



**City of Surprise
Special Terms
(Construction)
RFP 317000108**

Procurement Division
16000 N. Civic Center Drive
Surprise, Arizona 85374
Phone: (623) 222-3700
Fax: (623) 222-3701

1. General.

- A. Contractor agrees, at its own cost and expense, to do all work necessary and required to fully, timely, and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever.
- B. Contractor will provide all of the labor and materials, and perform the Work in accordance with the Contract Documents.
- C. At all times relevant to the agreement and performance of the Work, the Contractor must fully comply with all Legal Requirements applicable to City, the Project, and the Contract Documents.
- D. Contractor will perform the Work in accordance with the Contract Documents to the satisfaction of City, exercising the degree of professional care, skill, diligence, quality, and judgment that a general contractor engaged, experienced and specializing in construction of facilities of similar scope, function, size, quality, complexity, and detail in urban areas throughout the United States comparable to Surprise, Arizona would exercise at such time, under similar conditions. Contractor must, at all times, perform the Work in conformance with sound and generally accepted principles and practices in the field applicable to general contractor.
- E. Contractor must comply with, and require all Subcontractors to comply with, the Arizona Contractors' license laws, including all requirements with respect to being duly registered and licensed.
- F. Contractor will perform the Work using only those firms, team members, and individuals designated by Contractor consistent with the Contract Documents. No other entities or individuals may be used without prior written approval of the City.

2. Performance of the Work (Field Measurements/Subcontractors/Suppliers).

- A. Unless otherwise specifically provided in the Contract Documents, Contractor must provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit Contractor to complete the Work consistent with the Contract Documents.



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- B. Contractor must perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents.
- C. Contractor's superintendent or designee must be present at the Site at all times when any Work under this agreement is taking place.
- D. All elements of the Work will be under the direct supervision of a foreman or his designated representative on the Site who will have the authority to take actions required to properly carry out that particular element of the Work.
- E. In the event of any noncompliance with this Section, City may require Contractor to stop or suspend the Work in whole or in part.
- F. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.
- G. Before starting the Work, Contractor will carefully study and compare the various plans, drawings, other Contract Documents, and Specifications relative to that portion of the Work, as well as the information furnished by City, will take field measurements of any existing conditions related to that portion of the Work, and will observe any conditions at the site affecting it. The exactness of grades, elevations, dimensions, soil conditions, or locations given on any Drawings, or the work installed by other contractors, is not guaranteed by City.
- H. Before ordering materials or doing work, Contractor and each Subcontractor will verify measurements at the Site and will be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.
- I. If Contractor observes errors, discrepancies, or omissions in the Contract Documents, Contractor must promptly notify City and request clarification. If Contractor, with the exercise of reasonable care, should have recognized such error, inconsistency, omission, or difference and fails to report it to City, and if Contractor proceeds with the Work affected by such observed errors, discrepancies, or omissions without receiving such clarifications, it does so at its own risk.



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- J. In all cases of interconnection of its Work with existing or other work, Contractor will verify at the Site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, locations, or dimensions must be promptly rectified by Contractor without any increase in the Contract Price. Any design errors or omissions noted by Contractor during this review must be reported promptly to City.
- K. Contractor will establish and maintain all construction grades, lines, levels, and benchmarks, and will be responsible for accuracy and protection of same. This Work must be performed or supervised by a licensed civil engineer or surveyor in the State of Arizona.
- L. Contractor will be responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- M. Contractor must coordinate the activities of all Subcontractors. Contractor will coordinate performance of the Work with City and other contractors or parties involved in the Project. If City performs other work on the Project or at the Site with separate contractors under City's control, Contractor agrees to cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- N. Contractor may not substitute or change any Subcontractor or Supplier without the prior written approval of City. Any substitute or replacement Subcontractor or Supplier will be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier.
- O. Contractor may not change or replace any Key Personnel without an explanation for the change being given to City, and receiving prior written approval of the change from City, which approval will not be unreasonably withheld.
- P. Subcontractors whose scope of work has a value greater than 15% of the total Contract Price are required to furnish performance and payment bonds to Contractor, unless otherwise approved in writing by City.



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3. Control of Project Site.

- A. Throughout all phases of construction, including suspension of Work, Contractor must keep the Site reasonably free from debris, trash, and construction wastes to permit Contractor to perform its construction services efficiently, safely, and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, Contractor will remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work, or applicable portions thereof, to permit City to occupy the Project or a portion of the Project for its intended use.
- B. Contractor will take whatever steps, procedures, or means necessary to prevent dust nuisance due to construction operations. The dust control measures must be maintained at all times to the satisfaction of City and in accordance with the requirements of the Maricopa County Bureau of Air Pollution Control Rules and Regulations.
- C. Contractor will maintain Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements during construction activities, including without limitation compliance with the 2010 regulations governing implementation of the ADA to the extent applicable. ADA and ANSI accessibility requirements will include, but not be limited to, parking, building access, areas of refuge, and emergency exit paths of travel. Contractor is responsible for the coordination of all work to minimize disruption to residents and the public.
- D. Only materials and equipment used directly in the Work may be brought to and stored on the Site by Contractor. When equipment is no longer required for Work, it must be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.
- E. Contractor agrees all persons working on the Site will act at all times in the best interest of the Project and will comply with all applicable rules and regulations reasonably set forth by City related to the Site. Notwithstanding the foregoing or anything in the Contract Documents to the contrary, City may remove from the Site any individual who City deems, in its reasonable discretion, to be creating a disturbance or causing any problem on the Site.



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- F. Contractor will be responsible to City for the acts and omissions of Contractor's employees, Subcontractors, and their agents and employees, and any other person performing any of the Work under a contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs, and expenses resulting from such acts or omissions. City may conduct criminal, drive history, and all other requested background checks of Contractor and/or Subcontractor personnel performing Work or who have access to City's information, data, or facilities in accordance with City's current background check policies. Any officer, employee, or agent that fails a background check must be replaced immediately.
- G. City will have a final authority, based upon security reasons: (i) to determine when security clearance of Contractor's and/or Subcontractor's personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting personnel; and (iii) to determine whether or not any individual or entity may provide Services or perform Work under the Contract. If City objects to any personnel for any reasonable cause, then Contractor must, upon notice from City, remove such individual from the Project.

4. Project Safety.

- A. The Project and all Work performed in relation thereto is governed by applicable provisions of the federal laws, including but not limited to, the following:
 - 1. Occupational Safety & Health Act of 1970, 29 U.S.C. § 651 et seq.
 - 2. Personal Protective Equipment for General Industry, 29 C.F.R. part 1019.
 - 3. Safety and Health Regulations for Construction, 29 C.F.R. part 1926.
 - 4. Safety Standards for Fall Protection in the Construction Industry, 29 C.F.R. part 1518.
- B. Contractor is responsible for safety of the job site for employees of Contractor as well as for members of the general public and others who may drive or walk through or be at the Site.
- C. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and



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equipment incorporated into the Work and stored on-site or off-site; and (iii) all other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and (iv) the owners or tenants of adjacent property and their patrons, employees and invitees.

- D. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- E. Contractor will provide a "competent person" as required by O.S.H.A regulations. The "competent person" must be identified at the Pre-Construction Conference with City advised in writing of any changes.
- F. The "competent person" must make routine daily inspections of the Site and must hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable.
- G. Contractor and Subcontractors must comply with all legal and regulatory requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirements.
- H. Contractor will immediately report to Project Manager in writing any safety-related injury, loss, damage, or accident arising from the Work and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- I. Contractor's responsibility for safety is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages, or accidents resulting from their performance of the Work.
- J. As between City and Contractor, Contractor is responsible to City for any and all safety issues relating to the Work on the Project. Contractor will administer and manage a safety program. This will include, but not necessarily be limited to, review of the safety programs of each Subcontractor. Contractor will monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards. Contractor's responsibility for review,



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monitoring, and coordination of the Subcontractor's safety programs will not extend to direct control over execution of the Subcontractors' safety programs. Notwithstanding Contractor's safety obligations to City, it is agreed and understood that each individual Subcontractor will remain controlling employer responsible for the safety programs and precautions applicable to its own work and the activities of other's work in areas designated to be controlled by such Subcontractor for purposes of workers compensation insurance coverage.

- K. Contractor is responsible to provide all necessary shoring, bracing, and trench support as is necessary to maintain traffic structures, etc., as required in the Construction Standards and Project Specific Standards. If the stability of adjoining building, walls, roadways, etc., is endangered by Contractor's excavation, shoring, bracing, or under pinning must be provided as necessary to ensure project safety.

5. Quality Control and Quality Assurance Testing.

- A. All construction materials to be used or incorporated in the Project are subject to inspection and testing to assure that the materials installed comply with the requirements of the Contract Documents ("**Quality Control**" or "**QC**") and to verify the accuracy and applicability of the QC testing results ("**Quality Assurance**" or "**QA**"). The City will approve or reject materials based on the QA/QC results and reserves the right to required third party QA/QC testing. Any material rejected by City must be removed immediately and replaced in an acceptable manner to City at no additional cost to City. When QC/QA tests indicate noncompliance with the Contract Documents, retesting will be performed by the same testing laboratory that performed the tests that indicated noncompliance.
- B. The Contractor will establish, provide, and maintain an effective Quality Control Testing Program ("**QCTP**") and submit a written QCTP to the City as a required submittal. The Contractor may not begin work until the QCTP has been reviewed and accepted by the City. Resumes of all personnel that will be associated directly or indirectly with the QCTP must be included.
- C. Although minimum testing requirements are specified herein, the Contractor bears full responsibility for the quality of the materials and



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their installation and may elect to perform additional testing beyond the requirements set forth herein to ensure compliance.

- D. The quality control requirements contained in this Section are in addition to and separate from quality assurance testing, which will be performed by the City or its representative. If the QA test results are not in agreement with the QC test results, the Contractor will have the option to retain a third party consultant for referee tests. The third party consultant must meet the same requirements as the consultant performing the Quality Control Testing. The results of the third party shall be binding. All cost incurred by the referee testing will be the Contractor's expense. If the Contractor elects not to retain a third party for referee testing, the City test results shall prevail.

6. Trade Names and Substitutions.

- A. Substitutions prior to bid will only be considered if in compliance with Arizona Revised Statute §34-104.
- B. Upon written request, substitutions or alternates to equipment, materials, patented processes by manufacturer, trade name, make, or catalog number may be permitted, unless indicated that no substitutes or alternates may be permitted, subject to the following:
1. The Contractor must certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
 2. The Contractor must describe any required changes in the Drawings and Specifications to adapt the design to the proposed substitution.
 3. The Contractor must provide an itemized estimate of all costs and credits that will result directly or indirectly from the acceptance of the substitution including cost of design, license fees, royalties, and testing.
 4. Substitutions will only be considered if they do not extend Contract Time.
- C. Contractor, if requested by City, must submit samples or any additional information that may be necessary to evaluate the acceptability of the substitution.



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- D. City will make the final decision and will notify Contractor in writing as to whether the substitution has been accepted or rejected.
- E. If City does not respond within fifteen (15) working days, the request for substitution will be considered rejected and Contractor must continue to perform the Work in accordance with the Contract Documents.

7. Shop Drawings.

- A. Contractor must prepare and submit Shop Drawings for all items for which Shop Drawings are required by the Contract Documents. Shop Drawings must show details of all work to insure proper installation of the Work using those materials and equipment specified under the approved Drawings and Specifications.
- B. Shop Drawings must be numbered consecutively for each specification section and must accurately and distinctly present the following:
 - 1. All working and erection dimensions.
 - 2. Arrangements and sectional views.
 - 3. Necessary details, including complete information for making connections between work under this agreement and work under other Contracts.
 - 4. Kinds of materials and finishes.
 - 5. Parts list and description thereof.
- C. Each Drawing or page must include:
 - 1. Project Name, City Project Number and descriptions.
 - 2. Submittal date and space for revision dates.
 - 3. Identification of equipment, product or material.
 - 4. Name of Contractor and Subcontractor.
 - 5. Name of Supplier and Manufacturer.
 - 6. Relation to adjacent structure of material.
 - 7. Physical dimensions clearly identified.
 - 8. ASTM and Federal Specifications references.
 - 9. Identification of and justification for deviations from the Contract Documents.
 - 10. Contractor's stamp, initialed or signed, dated and certifying the review of submittal, certification of field measurements and compliance with Contract.



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11. Location at which the equipment or materials are to be installed. Location means both physical location and location relative to other connected or attached material. City will return unchecked any submittal, which does not contain complete data on the work and full information on related matters.
 - D. Stock or standard drawings will not be accepted for review unless full identification and supplementary information is shown thereon in ink or typewritten form.
 - E. Contractor must schedule, prepare, and submit all shop drawings in accordance with a time-table that will allow its suppliers and manufacturers sufficient time to fabricate, manufacture, inspect, test, and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the Work.
 - F. If the Shop Drawings show departures from the Contract Documents requirements, Contractor will make specific mention thereof in the letter of transmittal; otherwise review of such submittals by City will not constitute review of the departure. Review of the drawings will constitute review of the specific subject matter for which the drawings were submitted and not of any other structure, material, equipment, or apparatus shown on the drawings.
 - G. The review of Shop Drawings will be general and not relieve Contractor of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract Documents. No construction called for by Shop Drawings may be initiated until such drawings have been reviewed and approved by City.
 - H. The City will provide a procedure for Shop Drawings submission and review.
 - I. Contractor will be responsible for all extra costs incurred by City caused by Contractor's failure to comply with the procedure outline above.
- 8. Long Lead Time Items.** Contractor will submit Shop Drawings, as required by the Project Manager, on all long lead items to be furnished and installed as part of the Project. Unless otherwise set forth in the Project Schedule, shop drawings for long lead items will be submitted within ten (10) days after execution of this agreement. In addition, Contractor will order all long lead items to be furnished and installed as part of this Project within (3) days after receiving approved Shop Drawings. For all long lead times for which shop drawings are not required,



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Contractor will order said long lead items within fifteen (15) days after execution of this agreement. Within two (2) days after ordering long lead items, Contractor will supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.

- 9. Construction Water.** If Contractor uses water from City's water system for construction water, Contractor must obtain a fire hydrant meter from the appropriate water service provider, and all construction water must be obtained through the hydrant meter. Contractor will pay all fees related to the hydrant meter and all water bills for construction water. All cost for meters and construction water must be included in the Contract Price.
- 10. Project Record Documents.**
- A. During the construction period, Contractor must maintain at the jobsite a full-size set of prints of the Drawings and Shop Drawings, indicating the actual installation, where the installation varies from the original Construction Documents (the "**Project Record Drawings**"). Contractor will give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
 - 1. Dimensional changes to the Drawings.
 - 2. Revisions to details shown on Drawings.
 - 3. Locations and depths of underground utilities.
 - 4. Revisions to routing of piping and conduits.
 - 5. Actual equipment locations.
 - 6. Changes made by Change Order.
 - 7. Details not on original Contract Drawings.
 - B. Contractor must mark completely and accurately Project Record Drawings with red erasable colored pencil.
 - C. Contractor will note Request for Information (RFI) Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
 - D. Contractor will submit Project Record Drawing sets and Shop Drawings to City or its representative for review and comment.
 - E. Upon receipt of the reviewed Project Record Drawings from City, Contractor must correct any deficiencies and/or omissions to the drawings and submit the final original of the Project Record Drawings to the Project



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Manager prior to Final Acceptance and as a condition of Final Acceptance.

- F. Project Manager will review the Project Record Drawings monthly prior to the date established for the Payment Request and will be the sole judge of acceptance of these drawings.

11. Warranty and Correction of Defective Work.

A. Contractor Duties

1. Contractor warrants to City that the construction of the Work will be of good and workmanlike quality and completed in strict conformance with all Legal Regulations, the Drawings and Specifications, and all other terms and conditions of the Contract Documents. All materials and equipment furnished as part of the construction, will be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents, and free of defects in materials and workmanship.
2. The date of Substantial Completion will be the beginning of the Warranty period, irrespective of early completion by some Subcontractors of their work. Contractor will furnish extended warranties for facilities placed in service before Substantial Completion so that the warranty period expires no earlier than one year beyond Substantial Completion, except as otherwise required in the Contract Documents.
3. In addition, unless otherwise specified in the Contract Documents, Contractor and Subcontractors must provide to City all of the following written warranties that apply to the Work, in a form acceptable to City.
 - a. General Warranty – One (1) year
 - b. Mechanical Contractor – Two (2) years
 - c. Plumbing Contractor – Two (2) years
 - d. Electrical Contractor – Two (2) years
 - e. Roofing Contractor – Two (2) years
 - f. Roofing Manufacturer – Ten (10) years
 - g. Caulking – One (1) year
 - h. Steel Joists, Certificate of Manufacture



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- i. Exterior Metal Wall System – Five (5) years
 - j. Painting – One (1) year
 - k. Termite – Five (5) years
 - l. Sheet Metal: Zinc coating thickness on hot-dipped galvanized
 - m. Metals- One (1) year
 - n. Acoustical Tile – Five (5) years
 - o. Resilient Floor Covering – One (1) year
4. Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. Contractor will provide City with all manufacturers' warranties prior to Final Acceptance.
 5. Contractor agrees that it is responsible to manage and administer the correction of any Work that is not in conformance with the Contract Documents during the warranty periods, or during any longer periods to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by City, will not constitute acceptance of Work not in accordance with the Contract Documents.
 6. When notified of a warranty issue, Contractor must respond in writing within 48-hours and will perform warranty work as soon as material for said repairs are available (as judged solely by City), and in any event Contractor must take immediate steps to commence and complete correction of nonconforming Work no later than the time period set forth in City's written notification in accordance with the Construction Standards. This includes the correction, removal, or replacement of the nonconforming Work, and any damage caused to other parts of the Work affected by the nonconforming Work. If defects develop which are determined by City to be an emergency, City will notify Contractor via the most expeditious means regarding the nature and condition of the defects. In turn, Contractor must immediately correct the defect or the emergency condition in accordance with Construction Standards.
 7. The time periods referenced in this Section apply only to Contractor's obligation to correct nonconforming Work and is not



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intended to constitute a period of limitations for any other rights or remedies that City may have regarding Contractor's other obligations under the Contract Documents.

8. Without limiting the foregoing or anything in this agreement to the contrary, Contractor must obtain and provide to City all warranties for any portion of the Project offered by the manufacturer, installer, or provider thereof. City and the user of the facility will have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable.
9. Contractor's warranty excludes damages or defects caused by abuse, alterations to the Work not executed by or through Contractor, improper or insufficient maintenance, improper operation, normal wear and tear, or normal usage.

B. City's Performance of Contract's Work

1. During construction of the Project, if Contractor fails to comply with a request of City to perform required work, or is unable to comply with said request, and it is necessary for City to do work that is normally Contractor's responsibility, City will bill Contractor for the work performed. Each incident requiring work by City will be covered by a separate billing from City to Contractor.
2. The amount of each billing for City performed work will be either \$250 or the actual accumulated charges for employees' time, materials, and equipment, whichever is greater. Employees' time will be billed at each individual's hourly rate plus the applicable City overhead rate. Any materials used will be billed at cost. Equipment rates will be based on the most recent schedule of equipment rental rates for force account work, applicable under the Contract Documents.
3. Contractor will pay City for the amount billed for City-performed work, or at City's option, the amounts billed may be deducted from any payments due to Contractor from City.

12. Contract Time.



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- A. The “**Contract Time**” is as set forth in the Project Schedule. The Contract Time begins with the Notice to Proceed (“**NTP**”) and ends with Final Acceptance.
- B. Beginning on the date of the NTP, Contractor must begin to fulfill Contractor’s obligations under the Contract Documents. Contractor’s obligations include providing City and other agencies with any submittals required by the Project Specific Standards. Contractor must submit all such required submittals before any physical construction work commences on the Site.
- C. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.
- D. Time is of the essence of this agreement, for the Project, for the Work, and for each phase and/or designated milestone thereof.

13. Substantial Completion.

- A. Substantial Completion must be achieved not later than the Substantial Completion Date set forth in the Project Schedule.
- B. When Contractor considers that the Work, phase, or a portion thereof that City agrees to accept separately, is substantially complete, Contractor will prepare and submit to the Project Manager a comprehensive “**Punch List**” of items to be completed or corrected prior to Final Acceptance and Final Payment. Failure to include an item on such Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.
- C. Upon receipt of Contractor’s Punch List, Project Manager will make an inspection to determine whether the Work, or designated portion thereof, is substantially complete. Project Manager may, at Project Manager’s sole option, be assisted in such inspection by the Design Professional for the Project. If the inspection by the Project Manager discloses any item, whether or not included on Contractor’s Punch List, which is not sufficiently completed in accordance with the Contract Documents so that City can occupy or utilize the Work, phase, or designated portion thereof, for its intended use, Contractor must complete or correct such item upon notification by Project Manager before issuance of the Certificate of Substantial Completion. In such case, Contractor must submit a request



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for another inspection by Project Manager to determine Substantial Completion.

- D. The Project Manager will not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by City for its intended purpose, including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories, and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, vertical transportation, and other systems properly operating with proper controls; lighting and electrical systems installed, operable, and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion. A minor amount of Work, as determined by and at the discretion of the Project Manager, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or sound systems, or completion or correction of minor exterior work that cannot be completed as a result of weather conditions, will not delay determination of Substantial Completion. If prior written approval is obtained from City for purposes of Substantial Completion, specified areas of the entire Work or Project may be individually certified as Substantially Complete. In no event may Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities (as applicable) and (ii) all terms and Work required under this agreement have been fulfilled by Contractor and same approved and accepted by City, subject only to the Punch List items.

14. Final Completion and Final Acceptance.

- A. Final Completion will be obtained within the time period set forth in the Project Schedule.



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- B. Unless otherwise expressly agreed to in writing by City, Final Completion must be obtained by no later than 30 calendar days after the date of Substantial Completion.
- C. Failure to timely obtain Final Completion will be a material breach of the Contract.
- D. Upon receipt of written notice that the Work is ready for final inspection and acceptance, City and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There will be no partial acceptance. Final Acceptance will not be issued and Final Completion will not occur until all items of work, including Punch List items, have been completed to City's satisfaction as reflected in the written Final Acceptance.
- E. If requested by City, Contractor may complete and turn over to City the Project on a phased basis; each phase having a separate inspection by the Project Manager, a Punch List generated, and then an inspection by City with final approval and acceptance.
- F. Final Payment is not due or owing, and will not be paid by City, until Final Completion is obtained.
- G. Permitting Contractor to continue and finish the Work or any part of it after the time fixed for its completion (whether milestone, phase, Substantial Completion or Final Completion) or after the date to which the time fixed for any completion may have been extended, does not operate as a waiver by City of any rights under the Contract Documents, law, or equity. Furthermore, the timely completion of the Work being of the utmost importance under this agreement, notwithstanding the existence of any disputes between the parties, Contractor will continue to prosecute the Work, including any Change Order, in a diligent and timely manner and not stop, slow down, or impede by action or inaction the progress of the Work, unless City suspends the agreement or Contractor's performance, so long as City makes timely payment to Contractor.

15. Contract Price.

- A. In exchange for Contractor's full, timely, and acceptable performance and construction of the Work under the Contract Documents, and subject to all of the terms of this agreement, City will pay Contractor in accordance with the Schedule of Values. Costs which would cause the Contract Price to be



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exceeded will be paid by Contractor without reimbursement from City, unless otherwise agreed to in writing by the City as part of an approved Change Order.

- B. The Contractor guarantees to complete the Work within the Contract Price or the Contractor alone will pay the difference between the actual cost and the Contract Price.
- C. The Contract Price is all-inclusive and specifically includes all fees, costs, insurance and bond premiums, and taxes necessary to fully, properly, and timely perform and construct the Work.
- D. For any portion of the Work which, either through this agreement, Change Order, or otherwise, is performed and paid for on a cost basis or time-and-materials basis, the costs which may be reimbursed to Contractor and/or chargeable against the Contract Price will be determined as set forth herein.
- E. Any savings realized during construction may be incorporated into the construction of the Project to fund additional scope items or will be returned to the City upon the City's request.

16. Payment; Generally.

- A. Payment for the Work will be made in accordance with MAG Standard Specification § 109 as amended below.
 - 1. In MAG Standard Specifications Section 109.7 (A), replace the first paragraph of the subsection with the following: City will make monthly progress payments during the course of the contract. The payments (estimates of work completed) will be prepared by Contractor on forms provided by City, and approved by Project Manager. The monthly payment cycle will start with the date of the Notice to Proceed. City may process payments more frequently if requested by Contractor and agreed to in writing by City. The payment process functions as follows: Prior to the monthly payment cycle date, Contractor will send a Contractor Payment Request Form to Project Manager. The Project Team will review the Contractor Payment Request Form and agree upon any necessary adjustments. Contractor must certify the final Contractor Payment Request Form by signing and returning to the Project Manager. When approved by the Project Manager, the progress payment will



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be processed for payment of any approved amounts within fourteen (14) days (except final payments).

2. Payments will be made pursuant to A.R.S. § 34-609.
3. When construction of the Project is fifty percent (50%) completed, Contractor may request payment of one-half of the retention pursuant to A.R.S. § 34-609(B)(3), subject to all of City's rights to withhold or offset payments, and/or other rights of City, under the contract.
4. City reserves the right under A.R.S. § 34-609(B)(3) to reinstate the ten percent (10%) retention if City determines that satisfactory progress is not being made.
5. The second, third, and fourth paragraphs of MAG Standard Specification § 109.7 will remain as written.

17. Payment Upon Substantial Completion.

- A. No later than fourteen (14) calendar days after Substantial Completion, City will pay to Contractor all sums due under the contract, except remaining retention; an amount equal to the liquidated damages, if any, assessable under the agreement; and 150% of the cost to complete all Punch List items as estimated by Project Manager.
- B. No further payments will be made to Contractor until Final Completion.

18. Final Payment.

- A. Subject to all of City's rights to withhold or offset payment, and other rights under this agreement, Final Payment including remaining retainage will be paid only after: (i) the Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by City; (ii) necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, and complete "as-built" drawings (including the Building Information Model, if required by the Contract Documents), plans and specifications have been delivered to City; (iii) full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to City; (iv) all conditions and requirements imposed by City or any financing entity for the corresponding



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disbursement have been met; and (v) Contractor delivers to City a written request for Final Payment.

- B. Contractor must also submit a signed copy of Contractor's Settlement of Claims Affidavit prior to Final Payment.
- C. In addition, if required under the Project Specific Standards, Contractor must compile a complete equipment list and maintenance manual to be submitted to City as a precondition to Final Payment. The list must include the following items for all equipment supplied under the Plumbing, Electrical, Air Conditioning, Elevator, and other Special Equipment Specifications.
 - 1. Name, Model and Manufacturer.
 - 2. Complete parts lists and drawings.
 - 3. Local source of supply for replacement parts along with suppliers' telephone numbers.
 - 4. Local service organizations serving the equipment and their telephone numbers.
 - 5. All tags, inspection slips, instruction packages, etc., removed from equipment shall be properly identified as to pieces of equipment from which they were taken.
- D. Contractor must also deliver to City not less than five (5) days prior to Final Completion of the Work one (1) digital (in the format specified by City), and if requested by City, one (1) hard copy, of any applicable maintenance manuals. Each manual must include all manufacturer's operation and maintenance instructions and "as-built" drawings. It must also include all other diagrams and instructions necessary to properly operate and maintain the equipment, the name, address, and telephone number of Contractor and all Subcontractors involved.

19. City's Right to Withhold Payment.

- A. City may withhold payment to such extent as may be necessary in City's opinion to protect City from loss for which Contractor is responsible, including, without limitation, if any of the following conditions exist: defective Work not remedied; third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to City is provided by Contractor; failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;



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reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price; damage to City or another Contractor; reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; failure to carry out the Work in accordance with the Contract Documents; or Contractor is in default of any of its other obligations under the Contract Documents.

- B. Payments to Contractor may be made by checks payable jointly to Contractor and its employees, agents, subcontractors and suppliers, or any of them, and when in the sole opinion of City it is advisable, payments may be made directly to Contractor's Subcontractors and any amount so paid shall be deducted from the amounts owed to Contractor under the agreement.
- C. No payment (nor use or occupancy of the Project by City) will be deemed acceptance or approval of the Work or as a waiver of any claims, rights, or remedies of City.
- D. Contractor must make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and must promptly furnish evidence of such payments as City may require. Contractor must pay when due all claims arising out of performance of the Work covered by this agreement for which a lien may be filed either against the real estate or leasehold interest of City, or against payments due from City to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of City, against payment due from City to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this agreement, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless City from and against any



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and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

20. Extra Work/Changes in the Work.

- A. City reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate and any such change, as set forth in a written Change Order, will be deemed a part of this agreement as if originally incorporated herein.
- B. In the event City and Contractor cannot agree on the terms of a Change Order, or when circumstances otherwise require, the Project Manager has the authority to direct the Contractor to perform extra work if the work in question is an item not provided for in the agreement as awarded. The Project Manager will have the authority to determine, based upon factual evidence presented by the Contractor, whether the work in question is an item not provided for in the agreement as awarded. If the Project Manager directs the Contractor to perform extra work, the Project Manager's instructions will include a price that the Contractor cannot exceed in charging the City for the extra work. Upon receipt of the Project Manager's directions to perform extra work, the Contractor will promptly proceed with the extra work and document the actual cost thereof. The Contractor is responsible to manage the extra work to ensure that the price limits set by the Project Manager are not exceeded. Contractor will perform the extra work and submit documentation for the actual cost of the extra work to the City. A Change Order will be issued to cover this work.
- C. Contractor is not entitled to payment for extra work unless a written Change Order, in the form prescribed by City, has been executed by City. On all requests for Change Orders, Contractor must specify the increased and/or decreased costs and whether it believes any extensions of time will be necessary to complete its Work as modified by the Change Order. If extra work is performed, a corresponding Change Order must be prepared, approved and processed by City before payment can be made to Contractor.
- D. In general, pricing for Change Orders may not exceed the same mark-up percentages that were in effect when the contract was awarded. The cost or credit to the City resulting from a change in the Work will be determined



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by actual cost and a percentage fee covering overhead and profit, as set forth in Schedule of Values.

- E. Contractor will have the right to add the fee percentage applicable to the Work under the agreement, or if no such fee has been agreed to by the parties, not more than five percent (5%) to the Subcontractor's prices for authorized extra work performed solely by Subcontractors. Such percentage must include all of Contractor's charges for overhead, profit, administration and supervision. Contractor will have the right to add the fee percentage applicable to Work under the agreement for self-performed extra work, or if no such fee has been agreed to by the parties, Contractor's maximum total allowable additions for overhead, profit, administration, and supervision may not exceed ten percent (10%) of actual verifiable labor, materials, and equipment for such self-performed extra work.
- F. Any agreement which modifies the terms of the Contract Documents (including Change Orders) must be approved in writing by the Project Manager. Once properly executed by both parties, these modifications to the Contract Documents will have the same effect as if they had been included in the original agreement.
- G. Accuracy Of Change Order Pricing Information
 - 1. Contractor agrees to submit Change Order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the Contract Documents with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on Change Orders will accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a Subcontractor or a Material Supplier after receiving approval of a Change Order amount that was designated to be paid to a specific Subcontractor or Supplier for the approved Change Order work.
 - 2. Contractor agrees to provide a detailed breakdown of allowable labor and labor burden cost (i.e., base wage rate of applicable classifications of workers, payroll taxes, and insurance and benefits costs). This information will be used to evaluate the potential cost of labor and labor burden related to Change Order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components.



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Information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor rate cost components used to price Change Orders will be subject to later audit. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

3. Contractor agrees that it is responsible for submitting accurate cost and pricing data to City to support its Change Order proposals or other Contract price adjustments under the agreement.
 4. Signature by the contracting parties on a Change Order will constitute full accord and satisfaction between City and Contractor for all costs, damages, and expenses of any nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order.
 5. City, through its designated representative, will have the right to examine, copy, and scan the records of the Contractor, Subcontractor or Sub-Subcontractor (during the Contract period and up to three years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. Contractor agrees that if City determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the agreement regarding pricing of Change Orders, an appropriate Contract Price adjustment will be made. Such post-approval Contract Price adjustments will apply to all levels of contractors and/or Subcontractors and to all types of Change Order proposals, specifically including Fixed Price, Unit Price, and Cost Plus Change Orders.
- H. In any emergency affecting the safety of persons and/or property, Contractor will act, at its discretion, to prevent threatened damage, injury, or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work will be determined by Change Order.
- I. If Contractor or a Subcontractor observes Differing Site Conditions at the Site, Contractor must give notice to City promptly before conditions are disturbed (to the extent practicable) and in no event later than fourteen



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(14) days after first observance of the conditions. City will promptly investigate such conditions and, if City determines that site conditions exist and they materially cause an increase in the cost of, or time required for, performance of any part of the Work, Contractor will be entitled to equitable adjustment in the Contract Price or Project Schedule (and other time requirements), or both. If it is determined by City that the conditions at the Site are such that no change is justified, then City will so notify Contractor in writing, stating the reasons. Claims in opposition to such determination must be made within fourteen (14) days after City has given notice of its decision.

- J. In the event of a material change in applicable Legal Requirements or taxes subsequent to the date of this agreement, Contractor may be entitled to a Change Order, in City's discretion, to the extent Contractor can document to the satisfaction of City that such change significantly increases Contractor's actual cost of performance of the Work.

21. Liquidated Damages & Offset. The liquidated damages provisions in MAG § 108.9 apply. City may deduct liquidated damages from any unpaid amounts then or thereafter due Contractor under this agreement. Any liquidated damages not so deducted from any unpaid amounts due Contractor will be payable to City at the demand of City, together with interest from the date of the demand at the highest lawful rate of interest payable by Contractor.

22. Mutual Waiver of Consequential Damages Only.

- A. Contractor and City waive claims against each other for consequential damages arising out of or relating to the agreement. This mutual waiver includes:
1. Damages incurred by City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 2. Damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.



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- B. This mutual waiver is applicable, without limitation, to all consequential damages because of either party's termination of the agreement. Nothing contained in this Section will be deemed to preclude an award of liquidated damages, when applicable, in accordance with this Article.

- C. Nothing herein will be deemed to constitute a waiver of any other remedy available to City in the event of Contractor's default under this agreement prior to full performance of the Work including, as applicable, specific performance of completion of the Work on behalf of Contractor, the cost and expense of which will be offset against any monies then or thereafter due to Contractor (if any) and otherwise immediately reimbursed to City by Contractor.