'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

D. The recommendation of Project Designer and CITY REP for payment of any amounts requested in an Application for Payment will constitute a representation by them and each of them to CITY, based on on-site observations of the Work in progress as experienced and qualified design and construction professionals, and based on their review of the Application for Payment and the accompanying data and schedules, that the Work has progressed to the point indicated; that, to the best of their knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment, neither CITY REP nor the Project Designer will thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed, or that any examination has been made to ascertain how or for what purpose CONTRACTOR has used the money's paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials or equipment has passed to CITY free and clear of any Liens.

E. The recommendation by the Project Designer and CITY REP for final payment will constitute an additional representation by them and each of them to CITY that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in Paragraph 15.9 have been fulfilled.

F. The Project Designer and CITY REP may refuse to recommend the whole or any part of any payment if, in either of their opinions, it would be incorrect to make such representations to CITY. They may also refuse to recommend any such payment, or because of subsequently

discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in their opinion to protect CITY from loss because:

1) The Work is defective, or completed Work has been damaged requiring correction or replacement.

2) Written claims have been made against CITY or Liens have been filed in connection with the Work.

3) The Contract Price has been reduced because of Modifications.

4) CITY has been required to correct defective Work or complete the Work in accordance with Paragraph 14.9.

5) CONTRACTOR'S unsatisfactory prosecution of the Work in accordance with the Contract Documents.

6) CONTRACTOR'S failure to make payment to Subcontractors for labor, materials or equipment.

15.5 Substantial Completion

A. When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify CITY REP, in writing, that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that CITY REP issue a certificate of Substantial Completion. Promptly thereafter, CITY REP and the Project Designer shall make an inspection of the Work to determine the status of completion. If CITY does not consider the Work substantially complete, CITY REP will notify CONTRACTOR in writing giving reasons therefor. If CITY considers the Work substantially complete, CITY REP, with the concurrence of CITY and assistance from the Project Designer, will prepare a list (punch list) of items to be completed or corrected before final acceptance and a certificate of Substantial Completion and shall fix the date of Substantial Completion. The list of items to be completed or corrected shall be attached to the certificate of Substantial Completion when it is issued to CONTRACTOR. At the time of delivery of the certificate and list, CITY REP will also deliver to CONTRACTOR a written recommendation as to a division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities and insurance. Unless and until CONTRACTOR and CITY agree otherwise in writing, this recommendation shall be binding on CITY and CONTRACTOR.

B. CITY shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the punch list.

15.6 Partial Utilization

A. CITY at CITY'S option may use and occupy any substantially completed parts of the Work which has specifically been identified in the Contract Documents, or which CITY, the Project Designer and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by CITY for its intended purpose, without significant interference with CONTRACTOR'S performance of the remainder of the Work, provided, however, if the portion of the Work to be used or occupied has not been found to be substantially complete, CITY must do so in accordance with Paragraph 15.5 prior to such occupancy.

B. In lieu of the issuance of a Certificate of Substantial Completion as to part of the Work, CITY may take over operation of a facility constituting part of the Work whether or not it is

substantially complete if such facility is functionally and separately usable; provided that prior to any such takeover, CITY and CONTRACTOR agree in writing as to the division of responsibilities between CITY and CONTRACTOR for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

C. Substantial completion of or CITY'S beneficial occupancy of a part of the project will not alter the fact that the one year warranty for the whole project starts at the date of Final Completion of the whole project.

15.7 Final Inspection

A. Upon written notice from CONTRACTOR that the Work is complete, CITY REP and the Project Designer will make a final inspection with CONTRACTOR and will provide written notice to CONTRACTOR of all items of Work which are incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

B. The release of the retention monies will be no earlier than the completion of all such deficiencies.

15.8 Final Application for Payment

A. After CONTRACTOR has corrected all such deficiencies and completed all such corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked up record documents, and other documents, all as required by the Contract Documents, and after the Project Designer has indicated that the Work is acceptable (subject to the provisions of Paragraph 15.9) CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as CITY REP may reasonably require, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work.

B. The final Application for Payment must be accompanied by a completed Contractor's Affidavit Regarding Settlement of Claims, the form for which is included in the Contract Documents. The affidavit serves to indemnify and save harmless the CITY against any and all liens for labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY or CITY'S property might in any way be responsible, have been paid or otherwise satisfied. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to CITY to indemnify CITY against any Lien.

C. The final Application for Payment must also be accompanied by the completed on-site, red line, as-built drawings showing all construction as it was in actual fact constructed and installed.

D. The final Application for Payment must also be accompanied by a completed Certificate of Completion, the form for which is included in the Contract Documents. This document certifies that all goods and/or services required by the Contract have been delivered in accordance with the Contract, and all activities required by the Contractor under the Contract have been completed.

15.9 Final Payment and Acceptance

A. If, on the basis of observation of the Work by CITY REP during construction and final inspection and review of the final Application for Payment and accompanying documentation

by CITY REP and the Project Designer, all as required by the Contract Documents, CITY is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of its obligations under the Contract Documents, CITY REP, with the concurrence and assistance of the Project Designer, shall within ten days after receipt of the final Application for Payment, indicate in writing a recommendation for payment and present the Application to CITY for payment. Thereupon, the Project Designer will give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions of Paragraph 15.8. Otherwise, CITY REP will return the Application to CONTRACTOR indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, and the CITY finds the Work has been completed according to the Contract, the CITY shall accept the Work, shall file a notice of completion, and shall pay the entire sum so found to be due as recommended by the CITY REP, after deducting therefrom all previous payments and all amounts to be retained under the provisions of the Contract. All prior progress estimates and payments shall be subject to correction in the final estimate and payment. The final payment shall be due and payable within sixty (60) days from the date of filing a notice of completion of the Work by the CITY.

B. If, through no fault of CONTRACTOR, final completion is materially delayed and if CITY REP so confirms, CITY shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of the Project Designer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if bonds have been furnished as required in Paragraph 5 the written consent of the Surety to the payment of the balance due for the portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to CITY REP with CONTRACTOR'S Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

15.10 Contractor's Continuing Obligation

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the Project Designer, nor the issuance of a letter of Substantial Completion, nor any payment or issuance of a certificate by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor the issuance of a notice of acceptability by the Project Designer pursuant to Paragraph 15.9, nor any correction of defective Work by CITY shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

15.11 Waiver of Claims

The making and acceptance of final payment shall constitute a waiver of all claims by CONTRACTOR against CITY, CITY REP and the Project Designer, and their consultants, directors, officers, employees and agents other than those previously made in writing and still unsettled.

15.12 City's Right to Withhold Certain Amounts and Make Application Thereof

A. In addition to the amount of retainage as stipulated in the Contract, the CITY may withhold a sufficient amount or amounts from any payment otherwise due to the CONTRACTOR as in CITY'S judgment may be necessary to cover:

1) Payments which may be past due and payable for properly filed claims against the CONTRACTOR or any Subcontractors for labor or materials furnished in or about the performance of the Work on the Project under this Contract.

2) Estimated or actual costs for correcting defective Work not remedied.

3) Amounts claimed by the CITY as liquidated damages, special damages, or other offsets, such as testing costs chargeable to the CONTRACTOR, reimbursement to CITY for costs incurred by reason of defective work and or repeated review of CONTRACTOR'S submittals.

4) Estimated costs for an independent consultant to properly complete as-built drawings when not acceptably completed in accordance with all the requirements herein.

B. CITY may apply such withheld amount or amounts to the payment of such claims at CITY'S discretion. In so doing, CITY shall be deemed the agent of CONTRACTOR and any payments so made by CITY shall be considered as a payment made under the Contract by the CITY to the CONTRACTOR, and CITY shall not be liable to the CONTRACTOR for such payment made in good faith. Such payments may be made without prior judicial determination of the claim or claims. CITY will render to CONTRACTOR a proper account of such funds disbursed on behalf of CONTRACTOR.

ARTICLE 16- SUSPENSION OF WORK AND TERMINATION

16.1 City May Suspend Work

CITY may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR and the Project Designer which shall fix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both for costs, directly attributable to any suspension but not lost profits if CONTRACTOR makes a claim therefore as provided in Articles 12 and 13.

16.2 City May Terminate

A. Upon the occurrence of any one or more of the following events:

1) If CONTRACTOR is adjudged a bankrupt or insolvent;

2) If CONTRACTOR makes a general assignment for the benefit of creditors;

3) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;

4) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;

5) If CONTRACTOR repeatedly fails to perform the Work in accordance with the Contact Documents, including but not limited to, failure to supply sufficient skilled workmen or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.6 as adjusted from time to time pursuant to Paragraph 6.16.

6) If CONTRACTOR repeatedly fails to comply with written directives from CITY REP.

7) If CONTRACTOR repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment;

8) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

9) If CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

CITY may without prejudice to any other right or remedy, serve written notice upon the CONTRACTOR and CONTRACTOR'S surety of CITY'S intention to terminate the Contract. Said notice to contain the reasons for such intention to terminate the Contract, and provide that unless within ten days after the service of such notice all such violations have been corrected and remedied, the Contract shall cease and terminate, and CONTRACTOR shall be excluded from the site. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished by others.

B. In the event of any such termination, CITY shall immediately serve written notice thereof upon the surety and CONTRACTOR, and the surety shall have the right to take over and perform the Contract, provided however, that if the surety, within fifteen (15) days after the serving upon it of a notice of termination, does not give the CITY written notice of their intention to take over and perform the Contract, or does not commence performance thereof within thirty (30) days from the date of serving said notice, CITY may take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere, and finish the Work as CITY may deem expedient for the account and at the expense of the CONTRACTOR. CONTRACTOR'S surety shall be liable to the CITY for any excess costs or other damage occasioned the CITY thereby. If the unpaid Balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including but not limited to, compensation for additional professional services and all costs generated to insure or bond the Work of substituted contractors or subcontractors utilized to complete the Work, such excess shall be paid to CONTRACTOR. If such costs exceed the unpaid balance, CONTRACTOR shall pay the difference to the CITY promptly upon demand; on failure of CONTRACTOR to pay, the surety shall pay on demand by CITY. Any portion of such difference not paid by CONTRACTOR or surety within thirty (30) days following the mailing of a demand for such costs by CITY shall earn interest at the rate of fifteen (15%) percent per annum or the maximum rate authorized by Arizona law, whichever is lower. Such costs incurred by CITY shall be verified by CITY REP and incorporated in a Change Order, but in finishing the Work, CITY shall not be required to obtain the lowest figure for the Work performed.

C. Where CONTRACTOR'S services have been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by CITY will not release CONTRACTOR from liability.

D. If funds are not appropriated to continue this Contract and for the payment of charges hereunder, CITY may terminate this Contract at the end of the fiscal period. CITY agrees to give written notice of termination to the CONTRACTOR at least thirty (30) days prior to the end of CITY'S current fiscal period and will pay to the CONTRACTOR all charges incurred through the end of such period.

E. Upon seven (7) days written notice to CONTRACTOR and the Project Designer, CITY may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Contract. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses.

16.3 Contractor May Stop Work or Terminate

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by CITY or under an order of court or other public authority, or CITY fails to pay within (14) fourteen days to CONTRACTOR, any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days written notice to CITY, terminate the Contract and recover from CITY payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Contract, if CITY has failed to make any payment as aforesaid, CONTRACTOR may, upon seven (7) days written notice to CITY, stop the Work until payment of all amounts then due. The provision of this paragraph shall not relieve CONTRACTOR of their obligations under Paragraph 6.15 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with CITY.

ARTICLE 17– ALTERNATE DISPUTE RESOLUTION

17.1 Notice Required

A. Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternative dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes arising under, relating to or touching upon this Contract, the interpretation thereof or the performance or breach by any party thereto, including, but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.

B. CONTRACTOR shall submit written notice of any claim or dispute to CITY REP within seven (7) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as they occur and not postponed until the Project is complete nor lumped together with other pending claims.

C. Failure to submit a notice of any claim, dispute, request or other issue within the times set forth in Articles 11, 12, 13 or 17 shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.

17.2 Decision of Project Designer on Disagreements

A. CITY REP will provide to CONTRACTOR a written response to any claim, request or proposal for a Change Order on or before fifteen (15) days from receipt of CONTRACTOR'S written claim, request or proposal.

B. The Project Designer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder.

C. Written notice of any request for which an interpretation by the Project Designer is sought, together with written supporting data, shall be delivered by CONTRACTOR to CITY REP for presentation to the Project Designer within seven (7) days of the occurrence or the event giving rise thereto, within seven (7) days of CONTRACTOR becoming aware of the need for clarification or further information, or if the claim or dispute was first submitted for a response from CITY REP and CONTRACTOR disputes or disagrees with the response of CITY REP, within three (3) days of CONTRACTOR'S receipt of such response.

D. CITY REP will immediately transmit any such CONTRACTOR requests, claims or disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the

Work to the Project Designer in writing with a request for written response within seven (7) days.

E. The Project Designer will render a decision within seven (7) days of receipt of such transmittal.

17.3 Neutral Evaluator, Arbitrators

CITY will select a Neutral Evaluator to serve as set forth in this ADR process. CITY and CONTRACTOR shall each select an arbitrator of their choice within fifteen (15) days of the date of execution of this Contract to serve as set forth in this ADR process. Each arbitrator selected shall be a member of the State Bar of the State of Arizona, and shall be experienced in the field of construction law. Neither the arbitrator nor the arbitrator's firm shall have presently, or in the past, represented any party to the arbitration.

17.4 Neutral Evaluation Process

In the event either party disagrees with the response of the Project Designer or for disputes not appropriate for submittal to the Project Designer, if CONTRACTOR disagrees with the response of the CITY REP, the following neutral evaluation process shall be used to obtain resolution.

A. Notification of Dispute: Within three (3) days of receipt of the disputed response, the disputing party shall notify the City Engineer of the unresolved dispute. The City Engineer shall promptly notify the Neutral Evaluator in writing of the existence of a dispute.

B. Nonbinding Information Hearing: The Neutral Evaluator shall schedule a nonbinding informal hearing of the matter to be held within seven (7) days from receipt of notification of the existence of a dispute. The Neutral Evaluator may conduct the hearing in such manner as deems appropriate and shall notify each party to attend the hearing and present evidence they believe will resolve the dispute. The Neutral Evaluator is not bound by the rules of evidence in admitting evidence in the hearing and may limit the length of the hearing, witnesses or evidence introduced to the extent that he deems same to be relevant and efficient. Each party to the dispute shall be notified by the Neutral Evaluator that they shall submit a written outline of the issues and evidence intended to be introduced at the hearing and proposed resolution of the dispute to the Neutral Evaluator before the hearing commences. Arbitrators shall not participate in such informal hearing or proceeding process.

C. Nonbinding Decision: The Neutral Evaluator shall render a nonbinding written decision as soon as possible, but not later than five (5) days after the hearing.

17.5 Binding Arbitration Procedure

If the neutral evaluation procedure is unsuccessful, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If any party chooses not to accept the decision of the Neutral Evaluator, such party shall notify the Neutral Evaluator in writing within three (3) business days of receipt of the Neutral Evaluator's decision of a request for arbitration. The party requesting arbitration shall post a cash bond with the Neutral Evaluator in the amount of $5,000, or a greater amount as determined by the Neutral Evaluator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitration Panel.

A. Arbitration Panel: The Arbitration Panel shall consist of the arbitrators previously selected by the parties involved in the dispute, (i.e., CITY'S arbitrator, CONTRACTOR'S arbitrator, or any other CONTRACTOR'S arbitrator who has a contract with the CITY which contains this ADR provision and is a party to the dispute), and the foregoing arbitrators shall select a neutral arbitrator as set forth herein. The Neutral Evaluator shall participate in the proceedings and in the deliberations, but shall not be entitled to vote.

B. Selection of Neutral Arbitrator: The selected arbitrators shall choose additional arbitrator(s) (one additional arbitrator or two additional arbitrators as needed to ensure that the arbitration panel will consist of an odd number of arbitrators), within five (5) days of receipt of notification of a dispute from the Neutral Evaluator. The Neutral Arbitrator(s) shall have the same qualifications as those of the arbitrators set forth in the Neutral Evaluator, Arbitrators paragraph. In the event that the selected arbitrators cannot agree on additional Neutral Arbitrators as set forth above, the Neutral Evaluator shall select the additional arbitrator(s).

C. Expedited Hearing: The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Neutral Evaluator to set an expedited hearing if circumstances justify it. The Neutral Evaluator shall contact the selected Arbitration Panel and arrange for scheduling of the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than twenty (20) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitration Panel upon a showing of emergency circumstances.

D. Procedure: The Neutral Evaluator shall act as Chairman of the Arbitration Panel and will conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitration Panel a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitration Panel may review and consider the Neutral Evaluator's decision. The Chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Chairman, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Chairman.

E. Hearing Days: To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.

F. Award: The Arbitrator Panel shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.

G. Scope of Award: The Arbitration Panel shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitration Panel shall also be without authority to issue an award against any individual party in excess of $500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of $50,000, exclusive of interest, arbitration fees, costs. and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.

H. Jurisdiction: The Arbitration Panel shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the

question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.

I. Entry of Judgment: Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.

J. Severance and Joinder: To reduce the possibility of inconsistent adjudications, the Neutral Evaluator or the Arbitration Panel, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Neutral Evaluator, (Chairman) may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. Neither the Neutral Evaluator nor the Arbitration Panel is authorized to join to the proceeding parties not in privity with the CITY.

K. Appeal: Any party may appeal errors of law by the Arbitration Panel if, but only if, the errors arise in an award in excess of $100,000; the exercise by the Chairman or Arbitration Panel of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.

L. Uniform Arbitration Act. Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. l2-1501, et. seq.

M. Fees and Costs. Each party shall bear its own fees and costs in connection with any informal hearing before the Neutral Evaluator. All fees and costs associated with any arbitration before the Arbitration Panel, including without limitation, the Arbitration Panelists' fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitration Panel. Fees for the Neutral Evaluator shall be a project cost.

N. Equitable Litigation: Notwithstanding any other provision of ADR to the contrary, any party can petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to the Project pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitration Panel. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

O. Change Order: Any award in favor of the CONTRACTOR against the CITY or in favor of the CITY against the CONTRACTOR shall be reduced to a Change Order and executed by the parties in accordance with the award and the provisions of General and Supplementary Conditions to this Construction Contract.

P. Merger and Bar: Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of Contract Time which reasonably should or could have been brought against any party that was or could have been brought into this ADR process. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any party regarding which claim or claims recovery has been sought

or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach. error. or omission.

Q. Disputes of amounts greater than $500,000: Disputes for which the Arbitration Panel has determined to warrant an award in an amount greater than Five Hundred Thousand Dollars ($500,000) to any one party, may be brought in the appropriate Court. A party must obtain such a determination from the Arbitration Panel prior to filing any legal action.

ARTICLE 18 - VALUE ENGINEERING

18.1 General

A. The CONTRACTOR may submit to CITY REP proposals for modifying the Plans, Specifications, or other requirements of the Contract for the sole purpose of reducing the total cost of the project without impairing in any manner the essential functions or characteristics of the project, including, but not limited to, service life, economy of operations, ease of maintenance, desired appearance, or design and safety standards.

B. It shall not be inferred from this subsection that the CITY is required to consider any proposal submitted.

C. Cost reductions contained in the proposal resulting from changes to contingency items, such as traffic control, dust palliative, etc., will not be considered.

18.2 Proposal Requirements

Proposals submitted pursuant to this subsection shall be identified as Value Engineering Proposals. They shall be submitted in writing and, at a minimum, contain the following:

A. A description of both the existing Contract requirements for performing the work and the proposed changes.

B. All engineering drawings and computations necessary for a thorough and expeditious evaluations.

C. An itemization of the existing Contract requirements that must be changed if the proposal is adopted and a recommendation as to the manner in which the change should be made.

D. A detailed estimate of the cost of performing the work under the existing Contract and under the proposed changes, including the cost of developing and implementing the changes.

E. The contract items affected by the proposed changes and any variations in quantities resulting from the changes.

F. An objective estimate of any effects the proposal will have on collateral costs to the CITY, cost of related items, and costs of maintenance and operation.

G. A statement as to the effect that the proposal will have on the time for the completion of the project.

H. A statement as to the time by which a change order adopting the proposal must be executed or when the CITY must have given oral or written approval.

I. A statement as to any time extension of time related to costs which will be required by the CONTRACTOR as a condition for implementing the proposed changes.

18.3 Review and Response

Proposals will not be considered until all of the above requirements have been met. Once all of the required submittals have been received, CITY REP will respond within ten (10) working days in writing as to whether or not the proposal will be considered for detailed evaluation. If no such notice is issued within the time allotted, the proposal shall be deemed rejected.

A. CITY will not be liable for any delay in acting upon any proposal nor for any failure to accept any proposal pursuant to this subsection.

B. CITY will be the sole judge of the acceptability of a proposal and of the estimated net savings in construction costs from the adoption of all or any part of the proposal. CONTRACTOR will be notified in writing by the CITY REP as to whether the CONTRACTOR'S proposal has been accepted. The decision by the CITY is final.

C. When CITY deems such action to be appropriate, it reserves the right to require the CONTRACTOR to share in the cost to the CITY of investigating, evaluating, and processing the proposal as a condition for the consideration of such proposal. Such cost shall be shared whether the proposal is accepted or rejected. When such a condition is imposed, the CONTRACTOR shall indicate their acceptance thereof in writing and such acceptance shall authorize the CITY to deduct the CONTRACTOR'S share of the CITY'S costs from any monies due or that may become due to the CONTRACTOR under the Contract.

18.4 Acceptance

A. If CONTRACTOR'S proposal is accepted in whole or in part, the necessary Contract modifications and Contract Price adjustments will be effected by the execution of a Change Order which will specifically state that it is executed pursuant to the provisions of this subsection.

B. CONTRACTOR shall continue to perform the work in accordance with the requirements of the Contract until a Change Order incorporating the proposal has been executed or until the CONTRACTOR has been given oral or written approval by the CITY that the CONTRACTOR'S proposal has been accepted. If the Change Order has not been executed, or the CONTRACTOR has not been given oral or written approval on or before the mutually agreed upon date, or on or before such other date as the CONTRACTOR may have subsequently specified in writing, the proposal shall be deemed to be rejected.

C. The executed Change Order shall incorporate the changes in the Plans, Specifications, or other requirements of the Contract Documents which are necessary to permit the proposal, or such part of it which has been accepted, to be put into effect, and shall include any conditions upon which the CITY'S approval thereof is based if such approval is conditional. The executed Change Order Contract shall also extend the time for the completion of the Contract if, and only if, the extension was required by the CONTRACTOR as a condition for implementing the proposal and such an extension has been deemed to be warranted by the CITY as a result of the CITY'S evaluation of the proposal.

D. The executed Change Order shall also establish the estimated net savings in the cost of performing the Work attributable to the proposal effectuated by the Change Order. In determining the net savings, the right is reserved to the CITY to disregard the Contract bid prices if, in the CITY'S judgment, such prices do not represent a fair measure of the value of the Work to be performed or to be deleted. The net savings will be established by determining the CONTRACTOR'S cost of performing the Work, taking into account the CONTRACTOR'S cost of developing the proposal and implementing the change, and reducing this amount by any ascertainable collateral cost to the CITY. The executed Change Order shall provide the Contractor be paid forty (40%) percent of the estimated net savings amount.

E. The executed Change Order shall also provide for the adjustment in Contract Prices. Contract Prices shall be adjusted by subtracting the CITY'S share of the accrued net savings.

F. The amount specified to be paid to the CONTRACTOR in the executed Change Order which effectuates a value engineering proposal shall constitute full compensation to the CONTRACTOR for the value engineering proposal and the performance of the Work thereof pursuant to the said Change Order.

ARTICLE 19 -- GENERAL PROVISIONS

19.1 Partial Invalidity

If any provision of the Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

19.2 Attorneys' Fees

Should either party to the Contract bring an action to enforce any provision of the Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in connection therewith.

19.3 Waiver of Rights

Except as otherwise specifically provided in the Contract Documents, no action or failure to act by the CITY, the Project Designer or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder.

19.4 Giving Notice

A. When any provisions of the Contract Documents requires CONTRACTOR or the Project Designer to give written notice to CITY, it shall be deemed to have been validly given if delivered in person to the person designated in the Contract Documents as CITY REP, or if delivered at or sent by registered or certified mail, postage prepaid, to the City Engineer addressed as follows:

City of Chandler
Public Works Department
Attn: City Engineer
P.O. Box 4008, Mail Stop 405
Chandler, AZ 85244-4008

B. When any provisions of the Contract Documents requires CITY, CITY REP, or the Project Designer to give written notice to CONTRACTOR, it shall be deemed to have been validly given if delivered in person to the person designated in the Contract Documents as CONTRACTOR'S Resident Superintendent, or if delivered at or sent by registered or certified mail, postage prepaid, to CONTRACTOR at the last address in the Contract Documents or such substitute address which CONTRACTOR designates in writing, or to the business address known to the giver of notice.

19.5 Computation of Time

When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation. Unless otherwise specified any action required shall be accomplished within a reasonable time.

19.6 Conflict of Interest

Pursuant to A.R.S. Sec. 38-511, a municipality may, within three (3) years after its execution, cancel any contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the municipality is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

19.7 Assignment

A. The performance of the Contract may not be assigned, except upon the written consent of the CITY. Consent will not be given to any proposed assignment which would relieve the original CONTRACTOR or their surety of their responsibilities under the Contract, nor will the CITY consent to any assignment of a part of the Work under the Contract.

B. Upon obtaining a prior written consent of the CITY, the CONTRACTOR may assign moneys due or to become due them under the Contract, to the extent permitted by law, but any assignment of moneys shall be subject to all proper setoffs in favor of the CITY and to all deductions provided for in the Contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by the CITY for the completion of the Work in the event that the CONTRACTOR should be in default therein.

C. No assignment of the Contract will be approved unless it shall contain a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or materials supplied for performance of the Work called for under the Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials and that the CITY may withhold funds due until all Work required by the Contract Documents is completed to the CITY'S satisfaction.

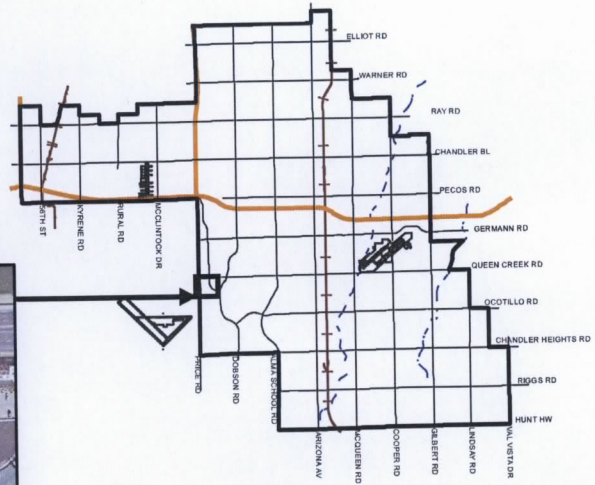
19.8 Notice of Injury

Should CITY or CONTRACTOR suffer injury or damage to their person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within seven (7) days of the first observance of such injury or damage.

END OF GENERAL CONDITIONS
ARTICLES 1 THROUGH 19

Chandler + Arizona

OWRF EXPANSION
PROJECT NO. WW1301.251



MEMO NO. CP15-089

PROJECT SITE

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