



**APACHE JUNCTION
SEWER DISTRICT**
RECLAIMING WATER FOR THE FUTURE

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GENERAL CONDITIONS

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SECTION 1 - SCOPE OF THESE GENERAL CONDITIONS

These General Conditions encompass provisions that apply to and are incorporated into all construction Agreements and/or Contracts entered into by the Apache Junction Sewer District (AJSD or Owner), unless otherwise specifically excluded in the executed Agreement.

SECTION 2 - GENERAL DEFINITIONS

Agreement: The written agreement executed between AJSD and Contractor, including all of the Agreement Documents.

Agreement Documents: The documents which together form the Agreement between AJSD and Contractor, as identified in Section 2 of the Agreement, or are otherwise incorporated into the Agreement, including the Agreement, the exhibits thereto, these General Conditions, any Notice to Proceed, and any Job Order (if applicable), the Plans and Specifications, Project Schedule, written and properly executed Change Orders, current MAG Specifications and AJSD's amendments thereto, and any other documents so designated in the Agreement.

Agreement Price: The agreed-upon price to be paid to Contractor for full, timely, and acceptable completion of the Work or Services under the terms of the Agreement.

Agreement Term(s): The number of calendar days or the dates related to the applicable phase, Substantial Completion, or Final Acceptance as stated in the Agreement Documents. Agreement Term starts with the Notice to Proceed (NTP) and ends with Final Acceptance. The Agreement Term is set forth in the Agreement and is based upon the Project Schedule agreed to by AJSD.

AJSD (Owner): Apache Junction Sewer District, a municipal corporation and political subdivision of the State of Arizona, formerly known as Superstition Mountains Community Facilities District, with whom Contractor has entered into the Agreement and for whom the Work or Services are to be provided pursuant to the Agreement(s).

AJSD Authorized Representative (AAR): The District Manager, or the Chairman of the Board of Directors of AJSD, or any other person(s) designated in Writing or specified in the Agreement, by the District Manager or Chairman of the Board of Directors of AJSD as Authorized Representative(s).

Allowance: A specific amount for a specific item of Work, if any, that AJSD agrees has not been sufficiently designed, detailed, or selected (including design changes from 90% to 100% as authorized by and at the discretion of AJSD) at the time the Agreement Price is agreed to for Contractor to provide a definitive price.

Alternate Systems Evaluations or Alternative Analysis: Alternatives for design, means and methods or other scope considerations that are evaluated using value analysis principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets AJSD requirements.

Change Order: A written instrument issued after execution of the Agreement Documents signed by AJSD and Contractor, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or deliverables; the amount of the adjustment to the Agreement Price, the extent of the adjustment to the Agreement Term, or modifications of other agreement terms. The Agreement Price and the Agreement Term may be changed only by Change Order, or an Amendment authorized by and executed by AJSD and the Contractor.

Consultant: Person or firm that provides professional services.

Contingent Bid Items: This is a minor bid item which is likely, but not certain, to occur during the course of work. If the Engineer determines that this work is required, the Contractor will accomplish the work and payment will be

made based on the contingent unit bid price included in the proposal. Since the quantity listed in the proposal is primarily for bid comparison, the amount of work required by the Engineer may vary materially from this.

Contractor: The person or business entity with whom AJSD has entered into an Agreement for construction related Work or Services in relation to the Project at issue.

Contractor Payment Request: The form that is accepted by AJSD and used by Contractor in requesting progress payments or final payment and which must include such supporting documentation as is required by the Agreement Documents or AJSD.

Construction Budget: AJSD's budget for construction of the Project.

Construction Documents: The Plans, Specifications, and Drawings prepared and issued by the Engineer and approved by AJSD for construction, meaning the documents are sealed by the Engineer (as required), acceptable for permitting and incorporated into the Agreement by this reference. All amendments and modifications to the Construction Documents must be approved in Writing by AJSD prior to incorporation into the Agreement.

Cost of the Work: The term Cost of the Work will mean costs necessarily incurred by Contractor in the proper performance of the Work. Such costs will be at rates not higher than the standard paid at the location of the Project except with prior consent of AJSD.

Critical Path Method (CPM): A scheduling technique which identifies the logical sequence of the activities occurring in a Construction Project, the anticipated time required to complete each activity in the Project, and the activities that must be completed on schedule to finish the Project within the anticipated time. Typically, activities are arranged in a network that shows both activities and their dependencies. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used, and limitations can be identified.

Critical Path: Critical Path is the sequence of project network activities which add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project cannot be changed without prior written approval of AJSD.

Day: Calendar day(s) unless otherwise specifically stated in the Agreement Documents.

Differing Site Conditions: Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Agreement Documents, or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work at the general area of the Site.

Drawings (Plans): Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by Contractor during the construction phase and which have been prepared or approved by the Engineer and AJSD. These documents include Drawings that have reached a sufficient state of completion and have been released by Engineer solely for the purposes of review and use in performing constructability or bid-ability reviews by Contractor and in preparing cost estimates (e.g., Master Planning and Programming, Schematic Design, Design Development, and Construction Drawings), but *"not for construction."* Shop Drawings are not Drawings as so defined.

Engineer: The qualified, licensed person, firm or corporation that furnishes design and construction administration services required under the Agreement Documents. These services may include but are not limited to development of Construction Drawings and Documents, review of Contractor Submittal(s), review of and response to Requests for Information, approval and certification of progress payment applications, construction administration, and construction agreement close out.

Final Acceptance: AJSD's acceptance of the facility or project from the Contractor after all Work is completed, tested, and inspected in accordance with the Agreement requirements. Final Acceptance results will be documented in a Letter of Acceptance (LOA).

Fixed Price: A fixed price or amount for an Agreement Price, Scope of Work, materials, or other item under the Agreement, Change Order, or other agreement, which AJSD agrees, in Writing, to pay instead of the actual cost.

Float: The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Agreement Term.

Laws, Regulations, or Legal Requirements: Any and all applicable laws, rules, regulations, ordinances, codes and orders applicable to the Project of any and all governmental bodies, agencies, authorities and courts having jurisdiction and any applicable provisions of the Development Agreement for the Project (if any), including, without limitation, those provisions relating to the design and construction of the Project.

Line Item: The individual elements of Work identified on a bid or other schedule and associated with a price or a unit price and quantity particular to that individual element of the Work. Also refers to individual items of work within the Schedule of Values.

Liquidated Damages: Designated damages for AJSD to collect as compensation upon a specific breach (example: late delivery).

Long Lead Item: Long lead item refers to the equipment, product, or system that is identified at the earliest stage of a project to have a delivery time long enough to directly affect the Critical Path or the overall lead time of the project.

MAG: The Maricopa Association of Governments.

MAG Specifications: The most current version of the Uniform Standard Specifications for Public Works Construction published by MAG.

MAG Standard Details: The most current version of the Uniform Standard Details as published by MAG.

Minor change: A change in the Work having no impact on cost or time or AJSD-approved design intent, as determined by AJSD.

Notice to Proceed (NTP): A written notice given by AJSD to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under the Agreement.

Project: The Project specified in the Agreement (including a Job Order).

Project Schedule: The schedule for the completion of the Project agreed to and required by AJSD.

Project Specific Conditions: Additional conditions which apply to the specific Project and Scope of Work which are set forth in Exhibit A of the Agreement.

Project Team: The Project Team consisting of the Engineer, Contractor, AAR and such others as AJSD may designate.

Punch List: The list initially prepared by Contractor pursuant to the Agreement Documents, reviewed and supplemented by the AAR, or the Engineer) and approved by AJSD containing items of incomplete work not impacting Substantial Completion, if allowed for under the Agreement, and to be completed or corrected by Contractor after Substantial Completion and before Final Acceptance in accordance with the Agreement Documents.

Quality Assurance (QA) Testing: Testing performed to verify the accuracy and applicability of the QC testing results and to ascertain that the materials installed meet the specified levels of quality in accordance with the Agreement Documents.

Quality Control (QC) Testing: Testing performed to assure that the materials installed comply with the requirements in the Agreement Documents.

Requests for Information (RFIs): Formal written request from Contractor to AJSD or Engineer for the Project seeking clarification or additional information needed for Contractor to properly complete the Work or Services under the Agreement. AJSD may require RFI's to be submitted on a specific form or in a specified format.

Schedule of Values (SOV): The specified document prepared by Contractor, and approved and accepted by AJSD, which divides the Agreement Price into pay items, such that the sum of all pay items equals the Agreement Price for the construction phase Work, or for any portion of the Work having a separate specified Agreement Price.

Scope of Work: The scope of work agreed to or required by AJSD and incorporated into the Agreement as Exhibit A.

Shop Drawings: All drawings, diagrams, schedules and other data specifically prepared for the Work by Contractor or a Subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site: The land or premises on which the Project is located.

Specifications: The part(s) of the Agreement Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. Where specified, the Project must be constructed using the current Uniform Standard Specifications and Details for Public Works Construction as furnished by the Maricopa Association of Governments, as amended by AJSD.

Subconsultant: A person, firm or corporation having an agreement with Consultant/Contractor to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor: An individual or firm having a direct agreement with Contractor or any other individual or firm having an agreement with the aforesaid contractors at any tier, who undertakes to perform a part of pre-construction services or construction phase Work at the Site for which Contractor is responsible. Subcontractors must be selected through the Subcontractor selection process described in the Agreement Documents, if any.

Substantial Completion: The date when AJSD determines that the Work (or separable units of Phases as provided in the Agreement Documents) is essentially and satisfactorily complete in accordance with the Agreement Documents such that the Project is ready for use by AJSD for its intended purpose, opening to the general public, full occupancy or use by AJSD (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and all areas serving the general public, as applicable, must be ready for full operation without material inconvenience or discomfort), 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; safety and automatic operation, following start-up testing, and commissioning as recommended by equipment manufacturer O&M and in conformance with an approved Maintenance of Plant Operations (MOPO); site work complete; permanent heating, ventilation, air conditioning, vertical transportation, and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and other work as applicable, has been performed to a similar state of essential and satisfactory completion. The only work that remains after Substantial Completion is the Punch List.

Supplier: A manufacturer, fabricator, distributor, or vendor having a direct agreement with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by Contractor or any Subcontractor.

Total Float: Number of Days by which pre-construction services or construction phase Work or any part of the same may be delayed without necessarily extending the Agreement Term or a pertinent or schedule milestone in the Project Schedule.

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

Writing: Typing, printing, photography and other modes of representing or reproducing words in a visible form, including email and other electronic means and expressions.

SECTION 3 - STANDARD SPECIFICATIONS AND DETAILS

AJSD operates under the most current version of the MAG Specifications and MAG Standard Details. Copies of the MAG Specifications and MAG Standard Details are available at the Maricopa Association of Governments office, 302 N. 1st Avenue, Suite 300, Phoenix, Arizona. They may also be downloaded from their website at: <https://azmag.gov/> The MAG Specifications and Standard Details thereto are incorporated into the Agreement by this reference provided that, in the event of a conflict, the Agreement Documents shall prevail.

SECTION 4 - CONTRACTOR'S RESPONSIBILITIES FOR CONSTRUCTION SERVICES

4.1 GENERAL

- 4.1.1.** Contractor must construct the Work in accordance with the Agreement Documents and as outlined in **Exhibit A** of the Agreement, exercising the degree of professional care, skill, diligence, quality and judgment that a professional construction manager engaged, experienced and specializing in the construction of facilities similar in scope, function, size, quality, complexity and detail, under similar conditions. Contractor must, at all times, perform the Work in conformance with sound and generally accepted construction management and construction contracting practices.
- 4.1.2.** If Contractor observes ambiguities, errors, discrepancies, or omissions in the Agreement Documents, Contractor must promptly notify the Engineer and AJSD and request clarification. If Contractor proceeds with the Work affected by such observed ambiguities, errors, discrepancies or omissions, without receiving such clarification, Contractor does so at its own risk and will be liable to AJSD for damages resulting from proceeding without clarification.
- 4.1.3.** Project Team and agents of each of the Parties, testing agencies and governmental agencies with jurisdictional interests will be provided access to the Work at reasonable times for their observation, inspection, and testing. Contractor must provide proper and safe conditions for such access.
- 4.1.4.** 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.

- 4.1.5.** Contractor must ensure that all employees performing any Work for which Contractor is responsible have a legal right to live and work in the United States. In addition, all compensation of any such employee must meet all applicable requirements of the Fair Labor Standards Act (FLSA) and Federal Minimum Wage laws.
- 4.1.6.** Projects may be financed in whole or in part by the Water Infrastructure Finance Authority of Arizona (WIFA) through the Clean Water or Drinking Water Revolving Fund. If financed by WIFA the loan recipient is required to comply with all federal and state laws, rules and regulations, as provided in the most recent WIFA Contract Packet for Governmental Borrowers and must ensure that their contractor(s) also comply(ies) with these regulations, laws and rules. If the Project is financed by WIFA, the WIFA Contract Packet will be an Exhibit to the Agreement and must be complied with in all respects.
- 4.1.7.** Contractor must comply with the Immigration Reform and Control Act of 1986 (IRCA). Contractor understands and acknowledges the applicability of the IRCA activities. Contractor agrees to comply with the IRCA while performing their work and to permit AJSD inspection of Contractor personnel records to verify such compliance.
- 4.1.8.** Pursuant to MAG Specifications § 107.4, Contractor must report immediately any discovery of archeological ruins or artifacts. Excavation must stop immediately so that AJSD can determine the pertinent steps to follow such discovery.
- 4.1.9.** All property owners that may be affected by the proposed construction activities must 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 residences or businesses, require 48-hour notification in advance of specific adjoining Work. Notification may be through door hangers or other procedures approved by AJSD.
- 4.1.10.** Access must be maintained to adjacent properties at all times during construction. Where property has more than one point of access, no more than one access will be restricted or closed at any one time. Access to adjacent private driveways will be maintained during all non-working hours.
- 4.1.11.** Contractor must furnish and erect construction signs in accordance with Project Specifications and any funding agency requirements, if applicable. The signs must be professionally prepared and subject to approval by AJSD, must be maintained by Contractor for the duration of the project, and must be removed by Contractor during the final project clean up.
- 4.1.12.** 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 must be a minimum of four (4) foot by eight (8) foot and must 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 must be included in other items for which direct payment is made. Sign locations will be determined by AJSD.
- 4.1.13.** All required construction signs must be installed by Contractor within 7 Days of Notice to Proceed.
- 4.1.14.** The Work to be accomplished under these Agreement Documents has been designed for AJSD by an Engineer retained by AJSD for this purpose. It is understood that normal construction administration for the purpose of interpretation of the Agreement Documents is provided by AJSD. Should any services of the Engineer be required to assist in the corrections of errors or

omissions by Contractor, or services of the Engineer 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 Engineer at the standard hourly rates previously negotiated with AJSD and must be paid for by the Contractor.

4.1.15. Contractor must reimburse AJSD for costs incurred by the Engineer and AJSD for additional services to the Project through the fault of the Contractor and through no fault of AJSD or the Engineer including, but not limited to, the following conditions:

4.1.15.1. Additional Site visits, investigations, inspections, design work or reports by the Engineer 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 Agreement Documents;

4.1.15.2. Engineer construction phase services rendered on the project during the time the project remains incomplete, after the Agreement date of final completion, due to delays caused solely by Contractor or Subcontractors, will be charged to Contractor at a rate previously negotiated with AJSD; and

4.1.15.3. All retesting required due to the failure of Contractor's Work to meet the requirements of the Agreement Documents will be at Contractor's expense. All standby and travel time by AJSD's testing lab, the Engineer and AJSD staff due to Contractor's inability to be prepared for testing at the agreed upon time will be at the Contractor's expense.

4.1.16. AJSD may withhold from any payment otherwise due to Contractor any amounts necessary to pay the Engineer and AJSD project personnel for such additional services as provided herein above.

4.1.17. Contractor will not be required to bear additional costs incurred by AJSD due to errors by the Engineer. Under no circumstances shall Contractor be responsible for the errors or omissions of the Engineer.

4.2 CONTRACTOR'S PRE-AGREEMENT AND PRE-WORK DELIVERABLES

4.2.1. Prior to award of the Agreement, Contractor must execute Agreement and deliver to AJSD. Failure to do so may delay Agreement award. Contractor must also provide to AJSD its Contractor's License classification and number and its Federal Tax I.D. number.

4.2.2. Before beginning any Work under the Agreement, Agreement must be fully executed by AJSD.

4.2.3. After Agreement award, AJSD will issue to Contractor an award letter. At that time Contractor must deliver to AJSD such bonds and certificates of insurance with endorsements in such amounts, and other evidence of insurance requested by AJSD, required under Section 11 of these General Conditions, and as the Agreement requires.

4.2.4. As evidence of Workers' Compensation Insurance, Contractor must, upon request, provide a letter of certification from the Industrial Commission of Arizona that 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 Workers' Compensation Insurance in the State of Arizona.

- 4.2.5.** Within 10 Days of the date of the executed Agreement letter issued by AJSD, Contractor must submit to AJSD for review and acceptance the following items:
- 4.2.5.1.** Comprehensive construction Project Schedule including a Critical Path Method (CPM) diagram as described in Section 6.2. Project Schedule must be in a standard electronic file format accepted by AJSD. Within 10 Days of receipt of AJSD's comments, Contractor must make all required corrections, adjustments, and additions to complete the Project Schedule and resubmit to AJSD for review.
 - 4.2.5.2.** Preliminary schedule of submittals and Shop Drawings. Within 10 Days of receipt of AJSD's comments, Contractor must submit the corrected and completed schedule of Shop Drawings for approval. Contractor's schedule of Shop Drawings and sample submittals will be acceptable to AJSD if Contractor provides a reasonable arrangement for reviewing and processing the required submittals.
 - 4.2.5.3.** Schedule of Values (SOV). SOV must be in a form specified by AJSD reflecting the subcontracts and other categories that will be used to submit Pay Applications for the Work. The total amount of the SOV must not be greater than the Agreement Price. The SOV will be reviewed at the Pre-Construction Meeting and revised by Contractor within 10 Days after Pre-Construction Meeting in response to comments and questions from AJSD. Once accepted by AJSD in Writing, the SOV for the Project must not be changed without the prior written approval of AJSD.
- 4.2.6.** Video Recording Requirement. Prior to performing any Work, Contractor must document the existing conditions of the Site, all other areas where Work will occur and all adjacent areas that may be impacted by the Work via digital video format. Contractor must video record and index all areas, features, buildings and other public and private improvements that could potentially be impacted by the Work. Video recording must be coordinated with AJSD. When video recording private property, Contractor must also coordinate the video recording with the private property owner, if possible. Contractor must provide AJSD with a copy of said digital video format prior to performing any Work.
- 4.2.7.** Aerial Drone Construction Photography.
- 4.2.7.1.** Contractor must engage a professional unmanned aerial vehicle (UAV) aerial pilot to photograph the Site prior to construction mobilization, and at intervals approved by AJSD in the Agreement, during construction and following final inspection. Drone camera specifications must meet the following minimum requirements:
 - A.** 1-inch CMOS
 - B.** Pixels: 20M
 - C.** FOV 84 8.8 mm/24 mm (35 mm format equivalent) f/2.8-f/11 auto focus at 1 m-
 - D.** For photographing: 16.9 Aspect Ratio: 5472x3078
 - E.** For video shooting: MP4/MOV/H.264
 - F.** FHD: 1920x1080 120p @100Mbps
 - G.** File format: High Definition (HD) JPEG for digital photos and HD MPEG 4 for digital video.
 - H.** All metadata to be recorded including GPS data and preserved with photographs provided.

- 4.2.7.2.** Drone photos to be taken in sequential geographical order and then organized and provided in the same manner unless otherwise specified.
- 4.2.7.3.** Photos to be provided digitally via an online file share service and/or by a USB drive to Contractor.
- 4.2.7.4.** Contractor is responsible for and must ensure that drone pilots are to obey ALL local (city, county, state) UAV regulations as well as Federal Aviation Administration UAV guidelines including, but not limited to, conducting all flights during daylight hours, not exceeding maximum altitude ceilings, not flying over people, and yielding to other aircraft.
- 4.2.7.5.** Contractor is responsible for and must ensure that drone pilots must fly the drone within visual line of sight (VLOS) and have a visual spotter when needed. Drone pilots are only to operate in favorable weather conditions when minimum visibility is three (3) miles or greater.
- 4.2.7.6.** Contractor is responsible for and must ensure that drone pilots are to conduct a preflight checklist and visually inspect the entire flight path prior to flying to ensure a safe flight.
- 4.2.7.7.** Airspace Authorizations. Operations in Class G airspace are allowed without air traffic control (ATC) permission. Operations in Class B, C, D and E airspace need ATC authorization. Drone pilots are to schedule each flight in advance and based on airspace, if required, will notify nearby airports, control towers, etc.
- 4.2.8.** Government Approvals and Permits.
 - 4.2.8.1.** Contractor must obtain all necessary permits for the Work, to be paid by AJSD permit fees. For bidding purposes, an allowance for all permit fees shall be included in the bid schedule under the item "allowance for permit fees." The Contractor will be paid for the actual cost of the permit fees upon submitting a receipt showing the fee Contractor has paid. Excluded from the above allowance are items such as costs incurred by the Contractor in securing the permit except for the actual permit fee established by the agency, cost for all shutdowns or outages, cost for pole bracing, cost of permits for construction water, cost of construction water, cost for any additional insurance requirements, cost for any licenses, and other similar type costs. Contractor is specifically notified of the need to obtain any necessary environmental permits or file the necessary environmental and regulatory permit notices.
 - 4.2.8.2.** Copies of all permits and the associated notices must be provided to AJSD prior to starting the permitted activity.

4.3 CONSTRUCTION MEETINGS

- 4.3.1.** Prior to the commencement of any Work, AJSD will schedule a Pre-Construction Meeting.
- 4.3.2.** The purpose of this meeting is to establish a working relationship between Contractor, Engineer, AJSD, involved utility firms and other interested parties. The agenda will include critical elements of the Work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with all parties, and emergency telephone numbers for all representatives involved in the course of construction.

- 4.3.3.** Minimum attendance by Contractor at any mandatory meeting with AJSD, including the Pre-Construction Meeting, must be (i) Contractor's Representative, who is authorized to execute and sign documents on behalf of the firm, (ii) Contractor's on-site Superintendent, and (iii) Contractor's Safety Office, or other employee responsible for safety.

4.4 PERFORMANCE OF THE WORK

- 4.4.1.** Unless otherwise provided in the Agreement Documents to be the responsibility of AJSD or a separate contractor, Contractor must provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, materials, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete the Work consistent with the Agreement Documents.
- 4.4.2.** Contractor must perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Agreement Documents. Contractor must at all times exercise complete and exclusive control over the means, methods, safety, sequences and techniques of construction.
- 4.4.3.** Contractor's Superintendent must be present at the Site at all times that material Work under this Agreement is taking place. Contractor's Superintendent or designee must be present at the Site at all times any other Work under this Agreement is taking place. Superintendent must not be replaced without written notice to AJSD. Whenever the Superintendent is not present at a particular part of the Work where AJSD or Engineer may desire to inform the Contractor's Superintendent relative to interpretation of the Drawings and Specifications or to disapproval or rejection of materials or Work performed, AJSD or Engineer may provide such information in Writing.
- 4.4.4.** All elements of the Work must be under the direct supervision of a supervisor or designated representative on the Site who must have the authority to take actions required to properly carry out that particular element of the Work.
- 4.4.5.** Working Hours. 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, all Work at the Site must be performed during regular working hours, or agreed upon hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without AJSD's written consent given after prior written notice to AJSD. If it becomes absolutely necessary to perform Work at night or on Saturdays, Sundays or legal holidays, AJSD must be informed at least 24 hours in advance of the beginning of performance of such Work.
- 4.4.6.** Only such Work will be done at night as can be done satisfactorily, as determined by AJSD. Good lighting and all other necessary facilities for carrying out and inspecting the Work must be provided and maintained at all points where such Work is being done. Further, unless such non-normal work hours are performed at AJSD's request or required by the Agreement Documents, Contractor must pay to AJSD all additional costs incurred by AJSD by reason of such non-normal working hours. Expenses incurred by AJSD for overtime compensation may be reimbursed, unless otherwise agreed upon, by Contractor as follows: (1) AJSD staff at the rates set forth as an Exhibit to the Agreement; (2) Engineer and staff at the standard hourly rates previously negotiated with AJSD; and (3) all others at actual cost, plus ten percent administrative overhead. Such costs may be deducted by AJSD from any payments due to Contractor. Provided, however, if overtime work or work during other than normal hours is at the request of AJSD and not due to Contractor delay, AJSD will pay the cost of AJSD overtime expenses.

- 4.4.7.** Where the Agreement Documents require that a particular product be installed or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer and Engineer. All materials and equipment must 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 Agreement Documents; but no provisions of any such instructions will be effective to impose on AJSD or Engineer responsibility for the means, methods, techniques, sequences or procedures of construction or for safety precautions incident thereto.
- 4.4.8.** Before starting the Work, Contractor must carefully study and compare the various Plans, Drawings, other Agreement Documents, and Specifications relative to that portion of the Work, as well as the information furnished by AJSD; must take field measurements of any existing conditions related to that portion of the Work; and must observe any conditions at the Site affecting the Work. The accuracy of grades, elevations, dimensions, or locations given on any Drawings, or the Work installed by other contractors, is not guaranteed by AJSD.
- 4.4.9.** Before ordering materials or doing Work, Contractor and each Subcontractor must 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 Agreement Documents, including the Drawings.
- 4.4.10. Ground Level Construction Photography.**
- 4.4.10.1.** The Contractor must furnish progress photographs of the project. The photographer selected by the Contractor must be approved by AJSD and must be either a commercial photographer or an individual experienced and equipped for such photography.
- 4.4.10.2.** The Contractor must deliver to AJSD all photographs taken during that period with each application for payment. If the current photographs do not accompany the application, the application will not be reviewed and will be returned to the Contractor as incomplete.
- 4.4.10.3.** Photographs must be delivered using an electronic method agreed upon by AJSD, and the following information must be provided for each photo: a description of the view, the direction from which the photograph was taken, the name of the project, AJSD's project number, the name of Contractor and the date of the photography. The stationing must also be included for all pipeline installations.
- 4.4.10.4.** Photographs must be taken during the construction period and must be of aesthetic composition and depict the progress of the Work from the beginning of construction through and including the finished product. AJSD may vary the specified frequency so that significant progress or changes can be recorded.
- 4.4.11. Underground Facilities.**
- 4.4.11.1.** Contractor is responsible for field verification and location of all known utilities prior to the start of construction. No field work will be allowed to start until Contractor has contacted Arizona 811 and all affected known utilities have been located. In addition, Contractor must expose and physically locate all known potentially conflicting utilities prior to construction. The actual locations of the utilities must be compared to locations shown on the Plans and any required changes in alignment and grade must

be made at the time of construction in consultation with AAR. It is generally recognized, and Contractor should anticipate that information from Arizona 811 or information from utility companies during project design, frequently fails to disclose all underground facilities. To the extent consistent with the provisions of the Agreement Documents, including this section, 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 this reference. Contractor may be entitled to an equitable adjustment, pursuant to Appendix 1 and Section 108.7 of the MAG Uniform Standard Specifications for Public Works Construction, arising from the discovery of unknown utilities encountered on the Project.

- 4.4.11.2.** Contractor is responsible for all coordination with utility companies. To the extent consistent with the provisions of the Agreement Documents, including this section, 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 provided that Contractor may be entitled to an adjustment, pursuant to Appendix 1 and Section 108.7 of the MAG Uniform Standard Specifications for Public Works Construction, for delays due to utility work on the project.

4.4.12. Water Turn-On or Turn-Off.

- 4.4.12.1.** Contractor must coordinate all water line turn-ons and turn-offs through AJSD. AJSD will close existing valves but will not guarantee a bone-dry Shutdown.

4.4.13. Tests and Inspections.

- 4.4.13.1.** Contractor must give AJSD timely notice (at a minimum, twenty-four hours) of readiness of the Work for all required inspections, tests or approvals. Contractor must give timely notice to AJSD in advance of backfilling or otherwise covering any part of the Work so that AJSD representative 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 out on each Day, Contractor must give timely notice to AJSD so that AJSD representative 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 AJSD representative may be subject to rejection. If Contractor gives such notice to AJSD, but then is not ready for such inspections, tests, approvals or observations at the time so noticed, Contractor must reimburse AJSD for all costs incurred by the attendance of AJSD representatives.
- 4.4.13.2.** 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 Agreement Documents, must assume full responsibility thereof, pay all costs in connection therewith and furnish AJSD the required certificates of inspection, testing, or approval. Contractor must also be responsible for and must pay all costs in connection with any inspection or testing required by the Specifications in connection with AJSD'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 Agreement Documents will be paid by AJSD, unless otherwise specified.

- 4.4.13.3.** All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction must be performed by organizations acceptable to AJSD and by the Engineer if so specified.
- 4.4.13.4.** Neither observations by AJSD or the Engineer, nor inspections, tests or approvals by others will relieve Contractor from their obligations to perform the Work in accordance with the Agreement Documents.
- 4.4.14.** Uncovering Work. If any Work that is to be observed, inspected, tested or approved is covered without written concurrence of AJSD, it must, if requested by AJSD be uncovered for observation. Unless Contractor has given AJSD timely notice of Contractor's intention to cover such Work and AJSD has not acted with reasonable promptness in response to such notice, Contractor must 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 will be issued.
- 4.4.15.** In all cases of interconnection of its Work with existing or other work, Contractor must verify at the Site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to verify all such grades, elevations, locations or dimensions must be promptly rectified by Contractor without any increase in the Agreement Price. Any design errors or omissions noted by Contractor during this review must be reported promptly to AJSD, provided that Contractor shall not be responsible for any such design errors or omissions. If Contractor proceeds with the Work affected by such observed errors or omissions, without receiving clarification from AJSD or the Engineer, Contractor does so at its own risk and will be liable to AJSD for damages resulting from proceeding without clarification.
- 4.4.16.** Contractor must 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.
- 4.4.17.** Contractor must photograph all buried piping of greater than four (4) inches in diameter prior to backfill.
- 4.4.18.** Contractor is responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Agreement Documents is intended or deemed to create any legal or contractual relationship between AJSD and any Subcontractor or sub-subcontractor, including but not limited to any third-party beneficiary rights.
- 4.4.19.** Contractor must coordinate the activities of all Subcontractors. Contractor must coordinate performance of the Work with AJSD, Engineer and other contractors or parties involved in the Project. If AJSD performs other work on the Project or at the Site with separate contractors under AJSD'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. Compensation or extension of time, if any, for delays arising from interference caused by other contractors will be calculated pursuant to Appendix 1.
- 4.4.20.** Contractor will not substitute or change any Subcontractor or Supplier without the prior written approval of AJSD. Any substitute or replacement Subcontractor or Supplier must be required to meet the same qualifications, selection criteria and process as the original Subcontractor or Supplier. If a Subcontract or Supplier selection plan has been approved by AJSD, Contractor will follow that plan unless otherwise approved by AJSD in Writing.

- 4.4.21.** Contractor must not change or replace any members of its Project team, including Contractor's Representative, Project Manager, or Superintendent, without an explanation for the change being given to AJSD, and receiving prior written approval of the change from AJSD, which approval will not be unreasonably withheld.
- 4.4.22.** Subcontractors whose scope of work has a value greater than 15% of the total Agreement Price are required to furnish performance and payment bonds to Contractor, unless otherwise approved in Writing by AJSD.

4.5 CONTROL OF THE PROJECT SITE

- 4.5.1.** 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 must remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit AJSD to occupy the Project or a portion of the Project for its intended use.
- 4.5.2.** Contractor must 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 AJSD and in accordance with the requirements of the Pinal County Air Quality Control District and/or the Arizona Department of Environmental Quality.
- 4.5.3.** Contractor must 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 must 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.
- 4.5.4.** Only materials and equipment used directly in the Work will 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.
- 4.5.5.** Contractor agrees that all persons working on the Site must act at all times in the best interest of the Project and will comply with all applicable rules and regulations reasonably set forth by AJSD related to the Site. Notwithstanding the foregoing or anything in this Agreement to the contrary, AJSD may remove from the Site any individual who AJSD deems in their reasonable discretion to be creating a disturbance or causing any problem on the Site.
- 4.5.6.** Contractor will be responsible to AJSD 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 an Agreement with Contractor, for all damages, losses, costs and expenses resulting from such acts or omissions except as otherwise specifically limited herein.
- 4.5.7.** Contractor shall conduct criminal, driving history, and all other requested background checks of Contractor personnel performing Work or who have access to AJSD's information, data, or facilities in accordance with AJSD's current background check policies, or the provisions of the Project Specific Conditions. Contractor shall require Subcontractor to conduct criminal, driving history, and all other requested background checks of personnel performing Work, the results of which the Contractor and AJSD shall have access to upon request. Any officer, employee or agent that refuses to comply or fails a background check must be replaced immediately.

- 4.5.8.** AJSD will have a final authority, based upon security reasons: (1) to determine when security clearance of Contractor's and Subcontractor's personnel is required; (2) to determine the nature of the security clearance, up to and including fingerprinting personnel; and (3) to determine whether or not any individual or entity may provide Services or perform Work under the Agreement.
- 4.5.9.** If AJSD objects to any personnel for any reasonable cause, then Contractor must, upon notice from AJSD, remove such individual from the Project.

4.6 PROJECT SAFETY

- 4.6.1.** The Project and all Work performed in relation thereto is governed by applicable provisions of the federal laws, including but not limited to, the latest amendments of the following:
 - 4.6.1.1.** Williams-Steiger Occupational Safety & Health Act of 1970, 29 U.S.C. §§ 651 et. seq.
 - 4.6.1.2.** Part 1910 and Part 1926 – Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations.
 - 4.6.1.3.** Part 1518 – Safety and Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.
- 4.6.2.** 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, walk through or be present at the Site.
- 4.6.3.** Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (1) all individuals at the Site, whether working or visiting; (2) the Work, including materials and equipment incorporated into the Work and stored on or off Site; and (3) 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 (4) the owners or tenants of adjacent property and their patrons, employees and invitees.
- 4.6.4.** Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 4.6.5.** Contractor must provide a competent person as required by the Occupational Safety and Health Administration (OSHA) regulations. The competent person must be identified at the Pre-Construction Meeting, and AJSD shall be advised in Writing of any changes.
- 4.6.6.** 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.
- 4.6.7.** Contractor and Subcontractors must comply with all legal and regulatory requirements relating to safety, as well as any AJSD specific safety requirements set forth in the Agreement Documents, provided that such AJSD specific requirements do not violate any applicable legal and regulatory requirements.
- 4.6.8.** Contractor will immediately report in Writing any safety-related injury, loss, damage or accident arising from the Work to AAR 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.

- 4.6.9.** Contractor's responsibility for safety under this Section 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.
- 4.6.10.** As between AJSD and Contractor, Contractor is responsible to AJSD for any and all safety issues relating to the Work on the Project. Contractor must administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor must monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards. Contractor's responsibility for review, 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 AJSD, it is agreed and understood that each individual Subcontractor will remain the 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.
- 4.6.11.** Nothing in this agreement will relieve Contractor of its responsibility to maintain traffic, structures, etc., as noted on the Plans, Specifications, and Project Specific Conditions. Contractor is responsible for providing all necessary shoring, bracing and trench support as is necessary to maintain traffic structures, etc., as stipulated in the Plans, Specifications, and Special Provisions. If the stability of adjoining buildings, walls, roadways, etc., is endangered by Contractor's excavation, shoring, bracing, or underpinning must be provided as necessary to ensure project safety. Cost for shoring, bracing, underpinnings, and trench support will be included in the appropriate items listed in the Agreement Price, and no additional payment will be made for this work.

4.7 MATERIALS QUALITY, SUBSTITUTIONS, AND SHOP DRAWINGS

4.7.1. Quality Control and Quality Assurance Testing.

- 4.7.1.1.** All construction materials to be used or incorporated in the Project are subject to inspection, Quality Control & Quality Assurance (QC/QA) Testing, and approval or rejection by AAR or Engineer. Any material rejected by AAR or Engineer for noncompliance with the Agreement Documents must be removed immediately and replaced in an acceptable manner to AJSD at no additional cost to AJSD. When QC/QA tests indicate noncompliance with the Agreement Documents, retesting must be performed by the same testing laboratory that performed the tests that indicated noncompliance.
- 4.7.1.2.** The Contractor must establish, provide, and maintain an effective Quality Control Testing Program (QCTP). The Contractor must develop his own program or procure the services of a consultant. In either case, the party performing the tests must be currently certified by the National Bureau of Standards in the National Voluntary Laboratory Accreditation Program (NVLAP) for construction services or the AASHTO Accreditation Plan (AAP) for Soils, Asphalt and Concrete. The Contractor must provide all support necessary to perform QC/QA testing and sampling (i.e., shoring for testing trench backfill, backhoes, motor graders, loaders, etc. to facilitate testing and sampling).

- 4.7.1.3.** The Contractor must submit a written QCTP to AJSD as a required submittal. The Contractor must not begin Work until the Quality Control Program has been reviewed and accepted by AJSD. Resumes of all personnel that will be associated directly or indirectly with the QCTP must be included.
- 4.7.1.4.** The QCTP must include, but not be limited to, on-site/field and laboratory testing of all material delivered to the Site and any existing materials or conditions pertinent to the project.
- 4.7.1.5.** All testing must be under the direction of a Professional Engineer registered in the State of Arizona, knowledgeable in Materials Testing. All test report forms must be stamped by said engineer.
- 4.7.1.6.** The written QCTP will set forth the responsibilities of the engineer, project manager, supervisory personnel and each technician assigned to this project. Substitutions or replacement of personnel require prior written approval by AJSD. All personnel must be proficient within their assigned duties and possess certification(s) commensurate with their position and responsibilities. The minimum certification(s) for each technician must be NICET Level II, Arizona Technical Testing Institute, American Concrete Institute, or other nationally recognized program applicable to the project and approved by AJSD. The written QCTP must include a description of the required field and construction materials laboratory tests, including required frequencies that meet the minimums established herein.
- 4.7.1.7.** The Contractor must establish a system to record and report all materials test results. The daily test reports must include, but will not be limited to:
- A.** Test designation;
 - B.** Date of test;
 - C.** Name of tester;
 - D.** Location of test/sample (station and offset);
 - E.** Product suppliers and product codes (as applicable);
 - F.** Depth/elevation of test/sample;
 - G.** Test result;
 - H.** Control requirement(s);
 - I.** Cause of rejection (if applicable);
 - J.** Results of retests (if applicable); and
 - K.** Remedial action (if applicable).
- 4.7.1.8.** The Contractor must submit test results to the AAR.
- 4.7.1.9.** The Contractor must also submit a weekly report to AJSD summarizing the testing and construction activities completed by emailing the report to the email addresses noted above. All weekly reports must be submitted simultaneously to the Contractor and AJSD. The report must include individual summary sheets for each utility line, structure, and portion of the pavement section. Cores must be numbered

sequentially throughout the Project. Re-cores must reference the original core by number and must contain the averaged values for thickness and density. Total pavement thickness must be reported. Vertical location of tests for underground utilities must indicate the depth of the excavation at the location of the test (i.e., cut to flow line, if applicable, depth to bottom or top of pipe, etc.). Density tests must be numbered sequentially. If the minimum number of tests has not been performed per the written QCTP, this must be stated in the weekly summary report with an explanation of the circumstances.

- 4.7.1.10.** AJSD will maintain a copy of the Project test results and weekly reports in the Project file. In cases where quality control activities do not comply with the Agreement provisions, AJSD may:
 - A.** Order the Contractor to replace ineffective or unqualified quality control personnel.
 - B.** Order the Contractor to stop operations until appropriate corrective action is taken.
- 4.7.1.11.** Although minimum testing requirements are specified herein, the Contractor bears full responsibility for the quality of the materials and their installation and may elect to perform additional testing beyond the requirements set forth herein to ensure compliance.
- 4.7.1.12.** The Quality Control requirements contained in this Section are in addition to and separate from Quality Assurance Testing, which will be performed by AJSD or its representative. If the Quality Assurance test results are not in agreement with the Quality Control 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 will 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, AJSD test results will prevail.
- 4.7.1.13.** Except as otherwise noted within this Section, Work or materials required by this Section are non-pay items as defined in MAG Section 101.
- 4.7.2.** Trade Names and Substitutions.
 - 4.7.2.1.** Substitutions prior to bid will only be considered if in compliance with Arizona Revised Statute § 34-104.
 - 4.7.2.2.** Contractor, if requested by AJSD, must submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
 - 4.7.2.3.** AJSD will make the final decision and will notify Contractor in Writing as to whether the substitution has been accepted or rejected.
 - 4.7.2.4.** If AJSD does not respond within fifteen (15) working days, Contractor must continue to perform the Work in accordance with the Agreement Documents and the substitution will be considered rejected.

4.7.3. Shop Drawings.

- 4.7.3.1.** Contractor must prepare and submit Shop Drawings which show details of all Work to ensure proper installation of the Work using those materials and equipment specified under the approved Plans and Specifications.
- 4.7.3.2.** Contractor must submit a schedule of Shop Drawing submissions, which avoids bulk submissions to the extent reasonably possible, with the Project Schedule for AJSD approval. The schedule of Shop Drawing submissions must include all of the items for which Shop Drawings are required by the Agreement Documents, including the Specifications. Unless otherwise noted, Shop Drawings will not be required for items specified or detailed in the Specifications.
- 4.7.3.3.** Shop Drawings must be numbered consecutively for each Specification section and must accurately and distinctly present the following:

 - A.** All working and erection dimensions.
 - B.** Arrangements and sectional views.
 - C.** Necessary details, including complete information for making connections between work under this Agreement and work under other Agreements.
 - D.** Kinds of materials and finishes.
 - E.** Parts list and description thereof.
- 4.7.3.4.** Each Drawing or page must include:

 - A.** Project Name, AJSD Project Number and descriptions.
 - B.** Submittal date and space for revision dates.
 - C.** Identification of equipment, product or material.
 - D.** Name of Contractor and Subcontractor.
 - E.** Name of Supplier and Manufacturer.
 - F.** Relation to adjacent structure of material.
 - G.** Physical dimensions clearly identified.
 - H.** American Society for Testing and Materials (ASTM) and Federal Specifications references.
 - I.** Identification of and justification for deviations from the Agreement Documents.
 - J.** Contractor's stamp, initialed or signed, dated and certifying the review of submittal, certification of field measurements and compliance with Agreement.
 - K.** Location at which the equipment or materials are to be installed.
- 4.7.3.5.** Location will mean both physical location and location relative to other connected or attached material. AJSD will return unchecked any submittal, which does not contain complete data on the Work and full information on related matters.

- 4.7.3.6.** Stock or standard drawings will not be accepted for review unless full identification and supplementary information is shown thereon in ink or typewritten form.
- 4.7.3.7.** Contractor must schedule, prepare and submit all Shop Drawings in accordance with a timetable 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.
- 4.7.3.8.** If the Shop Drawings show departures from the Agreement requirements, Contractor must make specific mention thereof in the Letter of Transmittal; otherwise review of such submittals by AJSD 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.
- 4.7.3.9.** The review of Shop Drawings will be general and will 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 Agreement. No construction called for by Shop Drawings will be initiated until such Drawings have been reviewed and approved by AJSD.
- 4.7.3.10.** The procedure in seeking review of the Shop Drawings will be as follows:
- A.** Contractor must submit complete sets of Shop Drawings and other descriptive data as specified in this Section.
 - B.** After Contractor's submittal or resubmittal of Shop Drawings, if Contractor has submitted Shop Drawings in accordance with the AJSD-approved submittal schedule, or upon resubmission, AJSD will be provided with three (3) calendar weeks for review. Should AJSD require additional review time above and beyond the three (3) calendar weeks, Contractor may ask for a time extension and/or monetary compensation, if they can present valid, factual evidence that actual damages were incurred by Contractor. AJSD will determine the amount of the time extension and/or the monetary compensation to be awarded Contractor, if any, in accordance with AJSD's Policy Statement for Calculating Delays and Damages, Appendix 1.
- 4.7.3.11.** Contractor will be responsible for all extra costs incurred by AJSD caused by Contractor's failure to comply with the procedure outlined above.
- 4.7.4.** Long Lead Items. Contractor must submit Shop Drawings, as required by the Engineer, on all Long Lead Items to be furnished and installed as part of the project. In addition, Contractor must order all Long Lead Items to be furnished and installed as part of this Project after receiving approved Shop Drawings. For all Long Lead Items for which Shop Drawings are not required, Contractor must order said Long Lead Items. Within 2 Days after ordering Long Lead Items, Contractor must supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.
- 4.7.5.** Construction Water. If Contractor uses water from AJSD's water system for construction water, Contractor must obtain a fire hydrant meter from the designated water provider and all construction water must be obtained through the hydrant meter. Contractor must pay all fees related to the hydrant meter and all water bills for construction water. All costs for meters and construction water will be included in the Agreement Price.

4.8 PROJECT RECORD DOCUMENTS

- 4.8.1.** During the construction period, Contractor must maintain at the jobsite a full-size set of prints of the Construction Document Drawings and Shop Drawings for Project Record Document purposes.
- 4.8.2.** Contractor must mark these Drawings to indicate the actual installation where the installation varies from the original Construction Documents. Contractor must 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:
 - 4.8.2.1.** Dimensional changes to the Drawings.
 - 4.8.2.2.** Revisions to details shown on Drawings.
 - 4.8.2.3.** Locations and depths of underground utilities.
 - 4.8.2.4.** Revisions to routing of piping and conduits.
 - 4.8.2.5.** Actual equipment locations.
 - 4.8.2.6.** Changes made by Change Order or Addendum.
 - 4.8.2.7.** Details not on original Agreement Drawings.
- 4.8.3.** Contractor must mark completely and accurately Project Record Drawing sets of Construction Documents.
- 4.8.4.** Contractor must note RFI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- 4.8.5.** Contractor must submit Project Record Drawing sets and Shop Drawings to AAR for review and comment.
- 4.8.6.** Upon receipt of the reviewed Project Record Drawings from AAR, Contractor must correct any deficiencies and omissions to the Drawings and submit the final original of the Project Record Drawings to AAR prior to Final Payment.
- 4.8.7.** AAR 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.

4.9 WARRANTY AND CORRECTION OF DEFECTIVE WORK

- 4.9.1.** Contractor warrants to AJSD that the construction, including all materials and equipment furnished as part of the Work, will be new unless otherwise specified in the Agreement Documents, of good quality, and free of defects in materials and workmanship and constructed in accordance with the requirements of the Agreement Documents. Contractor's warranty obligation excludes wear and tear as well as defects caused by abuse, alterations, or unreasonable failure to maintain the construction by persons other than Contractor, Subcontractors, or others under Contractor's control. Nothing in this warranty will limit any manufacturer's warranty which provides AJSD with greater warranty rights than set forth herein or in the Agreement. Contractor will provide AJSD with all manufacturers' warranties and operation and maintenance manuals upon substantial completion of the Work. Contractor's warranty must be for one (1) year, or otherwise agreed upon term, and will commence for all portions of the Work upon Final Acceptance of the entire Work as determined by AJSD under the Agreement. All statutory or other warranties associated with equipment, machinery and/or facilities, express or implied, related to latent defects will remain in force and are not limited by this provision.

4.9.2. AJSD May Stop the Work. If the Work is defective, or Contractor fails to supply sufficiently skilled workmen or suitable materials or equipment, AJSD may order Contractor to stop the Work, or any portion thereof, without cost to AJSD or any portion thereof, until the cause for such order has been cured and subject to Contractor's right to dispute pursuant to Appendix 6; however, this right of AJSD to stop the Work will not give rise to any duty on the part of AJSD to exercise this right for the benefit of Contractor or any other party.

4.9.3. Correction or Removal of Defective Work.

4.9.3.1. If required by AJSD, Contractor must promptly, without cost to AJSD and as specified by AJSD, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by AJSD, as not compliant with the Agreement Documents, remove it from the Site and replace it with non-defective Work. Contractor must 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 must reimburse AJSD for costs incurred by AJSD due to such correction or removal including but not limited to additional expenses for inspection, testing or observation and for repeated reviews by AJSD or Engineer.

4.9.3.2. Upon failure on the part of the Contractor to comply, within a reasonably prompt time, with any written order of AJSD to correct or remove defective Work, AJSD has 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 to or to become due to the Contractor.

4.9.4. AJSD May Correct Defective Work. If Contractor fails, within a reasonable time after written notice from AJSD, to proceed to correct defective Work or to remove and replace rejected Work as required by AJSD, AJSD may, after 7 Days' written notice to Contractor, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, AJSD may exclude Contractor from all or part of the Work, and suspend Contractor's services related thereto, utilize Contractor's tools, appliances, construction equipment and machinery at the Site to correct defective Work, as necessary to protect property, health and safety until replacement is available, and incorporate in the Work all materials and equipment stored at the Site or for which AJSD has paid Contractor, but which are stored offsite. Contractor must allow AJSD, and AJSD representatives, agents and employees, such access to the Site as may be necessary to enable AJSD to exercise its rights under this Section. All direct costs of AJSD in exercising such rights will be charged against Contractor in an amount verified by AAR, and a Change Order will be issued incorporating the necessary revisions in the Agreement Documents and a reduction in the Agreement Price. Such direct costs will 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 will not be allowed an extension of the Agreement Term because of any delay in Contractor's performance of the Work attributable to the exercise by AJSD or AJSD's rights hereunder.

4.9.5. Correction or Removal of Unauthorized Work.

4.9.5.1. Any Work done beyond the lines and grades shown on the Drawings or established by the Engineer 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.

4.9.5.2. Upon failure on the part of the Contractor to comply promptly with any order of the AJSD, AJSD will 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.

4.9.6. Correction Period - One Year Guarantee.

4.9.6.1. If, within one year after the date 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 Agreement Documents, or by any specific provision of the Agreement Documents, any Work is found to be defective, Contractor must promptly, without cost to AJSD and in accordance with AJSD's written instructions, either correct such defective Work, or, if it has been rejected by AJSD, 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, AJSD may have the defective Work corrected or the rejected Work removed and replaced, and all direct costs of such removal and replacement, including compensation for additional professional services, must be paid by Contractor. Such action by AJSD will not relieve the Contractor of the guarantees required by this Section or elsewhere in the Agreement Documents.

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

4.9.6.3. This Section does not in any way limit the guarantee on any items for which a longer guarantee is specified in the Agreement Documents 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 must furnish AJSD with all appropriate guarantee or warranty certificates upon completion of the Project. No guarantee period, whether provided for in this Section or elsewhere, will 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 Project Specific Special Conditions.

4.9.7. Acceptance of Defective Work.

4.9.7.1. Instead of requiring correction or removal and replacement of defective Work, AJSD may accept Work when in the best interest of AJSD to do so with appropriate monetary credit from Contractor. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Agreement Documents, including appropriate reduction in the Agreement Price; or, if the acceptance occurs after final payment, an appropriate amount must be paid by Contractor to AJSD.

4.9.7.2. Alternatively, AJSD may require Contractor to furnish, at Contractor's expense, a special performance guarantee or other surety prior to acceptance of defective work.

- 4.9.8.** The Warranty period begins on the Final Acceptance date noted in the Certificate of Completion, irrespective of early completion by some Subcontractors of their work.
- 4.9.9.** To the extent consistent with the provisions of this Section 4.9, Contractor's warranty obligation must be in accordance with Section 108.8 of MAG Uniform Standard Specifications for Public Works Construction.
- 4.9.10.** Nothing in the warranties contained in the Agreement Documents are intended to limit any manufacturer's warranty which provides AJSD with greater warranty rights than set forth in this Section or the Agreement Documents. Contractor must provide AJSD with all manufacturers' warranties prior to Substantial Completion, if applicable, or Final Acceptance.
- 4.9.11.** Contractor agrees that it will be responsible to manage and administer the correction of any Work that is not in conformance with the Agreement Documents during the warranty periods set forth in this Section. A progress payment, or partial or entire use or occupancy of the Project by AJSD, will not constitute acceptance of Work not in accordance with the Agreement Documents.
- 4.9.12.** When notified of a warranty issue, Contractor must respond in Writing within 48 hours and must perform warranty Work as soon as materials for said repairs are available, and in any event Contractor must, take immediate steps to commence correction of nonconforming Work no later than the time period set forth in AJSD's written notification in accordance with the Agreement Documents. 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 AJSD to be an emergency, AJSD will notify Contractor, via the most expeditious means regarding the nature and condition of the defects. In turn, Contractor must immediately dispatch necessary forces to correct the defect or the emergency condition in accordance with Agreement Documents.
- 4.9.13.** The time periods referenced in this Section apply only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies that AJSD may have regarding Contractor's other obligations under the Agreement Documents.
- 4.9.14.** Without limiting the foregoing or anything in these General Conditions or the Agreement to the contrary, Contractor must obtain and provide to AJSD all warranties for any portion of the Project offered by the manufacturer, installer or provider thereof. AJSD will have the right to the full value and benefit of all such warranties. Contractor must ensure all such warranties are fully transferrable to facilitate the full value of this Section.
- 4.9.15.** 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, or normal wear and tear and normal usage.
- 4.9.16.** In the event of any noncompliance with this entire Section 4, AJSD may require Contractor to stop or suspend the Work in whole or in part.

SECTION 5 - AJSD RESPONSIBILITIES

5.1 AAR AND INSPECTORS

- 5.1.1.** AAR is responsible for providing AJSD-supplied information and approvals in a timely manner to assist Contractor to fulfill its obligations under the Agreement Documents. AAR will also provide Contractor with prompt notice when it observes any failure on the part of Contractor to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Drawings and Specifications.

- 5.1.2. AJSD may utilize field inspectors (Inspectors) to assist AAR during construction in observing performance of Contractor. AJSD's use of Inspectors is for the purpose of assisting the AAR.
- 5.1.3. The Inspectors are authorized to inspect all Work and materials furnished. Such inspections may extend to all or part of the Work and to preparation, fabrication or manufacture of the materials to be used. The Inspectors have the authority to issue instructions contrary to the Construction Documents if approved and coordinated with the direction of AAR.
- 5.1.4. The Inspectors have the authority to reject work or materials for noncompliance with the Agreement Documents until any questions at issue can be decided by AAR.
- 5.1.5. The use of Inspectors by AJSD will not make AJSD responsible for or give AJSD control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for Contractor's failure to perform the Work in accordance with Agreement Documents. The Inspectors are not authorized to direct any of Contractor's activities, employees or Subcontractors.

5.2 DESIGN PROFESSIONAL SERVICES

AJSD may contract separately with one or more Engineers to provide construction administration of the Project. The Engineer's Agreement, as well as other firms hired by AJSD may be furnished to Contractor. Contractor does not have the right to limit, restrict or reject any modifications related to the Work that are mutually acceptable to AJSD and Engineer.

5.3 AJSD'S SEPARATE CONTRACTORS

AJSD is responsible for all work performed on the Project or at the Site by separate contractors retained by AJSD. AJSD will contractually require its separate contractors to reasonably cooperate with, and reasonably coordinate their activities so as not to interfere with Contractor in order to enable Contractor to timely complete the Work consistent with the Agreement Documents. Contractor must immediately notify the AAR, and address the matter in the next status report, if any activities of such separate contractors are expected to interfere, or are interfering, with Contractor and such interference will or could result in any delay in Contractor's performance of the Work. Compensation or extensions of time, if any, for delays arising from interference caused by other contractors will be calculated pursuant to Appendix 1.

5.4 PERMIT REVIEW AND INSPECTIONS

- 5.4.1. If requested by Contractor, AAR will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
- 5.4.2. The regulating agencies of AJSD, such as Development and Sustainability, Fire and Planning Departments, enforce legal requirements. The enforcement activities of AJSD are independent and separate from this Agreement.

5.5 PLANS AND SPECIFICATIONS TO THE CONTRACTOR.

Contractor will be provided one (1) electronic copy, in a format accepted by Contractor, and up to three (3) copies of the Agreement Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

SECTION 6 - AGREEMENT TERM

6.1 AGREEMENT TERM

- 6.1.1.** The Agreement Term will start with the Notice to Proceed (NTP) and end with Final Acceptance.
- 6.1.2.** Beginning on the date of the NTP, Contractor must begin to fulfill Contractor's obligations under the Agreement. Contractor's obligations include providing AJSD and other agencies with any submittals required by the Project Specific Special Provisions, including but not limited to, an approved Project Schedule, Traffic Control Plans, and a Stormwater Pollution Prevention Plan. Contractor must submit all such required submittals before any physical construction work commences on the Site. NTP does not authorize construction work until all Agreement insurance, bonds, and schedules are submitted to and received by AJSD.
- 6.1.3.** The Agreement Term will be as set forth in the Project Schedule. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Acceptance within the Agreement Term.
- 6.1.4.** Time is of the essence of this Agreement, for the Project, for the Work, and for each phase and designated milestone thereof.
- 6.1.5.** Failure of Contractor to perform any covenant or condition contained in the Agreement Documents within the time periods specified herein, will constitute a material breach of this Agreement entitling AJSD to termination of the Agreement, pursuant to Section 10.2, unless Contractor applies for and receives an extension of time, in accordance with the procedures set forth in the Agreement Documents.
- 6.1.6.** Failure of AJSD to insist upon the performance of any covenant or condition within the time periods specified herein, will not constitute a waiver of Contractor's duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in Writing for each such covenant or condition.
- 6.1.7.** AJSD's agreement to waive a specific time provision or to extend the time for performance will not constitute a waiver of any other time provisions contained in the Agreement Documents. Failure of Contractor to complete performance promptly within the additional time authorized in the waiver or extension of time agreement except where otherwise extended may constitute a material breach of this Agreement entitling AJSD to all the remedies set forth herein or provided by law.

6.2 PROJECT SCHEDULE

- 6.2.1.** The Project Schedule must be in Microsoft Project standard file format, must be updated and maintained throughout the Agreement Term, and must contain the following:
 - 6.2.1.1.** Detailed representation of all activities for the project, both onsite 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 must be shown on the Project Schedule or in attached transmittal letter as described in Section 6.2.8.
 - 6.2.1.2.** Dependencies between activities must be indicated so that it may establish the effect the progress of any one activity would have on other activities and on the Schedule.

- 6.2.1.3.** Activities for submission, review, and approval of all required submittals.
- 6.2.1.4.** An amount of time will be established prior to the final completion date for punch list and cleanup. No other activities will be scheduled during this period. Punch list and cleanup must be shown on the Project Schedule and must be entirely completed prior to the expiration of the Agreement Term.
- 6.2.2.** Within 10 Days of receipt of AJSD's comments, Contractor must make all required corrections, adjustments, and additions to complete the Project Schedule and resubmit to AJSD for review. AJSD's review of and response to the Project Schedule is for the purpose of: (1) AJSD planning and staffing for the Project as may be required from time to time; (2) ensuring Contractor's general conformance with the scheduling requirements of the Agreement Documents and completion of the Project within the Agreement Term; and (3) monitoring and evaluating the construction status for purposes of approving monthly progress payments. Acceptance of a submitted schedule by AJSD should in no way be construed as an affirmation or admission that the schedule is reasonable or workable by Contractor. The responsibility for completing the Work on the Project within the Agreement Term remains the obligation of Contractor. AJSD's review does not relieve Contractor from compliance with the requirements of the Agreement Documents or be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.
- 6.2.3.** The Project Schedule must show milestones, including milestones for AJSD-furnished information, and must include activities for AJSD-furnished material and construction by other contractors when those activities are interrelated with Contractor activities.
- 6.2.4.** The Project Schedule must be revised as required by conditions and progress of the Work, but such revisions do not relieve Contractor of its obligations to complete the Work within the Agreement Term, as adjusted in accordance with the Agreement Documents. No modification to the Agreement Documents or the Agreement Term will be effective unless approved in advance by AJSD.
- 6.2.5.** For all items of materials and equipment that are critical or may require long lead times to acquire, the Project Schedule must show dates for submission, review and approval of submittals, ordering, and delivery.
- 6.2.6.** An updated Project Schedule must be submitted monthly to AJSD as part of the Payment Request. The monthly submittal must include one full size plot of the entire schedule and one electronic copy containing the schedule in Microsoft Project standard file format. In addition, Contractor must, upon request by AJSD, provide a copy of all submitted schedule data in electronic format which must be clearly labeled with the Project description, scheduling program name and version number, and schedule print/data date.
- 6.2.7.** Contractor must provide AJSD with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Agreement Documents that require resolution, and (iii) other information detailing items that require resolution so as not to jeopardize the ability to complete the Work in the Agreement Term.
- 6.2.8.** With each Project Schedule submittal, Contractor must include a transmittal letter including the following:
 - 6.2.8.1.** Description of problem tasks, referenced to field instructions or requests for information (RFI's), as appropriate.

- 6.2.8.2.** Current and anticipated delays including:
 - A.** Cause of the delay.
 - B.** Corrective action and schedule adjustments to correct the delay.
 - C.** Known or potential impacts and their delay on other activities, milestones, and their impact on the Substantial Completion and Final Acceptance dates.
 - D.** Changes in construction sequence.
- 6.2.8.3.** Pending items and status thereof including but not limited to:
 - A.** Time Extension requests;
 - B.** Substantial Completion date status;
 - C.** Final Acceptance date status.
- 6.2.8.4.** If ahead of schedule, the number of calendar Days ahead.
- 6.2.8.5.** If behind schedule, the number of calendar Days behind.
- 6.2.8.6.** Other Project or scheduling concerns.

6.2.9. Critical Path Method (CPM).

- 6.2.9.1.** Unless otherwise specified in the Agreement, the Project Schedule must include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.
- 6.2.9.2.** The CPM diagram schedule must be in calendar Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float Times for all activities except critical activities. The CPM diagram must be presented in a time scaled graphical format for the Project as a whole.
- 6.2.9.3.** The CPM diagram schedule must indicate all relationships between activities.
- 6.2.9.4.** The activities making the Project Schedule must contain sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluation the progress of the Work. Individual activities must not exceed 30 Days in length, in most cases.
- 6.2.9.5.** The CPM diagram schedule must be based upon activities, which coincide with the Schedule of Values.
- 6.2.9.6.** The CPM diagram schedule must show all submittals associated with each work activity and the review time for each submittal.

6.2.10. Float Time.

- 6.2.10.1.** The total Float Time within the overall schedule shall be considered a jointly owned and shared resource by Contractor and AJSD and available to the Project, subject to approval by AJSD, and shall not be considered as time for the exclusive use or benefit of either Contractor or AJSD.

- 6.2.10.2.** Contractor will not be allowed to sequence, hide, or reallocate Float Time through such strategies, as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, tec. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Agreement Term.
- 6.2.11.** AJSD-Caused Delays. AJSD-caused delays on the Project, if any, may be offset by AJSD-caused time savings to the extent AJSD can demonstrate a savings to the Critical Path (i.e., Critical Path submittals returned in less time than allowed by the Agreement, approval of substitution requests and credit changes which result in savings of time to Contractor, etc.) In such an event, Contractor will not be entitled to receive a time extension or delay damages until all AJSD-caused time savings are exceeded and the Agreement Term is also exceeded.
- 6.2.12.** Rain-Related Delays. Contractor is required, in preparing the Project Schedule, to consider all relevant weather conditions, including normal rainfall and distribution. No additional compensation will be given for any rain-related delays or impacts on the Work or the Project Schedule. No time extension will be granted in the Project Schedule unless the rainfall during the construction of Work is unusually severe, was not reasonably anticipated, and the total rainfall was significantly in excess of the normal rainfall for the Project Site location. Normal rainfall for the Project will be determined from the 10-year average rainfall for the Site as measured by the National Oceanic and Atmospheric Administration or comparable source of reliable information for rainfall in Apache Junction, Arizona. In addition, the excessive rainfall must have actually impacted Work activities on the Critical Path and caused delay beyond any remaining Float at the time of the rain- caused delay. The burden of documenting normal rainfall, the excessive rainfall and the impact on Critical Path activities is on Contractor. All other provisions in the Agreement Documents relating to claims, including without limitation notice requirements, apply to any claim by Contractor for a rain delay.
- 6.2.13.** AJSD’s “Policy Statement for Calculating Delays and Damages,” Appendix 1 to these General Conditions, will apply to all claims of delay and delay damages.
- 6.2.14.** Force Majeure. If Contractor is delayed or prevented from the performance of any Work required under this Agreement for causes beyond the control and without fault of Contractor (financial inability excepted) including, without limitation, acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, electronic viruses, worms or corrupting microcode, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or electrical lines, facilities, fuel, energy, or other, performance of that Work will be excused, but only for the period of the delay. Compensation or extensions of time, if any, for delays arising from Force Majeure will be calculated pursuant to Appendix 1.

6.3 SUBSTANTIAL COMPLETION

- 6.3.1.** When Contractor considers that the Work, phase or a portion thereof, which AJSD agrees in Writing to accept separately, is substantially complete, AJSD will prepare and submit to Contractor 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 Agreement Documents.
- 6.3.2.** Upon receipt of Contractor’s Punch List, AAR will conduct an inspection to determine whether the Work or designated portion thereof is substantially complete. AAR may, at their sole option, be assisted in such inspection by the Engineer for the Project. If the inspection by the AAR discloses any item, whether or not included on Contractor’s Punch List, which is not sufficiently completed in accordance with the Agreement Documents so that AJSD can occupy or utilize the

Work, phase or designated portion thereof for its intended use, Contractor must, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by AAR. In such case, Contractor must then submit a request for another inspection by AAR to determine Substantial Completion.

6.3.3. Certificate of Substantial Completion.

6.3.3.1. The AAR will not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Agreement Documents) is essentially and satisfactorily complete in accordance with the Agreement Documents, such that the Project is ready for use by AJSD for its intended purpose, opening to the general public, full occupancy or use by AJSD (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and all areas serving the general public, as applicable, must be ready for full-operation without material inconvenience or discomfort), 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; safety and automatic operation, following start-up testing, and commissioning as recommended by equipment manufacturer O&M and in conformance with an approved MOPO; 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 other Work as applicable, has been performed to a similar state of essential and satisfactory completion in accordance with the requirements of the Agreement Documents. A minor amount of Work, as determined by and at the discretion of the AAR, 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 AJSD for purposes of Substantial Completion, specified areas of the entire Work or Project may be individually certified as Substantially Complete. In no event will 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 will have also been approved and accepted by AJSD, subject only to the Punch List items.

6.3.3.2. If requested by AJSD, Contractor must complete and turn over the Project to AJSD on a phased basis. Each phase will have a Punch List generated, and then an inspection by AJSD with final approval and acceptance only after the Punch List is complete.

6.4 PARTIAL UTILIZATION

6.4.1. AJSD at AJSD's option may use and occupy any substantially completed parts of the Work which has specifically been identified in the Agreement Documents, or which AJSD, the Engineer and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by AJSD 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, AJSD must do so in accordance with Section 6.3 prior to such occupancy.

- 6.4.2. In lieu of the issuance of a Certificate of Substantial Completion as to part of the Work, AJSD 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, AJSD and Contractor agree in Writing as to the division of responsibilities between AJSD and Contractor for security, operation, safety, maintenance, correction period, cooling, heating, utilities and insurance with respect to such facility.
- 6.4.3. Substantial Completion of, or AJSD's beneficial occupancy of a part of the Project, will not alter the fact that the one-year warranty for the entire Project **starts at the date of Final Completion of the whole Project.**

6.5 FINAL ACCEPTANCE

- 6.5.1. Unless otherwise expressly agreed to in Writing by AJSD, Final Acceptance must be obtained no later than 30 Days (60 Days for federally funded agreements) after the date of Substantial Completion. Failure to timely obtain Final Acceptance except as otherwise extended in accordance with the Agreement Documents, will be a material breach of the Agreement.
- 6.5.2. Upon receipt of written notice that the Work is ready for final inspection and acceptance, AJSD 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 occur until all items of Work, including Punch List Items, have been completed to AJSD's satisfaction as reflected in the written Final Acceptance.
- 6.5.3. Final Payment will not be due, owing, or paid by AJSD until Final Acceptance is issued.
- 6.5.4. Landscape Establishment Period. Unless otherwise expressly agreed to in Writing by AJSD, the Landscape Establishment Period will begin on the date of Final Acceptance of the Project and will run 90 Calendar Days thereafter. Landscape Establishment Period requirements are detailed in General Conditions Appendices, attached herein.

6.6 CONTINUATION OF WORK

- 6.6.1. 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 Acceptance) or after the date to which the time fixed for any completion may have been extended, does not operate as a waiver by AJSD of any rights under the Agreement Documents, law or equity.
- 6.6.2. Furthermore, the timely completion of the Work being of the utmost importance under this Agreement, notwithstanding the existence of one or more disputes between the parties concerning the scope of the Work, the Project Schedule, Agreement Term, payments or any other matter, and further notwithstanding a party's invocation of the Dispute Resolution provisions specified in Appendix 6 of these General Conditions, unless AJSD suspends the Agreement or Contractor's performance pursuant to Section 10 of these General Conditions, Contractor will continue to prosecute the Work, including any Change Order work or Extra Work Orders, in a diligent and timely manner and not stop, slow down or impede by action or inaction the progress of the Work, including commencing performance of and thereafter completing any additional work called out in any Change Order or Extra Work Order issued by AAR with the approval of AJSD, so long as AJSD makes payment to Contractor in accordance with Section 8 of these General Conditions.

SECTION 7 - AGREEMENT PRICE

7.1 UNIT PRICE AGREEMENTS

- 7.1.1.** The Agreement Price for all Unit Price Agreements will be the amount set forth in the Agreement or Change Order multiplied by the verified quantity provided.
- 7.1.2.** Measurements of quantities to determine the total Agreement Price must be in accordance with MAG Specification §§ 109.1 and 109.2.
- 7.1.3.** The Unit Price may only be changed as set forth in Section 9 below.

7.2 CHANGE ORDERS

- 7.2.1.** Unit Price Change Orders. The Change Order Price for all Unit Price Change Orders will be the amount set forth in the Change Order multiplied by the verified quantity provided.
- 7.2.2.** Measurements of quantities to determine the total Change Order Price must be in accordance with MAG Specifications §§ 109.1 and 109.2.
- 7.2.3.** The Unit Price may only be changed as set forth in Section 9 below.
- 7.2.4.** MAG Specification § 109.4.1 is modified as follows: Before § 109.4.1, the following is added: Any deduction or increase in the Agreement Price must be supported by a signed, written Change Order fully executed by AJSD, and supported by such backup as the AAR may require.

7.3 SALES TAX

Contractor is required to pay all applicable sales tax in accordance with the law of the state of Arizona and this cost must be included in all Agreement Prices. When equipment, materials or supplies generally taxable to Contractor are eligible for a tax exemption due to the nature of the Project, Contractor must assist AJSD in applying for and obtaining such tax credits and exemptions which will be paid or credited to AJSD.

SECTION 8 - PAYMENT

8.1 PAYMENT FOR CONSTRUCTION SERVICES

- 8.1.1.** Payment for the Work will be made in accordance with MAG Standard Specification § 109 as amended below.
- 8.1.2.** Contractor must submit to AJSD for review a completed Contractor Payment Request signed by Contractor, covering the Work completed as of the date of the Request and accompanied by such supporting documentation as is required by the Agreement Documents and also as AJSD may reasonably require. A Contractor Payment Request will not be considered complete unless it is accompanied by an updated Project 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 Contractor Payment Request must also be accompanied by such data, satisfactory to AJSD, as will establish AJSD's title to the material and equipment and protect AJSD's interest therein, including applicable insurance. Each subsequent Contractor Payment Request must 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 Contractor Payment Requests. Where applicable, funding agency procedures will be followed.

- 8.1.3.** AJSD will retain 10 percent of all estimates as a guarantee for complete performance of the Agreement in accordance with Arizona Revised Statutes Section 34-221 or 34-609. The Contractor may elect to deposit securities in lieu of retention in accordance with Arizona Revised Statutes Section 34-221, Paragraph C.5. or 34-609, Paragraph B.5.
- 8.1.4.** The payment process functions as follows: Prior to the payment cycle date, Contractor must send a draft Contractor Payment Request to AAR. The Project Team will review the Request and agree upon any necessary adjustments. Contractor must certify the final Request by signing and returning to AAR.
- 8.1.5.** 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 AJSD's rights to withhold or offset payments, and other rights of AJSD, under the Agreement.
- 8.1.6.** AJSD reserves the right under A.R.S. § 34-609.B.3 to reinstate the ten percent (10%) retention if AJSD determines that satisfactory progress is not being made.
- 8.1.7.** Contractor's Warranty of Title.
 - 8.1.7.1.** Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Contractor Payment Request, whether incorporated in the Project or not, will pass to AJSD at the time of payment, free and clear of all liens, claims, security interests, and encumbrances, provided that this will 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.
 - 8.1.7.2.** No materials, supplies, or equipment for the Work under this Agreement will 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.
 - 8.1.7.3.** Nothing contained in this Section will 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 AJSD. The provisions of this Section must be inserted in all subcontracts and material agreements, and notice of its provisions must be given to all persons furnishing materials for the Work when no formal agreement is entered into for such materials.

8.2 PAYMENT UPON SUBSTANTIAL COMPLETION

- 8.2.1.** No payment will be made upon Substantial Completion, except for regularly scheduled progress payments.
- 8.2.2.** No further payments will be made to Contractor until Final Acceptance.

8.3 FINAL PAYMENT

- 8.3.1.** Subject to all of AJSD's rights to withhold or offset payment, and other rights under the Agreement, Final Payment including remaining retainage will be paid only after:
 - 8.3.1.1.** Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by AJSD;

- 8.3.1.2.** Necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, acceptable sewer video results (if applicable), and complete “as-built” Drawings (including the Building Information Model, if required by the Agreement Documents) have been delivered to AJSD, as specified in this Section 8.3;
 - 8.3.1.3.** 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 Contractor;
 - 8.3.1.4.** All conditions and requirements imposed by AJSD pursuant to the Agreement Documents or any funding agency for the corresponding disbursement have been met; and
 - 8.3.1.5.** Contractor delivers to AJSD a Contractor Payment Request requesting Final Payment.
- 8.3.2.** Contractor must also submit a signed copy of Contractor’s Affidavit Regarding Settlement of Claims, Appendix 3 to these General Conditions, and Certificate of Completion, Appendix 7 to these General Conditions, prior to Final Payment.
- 8.3.3.** In addition, if required under the Project Specific Special Provisions, Contractor must compile a complete equipment list and maintenance manual to be submitted to AJSD 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:
- 8.3.3.1.** Name, Model and Manufacturer.
 - 8.3.3.2.** Complete parts lists and Drawings.
 - 8.3.3.3.** Local source of supply for replacement parts along with suppliers’ telephone numbers.
 - 8.3.3.4.** Local organizations servicing the equipment and their telephone numbers.
 - 8.3.3.5.** All tags, inspection slips, instruction packages, etc., removed from equipment must be properly identified as to pieces of equipment from which they were taken.
- 8.3.4.** Contractor must also deliver to AJSD, prior to Final Payment, one (1) digital copy (in the format specified by AJSD) and, if requested by AJSD one (1) hard copy, of any applicable Maintenance manuals. Each manual must include all manufacturer’s operation and maintenance instructions and “as-built” Drawings with the list herein specified. 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.

8.4 AJSD’S RIGHT TO WITHHOLD PAYMENT

AJSD may withhold payment to such extent as may be necessary to protect AJSD from loss for which Contractor is responsible if any of the following conditions exist, subject to Contractor’s right to seek dispute resolution under Appendix 6:

- 8.4.1.** Defective Work not remedied after notice and Contractor’s failure to remedy such Defective Work;
- 8.4.2.** Failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment, provided Contractor has been paid by AJSD, as evidenced on the paid invoice, for such labor, materials or equipment;
- 8.4.3.** Reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Price;

- 8.4.4.** Damage to AJSD or another contractor, caused by Contractor;
- 8.4.5.** Reasonable evidence that the Work will not be completed within the Agreement Term, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 8.4.6.** Failure to carry out the Work in accordance with the Agreement Documents; or
- 8.4.7.** Contractor is in default of any of its other obligations under the Agreement Documents following notice and a Contractor's failure to cure such default pursuant to Section 10.2.

8.5 JOINT/DIRECT CHECKS

To promote the timely completion and progress of the Work or when appropriate and necessary, payments to Contractor may be made jointly to Contractor and its employees, agents, Subcontractors and suppliers, or any of them. For federally funded agreements, see federal provisions for additional requirements for the joint check process.

8.6 PAYMENT NOT A WAIVER

No payment (nor use or occupancy of the Project by AJSD) will be deemed acceptance or approval of the Work or as a waiver of any claims, rights, or remedies of AJSD.

8.7 LIENS AND BOND CLAIMS

Contractor must make all payments properly due, 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 AJSD may require. Contractor must pay when due all claims arising out of performance of the Work covered by this Agreement, or against payments due from AJSD 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 AJSD, against payment due from AJSD to Contractor, or against any payment or performance bond, must 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, or to bond over, any such liens or claims in the nature of a lien or bond claim within 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 AJSD from and against any and all such liens and claims to the extent Contractor has received corresponding payment from AJSD, as evidenced on the paid invoice. This paragraph does not apply to claims of Contractor due to non-payment for work performed.

8.8 FINANCIAL RECORDKEEPING AND AJSD'S AUDIT RIGHT

- 8.8.1.** Records for all Agreements between AJSD and Contractor must, upon reasonable notice, be open to inspection and subject to audit, scanning, and reproduction during normal business working hours. Such audits may be performed by any AJSD representative, or any outside representative engaged by AJSD for the purpose of examining such records. AJSD or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of five years after Final Payment or longer if required by law. AJSD's representatives may (without limitation) conduct verifications such as counting employees at the Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.

- 8.8.2.** Contractor’s “records” must include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in AJSD’s judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Document but shall not include any information covered by applicable legal privilege such as attorney-client or work-product doctrines. Any confidential and/or trade secret information shall be clearly marked as such, and AJSD shall ensure that such information is handled appropriately to preserve such confidentiality and/or trade secret status, subject to A.R.S. § 39-101, et. seq. Arizona’s public information laws. Such records must include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; Change Order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to AJSD or the Project in connection with Contractor’s dealings with AJSD or the Project (all foregoing hereinafter referred to as “records”) to the extent necessary to adequately permit evaluation and verification of any or all of the following:
- 8.8.2.1.** Compliance with Agreement requirements for deliverables;
 - 8.8.2.2.** Compliance with approved Plans and Specifications;
 - 8.8.2.3.** Compliance with § 14.9 below;
 - 8.8.2.4.** Compliance with Agreement provisions regarding the pricing of Change Orders;
 - 8.8.2.5.** Accuracy of Contractor representations regarding the pricing of invoices; or
 - 8.8.2.6.** Accuracy of Contractor representations related to claims submitted by
 - 8.8.2.7.** Contractor or any of their employees.
- 8.8.3.** Contractor must require all payees (examples of payees include Subcontractors, Suppliers, Insurance Carriers, etc.) to comply with the provisions of this Section by including the requirements hereof in a written agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum agreements) have the same right to audit provisions contained in this Agreement included in their agreements with Contractor.
- 8.8.4.** AJSD’s authorized representative(s) (including, without limitation, AAR) must have reasonable access to Contractor’s facilities, must be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement and must be provided adequate and appropriate workspace, in order to conduct audits in compliance with this Section.
- 8.8.5.** If an audit inspection or examination in accordance with this Section, discloses overpricing or overcharges to AJSD (of any nature) by Contractor or Contractor’s Subcontractors in excess of \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of AJSD’s audit must be reimbursed to AJSD by Contractor. Any adjustments or payments which must be made as a result of any such audit or inspection of Contractor’s invoices or records must be made within a reasonable amount of time (not to exceed 90 Days) from presentation of AJSD’s findings to Contractor.

- 8.8.6.** In addition to the normal paperwork documentation Contractor typically furnishes to AJSD, Contractor agrees to furnish, upon written request from AJSD, any of the documentation necessary for AJSD to exercise its audit rights under this Section 8.8 in computer readable file formats (Word, Excel, or .pdf), as AJSD may designate.
- 8.8.7.** AJSD, its authorized representative, and the appropriate agency, reserve the right to audit Contractor's records in compliance with local, state or federal policies, statutes or at AJSD's discretion, within three (3) years of Final Acceptance of the Work.

SECTION 9 - CHANGES TO THE AGREEMENT

9.1 FIELD ORDERS

AJSD may authorize minor changes in the Work not involving an adjustment in the Agreement Price or the Agreement Terms, which are consistent with the overall intent of the Agreement Documents. These may be accomplished by a written Field Order on the standard form approved and executed by AJSD. Such Field Orders must be binding and Contractor must perform the change promptly. If Contractor believes that a Field Order justifies an increase in the Agreement Price or Agreement Term, Contractor may propose a change order.

9.2 EXTRA WORK/CHANGES IN THE WORK

- 9.2.1.** AJSD reserves the right to make such changes in the Plans and Specifications for the Work, as it may deem appropriate, and such change shall be set forth in a written Change Order. All Change Orders are deemed a part of this Agreement as if originally incorporated herein.
- 9.2.2.** In the event AJSD and Contractor cannot agree on the terms of a Change Order, or when circumstances otherwise require, the AAR 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 AAR 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 AAR directs the Contractor to perform extra work, the AAR's instructions will include a price for the extra work. Upon receipt of the AAR's directions to perform extra work, the Contractor must promptly proceed with the extra work and document the actual cost thereof. Contractor's right to payment for extra work will be determined under Subsection 9.2.4 below. Contractor must perform the extra work and submit documentation for the actual cost of the extra work to AJSD. A Change Order will be issued to cover this work. Contractor shall have the right to dispute AJSD's determination of a price and/or time extension for extra work under this section pursuant to the dispute resolution process outlined in Appendix 6.
- 9.2.3.** Contractor will not be entitled to payment for extra work unless a written Change Order, in form and content prescribed by AJSD, has been executed by AJSD. On all requests for Change Orders, Contractor must specify the increased 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 under Subsection 9.2.2 above, a corresponding Change Order will be prepared, approved and processed by AJSD before payment can be made to Contractor.
- 9.2.4.** In general, pricing for Change Orders will include the same mark-up percentages that were in effect when the Agreement was awarded. The cost or credit to AJSD resulting from a change in the Work is subject to Appendix 1 (Policy Statement for Calculating Delays and Damages) and will be determined, based on the type of pricing for the Agreement involved, as follows:

- 9.2.4.1.** By mutual acceptance of a lump sum properly itemized in a form acceptable to AJSD;
- 9.2.4.2.** By unit prices stated in the Agreement Documents;
- 9.2.4.3.** When AJSD determines that a Unit Price Book Job Order associated with a Job Order Agreement requires a Change Order, by using the same Total Cost Data and CCI that are in effect when the Change Order is anticipated to be issued; or
- 9.2.4.4.** By actual cost and a percentage fee covering overhead and profit, as follows:
 - A.** Contractor will perform the extra work and be compensated for actual cost of labor, materials and equipment.
 - B.** 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 will include all of Contractor's charges for overhead, profit, administration and supervision.
 - C.** Contractor or Subcontractor 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 or Subcontractor's maximum total allowable additions for overhead, profit, administration and supervision will not exceed ten percent (10%) of actual verifiable labor, materials and equipment for such self- performed extra work.
- 9.2.4.5.** Any agreement which modifies the terms of the Agreement (including Change Orders) will be approved in Writing by the AAR. Once properly executed by both parties, these modifications to the Agreement will have the same effect as if they had been included in the original Agreement.

9.3 ACCURACY OF CHANGE ORDER PRICING INFORMATION

- 9.3.1.** Subject to Sections 9.3.2 through 9.3.4 and except as such parties mutually agree to reserve, signature by the contracting parties constitutes full accord and satisfaction between AJSD and Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order or other modification of the Agreement agreed to in Writing.
- 9.3.2.** Accurate Change Order Pricing Information: Contractor agrees that it is responsible for submitting accurate cost and pricing data to AJSD to support its Fixed Price, Unit Price, or Cost-Plus Change Order Proposals or other Agreement Price adjustments under the Agreement. Contractor further agrees to submit Change Order proposals with cost and pricing data, which is accurate, complete, current, and in accordance with the terms of the Agreement with respect to pricing of change orders. Contractor agrees that any "buy- out savings" on Change Orders will accrue equally, fifty (50) percent to Owner and fifty (50) percent to Contractor. "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.

- 9.3.3.** Right to Verify Change Order Pricing Information: Contractor agrees that AJSD, through its designated representative, will have the right to examine, copy, and scan the records of the Contractor, Subcontractor or Sub-Subcontractor's records (during the Agreement period and up to three years after final payment is made on the Agreement) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals or claims. Contractor agrees that if AJSD 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 Agreement Price adjustment will be made. Such post-approval Contact Price adjustments will apply to all levels of contractors and Subcontractors and to all types of Change Order proposals, specifically including Fixed Price, Unit Price, and Cost-Plus Change Orders.
- 9.3.4.** Requirements for Detailed Change Order Pricing Information: 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. 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.

9.4 EMERGENCIES

In any emergency affecting the safety of persons or property, Contractor will act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Agreement Price or Agreement Term resulting from emergency work will be determined as provided in this Agreement.

9.5 DIFFERING SITE CONDITIONS

- 9.5.1.** If Differing Site Conditions are encountered at the Project Site, notice by the observing party must be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than 14 Days after first observance of the conditions. AJSD will promptly investigate such conditions and, if AJSD determines that Differing 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 Agreement Price or Construction Schedule (and other time requirements), or both. If it is determined by AJSD that the conditions at the Project Site are not Differing Site Conditions and no change is justified, then AJSD will notify Contractor in Writing, stating the reasons. Claims in opposition to such determination must be made within 14 Days after AJSD has given notice of its decision. If AJSD and Contractor cannot agree on an adjustment in the Agreement Price or Construction Schedule (and other time requirements), the adjustment may be submitted to dispute resolution as provided in Appendix 6 of these General Conditions.

9.6 CHANGES IN LAWS, REGULATIONS, OR LEGAL REQUIREMENTS OR TAXES

In the event of a material change in applicable Laws, Regulations, or Legal Requirements, or taxes subsequent to the date of the Agreement by the parties, Contractor may be entitled to a Change Order, in AJSD's discretion, to the extent Contractor can document to the satisfaction of AJSD that such change significantly increases Contractor's actual cost of performance of the Work.

SECTION 10 - SUSPENSION AND TERMINATION

10.1 SUSPENSION

AJSD may suspend the Agreement and Contractor's performance in accordance with MAG Specifications § 105.1. Compensation or extensions of time, if any, for delays arising from Suspension of the Agreement will be calculated pursuant to Appendix 1.

10.2 TERMINATION BY AJSD FOR CAUSE

10.2.1. MAG Specifications § 108.11 applies to the Agreement.

10.2.2. AJSD may also terminate the Agreement per Section 10.2.3 if AJSD determines, that Contractor has:

10.2.2.1. materially breached any provisions of the Agreement and has failed to commence cure of such breach after prior written notice;

10.2.2.2. refused or failed to supply enough properly skilled workers or proper materials under Section 4.4. after prior written notice and failure to commence cure;

10.2.2.3. failed to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors under Section 8.4 and has failed to commence cure of such failure, after prior written notice, and provided that Contractor has been paid by AJSD, as evidenced on the paid invoice, for such materials or labor;

10.2.2.4. disregarded laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction after prior written notice and failure to commence cure of such violation, if possible;

10.2.2.5. failed to comply with written directives from AJSD after prior written notice and failure to commence cure of such failure;

10.2.2.6. is adjudged as bankrupt or insolvent;

10.2.2.7. made a general assignment for the benefit of creditors;

10.2.2.8. appointed a trustee or receiver for Contractor; or

10.2.2.9. filed a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws.

10.2.3. When any of the above reasons exist, AJSD may terminate the Agreement, without prejudice to any other rights or remedies of AJSD, after giving Contractor and Contractor's surety, if any, 7 Days written notice of AJSD's intent to terminate the Agreement and Contractor's failure to commence cure of any such reasons. Upon such termination, AJSD may: (1) take possession of the Site and of all materials thereon owned by Contractor; or (2) finish the Work by whatever reasonable method AJSD may deem expedient. When AJSD terminates the Agreement for one of the reasons stated above, Contractor will not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Agreement Price existing at the time of such termination exceeds the costs and expenses of finishing the Work and any other damages incurred by AJSD, such excess will be paid to Contractor. If such costs, expenses and damages exceed such unpaid balance, Contractor must pay the difference to AJSD. This obligation for payment will survive termination of the Agreement.

10.2.4. TERMINATION BY AJSD FOR CONVENIENCE

AJSD may also terminate the Agreement at any time for its convenience upon 7 Days written notice to Contractor specifying the termination date. In the event of termination, which is not the fault, in whole or in part, of Contractor, AJSD will pay to Contractor only such compensation, including reimbursable expenses, due for Work properly performed on the Project prior to the termination date as well as reasonable close-out expenses as set forth as an Exhibit to the Agreement. Upon any termination of the Agreement, no further payments will be due from AJSD to Contractor.

10.2.5. A.R.S. § 38-511

The Agreement is subject to, and may be terminated by AJSD in accordance with, the provisions of A.R.S. § 38-511.

SECTION 11 - INSURANCE AND BONDS

11.1 INSURANCE REQUIREMENTS

11.1.1. After Agreement award, the Contractor must furnish AJSD a certificate of insurance on a standard insurance industry ACORD form. The ACORD form 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 AJSD. Provided, however, the A.M. Best rating requirement may not be deemed to apply to required Worker's Compensation coverage.

11.1.2. The Contractor and any of its Subcontractors must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below provided that Contractor may set reasonable insurance coverage and minimum insurance limits to cover each of the Subcontractor's liabilities given the scope of work and the services being provided.

11.1.3. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. AJSD in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, or Subcontractors and the Contractor is free to purchase any additional insurance as may be determined necessary.

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

11.1.5. Use of Subcontractors: If any Work is subcontracted in any way, the Contractor must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as AJSD requires of the Contractor in this Agreement provided that Contractor may set reasonable insurance coverage and minimum insurance limits to cover each of the Subcontractor's liabilities given the scope of work and the services being provided. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

11.2 MINIMUM SCOPE AND LIMITS OF INSURANCE

11.2.1. The Contractor must provide coverage with limits of liability not less than those stated below.

- 11.2.1.1.** Commercial General Liability-Occurrence Form. Contractor must 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.
- 11.2.1.2.** Excess Liability. Contractor must maintain Excess Liability coverage that when combined with Commercial General Liability limits reaches a total \$10,000,000 combined limit.
- 11.2.1.3.** Automobile Liability-Any Automobile or Owned, Hired and Non-Owned Vehicles. Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 for each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance under this Agreement. 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.
- 11.2.1.4.** Workers Compensation and Employers Liability Insurance. Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of Work under this Agreement 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.
- 11.2.1.5.** Builders Risk Insurance. The Contractor bears all responsibility for loss to all equipment or Work under construction. Unless waived in Writing by AJSD the Contractor will purchase and maintain in force Builders Risk insurance on the entire Work until completed and accepted by AJSD. This insurance will be Special Causes of Loss policy form, (minimally including perils of fire, flood, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, and collapse), completed value, replacement cost policy form equal to the Agreement Price and all subsequent modifications. The Contractor’s Builders Risk insurance must be primary and not contributory.
- A.** Builders Risk insurance must cover the entire Work including reasonable compensation for architects and engineers’ services and expenses and other “soft costs” made necessary by an insured loss. Builders Risk insurance must provide coverage from the time any covered property comes under the Contractor’s control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any Project property or equipment is in transit, off Site, or while on Site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the Site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.
 - B.** Builders Risk insurance must include coverage in accordance with the Terrorism Risk Insurance Act (TRIA).
 - C.** Builders Risk insurance must include coverage for “hot” and “cold” testing, start-up and commissioning.

- D. Builders risk insurance must include Business Interruption coverage with a limit not less than \$1,000,000.
- E. The Contractor must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders Risk insurance cited above if the Work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law or testing requirements in the performance of this Agreement..
- F. Builders Risk Insurance must be maintained until whichever of the following first occurs: (i) final acceptance has been made; or (ii) until no person or entity, other than AJSD, has an insurable interest in the property required to be covered.
- G. Builders Risk insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by AJSD.
- H. Builders Risk insurance must include as named insureds, AJSD, the Contractor, and all tiers of Subcontractors and others with an insurable interest in the Work who will be named as additional insureds unless they are able to provide the same level of coverage with AJSD and Contractor named as additional insureds. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 Days advance notice to AJSD. AJSD must also be named as a Loss Payee under the Builders Risk coverage.
- I. Builders Risk insurance must be written using the Special Causes of Loss policy form, replacement cost basis.

AJSD and Contractor waive all rights against each other and any of their Subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by insurance obtained pursuant to this Agreement or other insurance applicable to the Work, except such rights as they have to the proceeds of such insurance held by the other as fiduciary. AJSD or Contractor, as appropriate, shall require of the Subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

- J. The Contractor is responsible for payment of all deductibles under the Builders Risk insurance policy.

11.2.1.6. Pollution Liability Insurance (Including Errors and Omissions). For Job Orders, Pollution Liability Insurance is only required if applicable and determined on a project specific basis. Contractor must maintain Pollution Liability Insurance with a limit of not less than \$5,000,000 per loss, \$5,000,000 aggregate for losses caused by

pollution conditions including coverage for bodily injury, property damage, defense costs, clean-up costs, and completed operations that arise from the operations of Contractor as described in this Agreement.

- A. The policy must provide complete professional service coverage, including coverage for pollution liability that is a result of a breach of professional duties.
- B. The policy must provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused for pollution conditions resulting from general contracting activities for which Contractor is legally liable.
- C. The policy must provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims.
- D. Completed Operations Coverage must be kept in place up to the statute of repose.
- E. The policy must be endorsed to include the following additional insured language: "AJSD, its elected officials, trustees, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of Contractor."
- F. If Work under this Agreement requires the transportation of any hazardous material or regulated substances, Contractor must carry Auto Liability with a CA 9948 endorsement or equivalent.
- G. If Work under this Agreement requires the disposal of any hazardous materials from the job site, Contractor must obtain a certificate of insurance for Pollution Legal Liability from the disposal site operator with a limit of not less than \$5,000,000 per loss, \$5,000,000 aggregate.

11.3 ADDITIONAL POLICY PROVISIONS REQUIRED

- 11.3.1.** Self-Insured Retentions or Deductibles. Any self-insured retentions and deductibles must be declared and approved by AJSD prior to GMP approval. If not approved, AJSD may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to AJSD, its officers, officials, agents, employees, and volunteers.
- 11.3.2.** The Contractor's insurance coverage must be primary insurance with respect to AJSD, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by AJSD, its officers, officials, agents, and employees will be in excess of the coverage provided by the Contractor and must not contribute to it.
- 11.3.3.** The Contractor's insurance must 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.
- 11.3.4.** Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 11.3.5.** The policies must contain a severability of interest clause and waiver of subrogation against AJSD, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for AJSD.

11.3.6. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 10 years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 10 year period containing all the Agreement insurance requirements, including naming the required Additional Insureds set forth herein.

11.3.7. If a Certificate of Insurance is submitted as verification of coverage, AJSD 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 Agreement.

11.3.8. Insurance Cancellation During Agreement Term.

11.3.8.1. If any of the required policies expire during the life of this Agreement, the Contractor must forward renewal or replacement Certificates to AJSD within 10 Days after the renewal date containing all the required insurance provisions.

11.3.8.2. Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must not be suspended, voided or canceled except after 30 Days prior written notice has been given to AJSD, except when cancellation is for non-payment of premium, then 10 Days prior notice may be given. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker must notify AJSD of any cancellation, suspension, or non-renewal of any insurance within 7 Days of receipt of insurers' notification to that effect.

11.3.8.3. AJSD as Additional Insured. The above-referenced policies are to contain, or be endorsed to contain, the following provisions:

A. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: AJSD, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including AJSD's general supervision of the Contractor; Products and Completed Operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.

B. AJSD, its officers, officials, agents, and employees must be named as additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

11.4 BONDS AND OTHER PERFORMANCE SECURITY

11.4.1. After Agreement award, Contractor must provide a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Agreement Price.

11.4.2. Each such bond must be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance and must be 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. A copy of the Certificate of Authority must accompany the bonds. The Certificate must have been issued or updated within two (2) years prior to the execution of this Agreement. The bonds must be written or countersigned by an authorized representative of the

surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required.

- 11.4.3.** The bonds must be made payable and be acceptable to AJSD. The bond forms for the performance and payment bonds must be in the forms required under A.R.S. § 34-221, *et. Seq.*, as in Appendices 4 and 5 of these General Conditions.
- 11.4.4.** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement Documents, Contractor must promptly furnish a copy of the bonds or must permit a copy to be made.
- 11.4.5.** All bonds submitted for this Project must be provided by a company which has been rated AM Best rating of A- or better for the prior four quarters by the latest edition of the 'Results Best's Key Rating Guide (Property/Casualty)' published by the A.M. Best Company.
- 11.4.6.** Personal or individual bonds are not acceptable.
- 11.4.7.** If the surety on any Bond furnished by Contractor is declared 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 this Section 11.4, Contractor must within 5 Days thereafter substitute another Bond and surety, both of which must be acceptable to AJSD.

SECTION 12 - INDEMNIFICATION

To the extent permitted by law, the Contractor (Indemnitor) must indemnify, defend, save, and hold harmless AJSD and its officers, officials, agents, and employees (Indemnitee) from any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) (collectively "Claims") caused or alleged to be caused, in whole or in part, by the negligent, reckless, wrongful, or willful acts, errors, or omissions of Indemnitor in connection with this Agreement. This indemnity includes any Claim or amount arising out of or recovered under workers' compensation laws or on account of Indemnitor's failure to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. Indemnitor's obligation to indemnify excludes those Claims arising solely from Indemnitee's own negligent, reckless, wrongful, or willful acts, errors, or omissions. Indemnitor is responsible for primary loss investigation, defense, and judgment costs where this indemnification applies. Indemnitor's obligations under this provision survive the termination or expiration of this Agreement.

SECTION 13 - DISPUTE RESOLUTION

- 13.1** All disputes arising out of or relating to the Agreement, the Work or the Project, other than termination under Section 10, will be resolved pursuant to the Dispute Resolution process set forth in Appendix 6 of these General Conditions.
- 13.2** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations under the Agreement until such dispute is resolved provided that AJSD continues to make all payments to Contractor in accordance with the Agreement Documents.
- 13.3** Notwithstanding any other provision in this Agreement, and where no other remedy for damages exists under this Agreement, AJSD has the right to immediately file in court and pursue an action for a temporary restraining order and injunctive relief against Contractor if AJSD determines that such action is necessary to protect its interests under the Agreement, to obtain specific performance of any provision of the Agreement, to advance the completion of the Project, or to protect health, welfare and safety.

SECTION 14 - MISCELLANEOUS PROVISIONS

14.1 AGREEMENT DOCUMENTS

- 14.1.1.** The Agreement Documents are intended to permit the parties to complete the Work and all obligations required by the Agreement Documents within the Agreement Term for the Agreement Price. The Agreement 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.
- 14.1.2.** It is the intent of the Agreement Documents that the Contractor shall deliver a functionally complete Project (or part thereof) to be constructed in accordance with the Agreement Documents.
- 14.1.3.** The Agreement Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Agreement Documents), Contractor's Bid or Proposal (including documentation accompanying the Bid and any post-Bid documentation submitted prior to Agreement award) when attached as an exhibit to the Agreement, the accepted Project Schedule, the Notice to Proceed, the Performance Bond, the Payment Bond, Project Design, Engineering and Specifications, these General Conditions, the Project Specific Special Provisions, Technical Specifications, Agreement Drawings, as the same may be more specifically identified in the Agreement, Change Orders, Work Change Directives, Field Orders and the written interpretations and clarifications of the Engineer or AJSD representative and Modifications issued after execution of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Agreement Documents.
- 14.1.4.** In the event of any inconsistency, conflict, or ambiguity between or among the Agreement Documents, the Agreement Documents will take precedence as follows from highest to lowest: Change Orders, Addenda, Agreement, Project Specific Special Provisions, General Conditions, Technical Specifications, Drawings/Plans, AJSD Amendments to MAG Standard Specifications and Details, and MAG Uniform Standard Specifications and Details for Public Works Construction. If applicable to this Agreement, Federal Provisions prevail.
- 14.1.5.** On the Drawings, given dimensions will take precedence over scaled measurements and large-scale drawings over small-scale drawings.
- 14.1.6.** Clarifications and interpretations of the Agreement Documents will be issued by the Engineer through AJSD.
- 14.1.7.** The headings used in this Agreement or any other Agreement Documents, are for ease of reference only and must not in any way be construed to limit or alter the meaning of any provision.
- 14.1.8.** The Agreement Documents form the entire agreement between AJSD and Contractor. No oral representations or other agreements have been made by the parties except as specifically stated in the Agreement Documents.
- 14.1.9.** The Agreement Documents may not be changed, altered, or amended in any way except in Writing signed by a duly authorized representative of each party in the form of a Change Order.
- 14.1.10.** Re-Use of Documents. Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor will 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 Engineer; and they must not re-use any of them on extensions of the Project or any other

project without written consent of AJSD and the Engineer and specific written verification or adaptation by the Engineer.

14.2 REFERENCE STANDARDS

- 14.2.1.** 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, will 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 Agreement if there were no Bids), except as may be otherwise specifically stated in the Agreement Documents.
- 14.2.2.** The provisions of any such standard, specification, manual or code, or any instruction of a Supplier will not change the duties or responsibilities of AJSD, Contractor, Engineer or AAR, or any of their Subcontractors, consultants, agents, or employees from those set forth in the Agreement Documents, nor will any such provision or instruction assign to AJSD, Contractor, Engineer, 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 Agreement Documents.

14.3 COMPLIANCE WITH ARIZONA LAW AND FEDERAL LAW

- 14.3.1.** Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to AJSD that the Contractor and each of its Subcontractors must 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).
- 14.3.2.** A breach of the Contractor Immigration Warranty constitutes a material breach of this Agreement and subject to penalties up to and including termination of this Agreement.
- 14.3.3.** AJSD retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist AJSD in the conduct of any such inspections.
- 14.3.4.** AJSD 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 AJSD in performing any such random verifications.
- 14.3.5.** The provisions of this Article must be included in any agreement the Contractor enters into with any and all of its subcontractors who provide services under this Agreement 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.

14.4 HAZARDOUS ENVIRONMENTAL CONDITIONS

- 14.4.1.** Contractor will be responsible for all Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible unless required by the Agreement Documents. Under no circumstances shall Contractor be considered the generator of any Hazardous Environmental Conditions encountered on the Project site provided the Hazardous Environmental Conditions have not been introduced by Contractor or any party under Contractor's care or control, and Contractor shall not be required to sign any transportation manifests as generator. AJSD shall

defend, indemnify, and hold harmless the Contractor for all losses, damages and expenses arising out of the presence or removal of any pre-existing Hazardous Environmental Conditions or Hazardous Environmental Conditions brought onto the site by AJSD.

14.4.2. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition. Contractor must immediately:

14.4.2.1. Secure or otherwise isolate such condition;

14.4.2.2. Stop all Work in connection with such condition and in any area affected thereby;
and

14.4.2.3. Notify AJSD and promptly thereafter confirm such notice in Writing.

14.4.3. AJSD will promptly retain a qualified expert to evaluate such condition or take corrective action, if any.

14.4.4. Contractor will 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 caused by Contractor that are in violation of applicable statutes and laws. Contractor will also be responsible for reimbursement to AJSD for administration, reporting, and tracking expenses required as a result of any spill event caused by Contractor. In the event the regulatory agency or court imposes a probationary period, Contractor must post bond for the probationary period to ensure that all such costs are reimbursed to AJSD. This responsibility will apply whether penalties are imposed directly on Contractor or any of its Subcontractors, or AJSD. Contractor must defend and indemnify AJSD 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).

14.5 COOPERATION AND FURTHER DOCUMENTATION

Contractor agrees to provide AJSD with such other duly executed documents as may be reasonably requested by AJSD to implement the intent of the Agreement Documents.

14.6 ASSIGNMENT

Neither Contractor nor AJSD will, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Agreement Documents, any such assignment will be void, will transfer no rights to the purported assignee, and would be a material breach of the Agreement.

14.7 SUCCESSORS

Contractor and AJSD intend that the provisions of the Agreement Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

14.8 LAWFUL PRESENCE

Pursuant to A.R.S. §§ 1-501 and 1-502, AJSD is prohibited from awarding an agreement to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign an AJSD-provided affidavit affirming the identification provided is genuine. This requirement will be imposed at the time of agreement award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

14.9 NO BOYCOTT OF ISRAEL CERTIFICATION

By Contractor's signature on this Agreement, Contractor certifies under A.R.S. § 35-393.01 that Contractor is not currently engaged in and for the duration of this Agreement will not engage in a boycott of Israel.

14.10 NO THIRD-PARTY BENEFICIARY

Nothing under the Agreement Documents will be construed to give any rights or benefits in the Agreement Documents to anyone other than AJSD and Contractor, and all duties and responsibilities undertaken pursuant to the Agreement Documents will be for the sole and exclusive benefit of AJSD and Contractor and not for the benefit of any other party, unless otherwise expressly set forth in the Agreement Documents.

14.11 GOVERNING LAW AND VENUE

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

14.12 SEVERABILITY

If any provision of the Agreement Documents or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of the affected provision, the remainder of the Agreement Documents, and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

14.13 LEGAL REQUIREMENTS

At all times relevant to its entry into this Agreement and performance of the Services and the Work, Contractor must fully comply with all Laws, Regulations, or Legal Requirements applicable to AJSD, the Project, and the Agreement.

14.14 PARTIAL INVALIDITY

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

14.15 ATTORNEYS' FEES

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

14.16 CONFLICT OF INTEREST

14.16.1. Contractor agrees to disclose any financial or economic interest in the Project property, or any property affected by the Project, existing prior to the execution of the Agreement. Further, Contractor agrees to disclose any financial or economic interest with the Project property, or any property affected by the Project, if Contractor gains such interest during the course of this Agreement. If Contractor gains financial or economic interest in the Project during the course of

this Agreement, this may be grounds for terminating this Agreement. Any decision to terminate the Agreement must be at the sole discretion of AJSD.

14.16.2. Contractor will not engage the services on this Agreement of any present AJSD employee who was involved as a decision maker in the selection or approval processes, or who negotiated or approved billings or Agreement Modifications for this Agreement.

14.16.3. Contractor agrees that it will not perform services on this Project for a contractor, subcontractor, or any supplier, not covered under this Agreement.

14.17 INDEPENDENT CONTRACTOR

Contractor is and must be an independent contractor. Any provisions in the Agreement Documents that may appear to give AJSD the right to direct Contractor as to the details of accomplishing the Work or to exercise a measure of control over the Work means that Contractor must follow the wishes of AJSD as the results of the Work only. These results must comply with all applicable laws and ordinances.

14.18 NOTICE OF INJURY

Should AJSD 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, notice must be made in Writing to the other party within 7 Days of the first observance of such injury or damage.

14.19 CONFIDENTIALITY

Contractor, for the benefit of AJSD, hereby agrees it will not release or cause or permit to be released to the public any press notices, publicity (oral or written) or advertising promotion relating to, any statement regarding, or any other public announcement or disclosure or cause or permit to be publicly announced or disclosed, in any manner whatsoever, the specific terms and conditions of this Agreement or any comment relating to the Project or the Site. Notwithstanding the foregoing, Contractor will be entitled to disclose the terms of the Agreement to the extent required by law or in the course of enforcing or defending a claim or action hereunder. Contractor must give AJSD reasonably prompt notice of any disclosure or statement made pursuant to this provision.

14.20 DATA CONFIDENTIALITY

14.20.1. As used in the Agreement, "data" means all information, whether written or verbal, including plans, specifications, renderings, 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, obtained by, or transmitted to AJSD in the performance of this Agreement.

14.20.2. Contractor agrees that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to AJSD in connection with the Contractor's performance of this Agreement is confidential and proprietary information belonging to AJSD.

14.20.3. Except as specifically provided in this Agreement, Contractor or its Subcontractors must not divulge data to any third party without prior written consent of AJSD. Contractor or its Subcontractors must not use data for any purposes except to perform Work required under this Agreement. These prohibitions will not apply to the following data provided Contractor has first given the required notice to AJSD:

- 14.20.3.1.** Data which was known to Contractor or its Subcontractors prior to its performance under this Agreement unless such data was acquired in connection with Work performed for AJSD;
 - 14.20.3.2.** Data which was acquired by Contractor or its Subcontractors in its performance under this Agreement and which was disclosed to Contractor or its Subcontractors by a third party, who to the best of Contractor's or its Subcontractor's knowledge and belief, had the legal right to make such disclosure and Contractor or its Subcontractors are not otherwise required to hold such data in confidence; or
 - 14.20.3.3.** Data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its Subcontractors are subject.
- 14.20.4.** In the event the Contractor or its Subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its Subcontractors became privy as a result of any other agreement with AJSD, the Contractor must first notify AJSD as set forth in this Section of the request or demand for the data. The Contractor or its Subcontractors must give AJSD sufficient facts so that AJSD can be given an opportunity to first give its consent or take such action that AJSD may deem appropriate to protect such data or other information from disclosure.
- 14.20.5.** Unless prohibited by law, within 10 Days after completion of services for a third party on real or personal property owned or leased by AJSD, the Contractor must promptly deliver, as set forth in this Section, a copy of all data to AJSD. All data will continue to be subject to the confidentiality agreements of this Agreement.
- 14.20.6.** Contractor or its Subcontractors assume all liability for maintaining the confidentiality of the data in its possession and agree to compensate AJSD for damages incurred by AJSD if any of the provisions of this Section are violated by Contractor, its employees, agents, or Subcontractors. Solely for the purpose of seeking injunctive relief, it is agreed that a breach of this Section will be deemed to cause irreparable harm that justified injunctive relief in court. Contractor agrees that the requirements of this Section will be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Agreement without notice.

14.21 SURVIVAL

All warranties, representations and indemnifications by Contractor must survive the completion or termination of this Agreement.

14.22 COVENANTS AGAINST CONTINGENT FEES

Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of Board of Directors, or any employee of AJSD has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, AJSD will have the right to annul the Agreement without liability or at its discretion to deduct from the Agreement Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

14.23 NO WAIVER

The failure of either party to enforce any of the provisions of the Agreement Documents or to require performance of the other party of any of the provisions hereof must not be construed to be a waiver of such provisions, nor will it affect the validity of the Agreement Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

14.24 NONEXCLUSIVE REMEDIES

The remedies set forth in this Agreement are cumulative and not exclusive, and failure to exercise any remedy (including, without limitation, any right to terminate) will not preclude any party from exercising any other right in seeking any other remedy available to it at law or in equity.

14.25 PROJECT COMMUNICATIONS

14.25.1. All communications concerning the performance of the Work or the Project will be provided to the designated AAR and Contractor's Representative set forth in Section 1 of the Agreement. AJSD may change the designated AAR and, subject to Section 4.4.21 of these General Conditions, Contractor may change Contractor Representative, by written notice to the other.

14.25.2. Project communications may be exchanged by e-mail, but email communications cannot change the terms of the Agreement or the Scope of Work or effectuate any change that requires a written Change Order.

14.25.3. When any provisions of the Agreement Documents require Contractor or Engineer to give written notice to AJSD, it will be deemed to have been validly given if delivered in person or sent by registered or certified mail, postage prepaid, to the Parties indicated in Agreement Article 1, incorporated by reference.

14.25.4. When any provisions of the Agreement Documents requires AJSD or the Engineer to give written notice to Contractor, it will be deemed to have been validly given if delivered in person to the person designated in the Agreement 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 Agreement Documents or such substitute address which Contractor designates in Writing, or to the business address known to the giver of notice.

14.25.5. As a courtesy, additional (not primary) form of notice, copies of notices mailed pursuant to this Section, may be sent by electronic mail to the responsible parties designated in the Agreement Documents

14.26 DRUG FREE WORKPLACE PROGRAM

14.26.1. AJSD has adopted a policy establishing a drug free workplace for itself and as a requirement for Contractors doing business with AJSD, to ensure the safety and health of employees working on AJSD projects.

14.26.2. Contractor must require a drug free workplace for all employees working under the Agreement. Specifically, all employees of Contractor who are working under an agreement with AJSD must be notified, in Writing, by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace.

14.27 Failure to require a drug free workplace in accordance with AJSD's policy may result in termination of the Agreement and possible debarment from bidding on future AJSD projects.

SECTION 15 - PROVISIONS APPLICABLE SOLELY TO GMP AND COST-BASED AGREEMENTS, CHANGE ORDERS, AND JOB ORDERS

15.1 ADDITIONAL DEFINITIONS

The definitions set forth in Section 2 apply to GMP and Cost-Based Agreements, Change Orders, and Job Orders, together with the additional definitions set forth below.

Baseline Cost Model – A breakdown and estimate of the scope of the Project developed by CMAR pursuant to Section 17.5 of these General Conditions.

CMAR or Construction Manager at Risk – The person or firm selected by AJSD to provide pre-construction and/or construction services as detailed in a Construction Manager at Risk Agreement with AJSD. In these General Conditions, the term “Contractor” includes CMAR under both Pre-Construction and Construction Services Agreements.

CMAR Fee or Contractor’s Fee – An agreed to percentage in an accepted GMP that represents the Contractor’s fee for performance of the Work, notwithstanding a reduction in agreed upon scope of work.

Agreement Documents – Where compensation under the Agreement is based upon a GMP accepted by AJSD, the term “Agreement Documents” also includes the accepted GMP Proposal.

Agreement Price – Where compensation under the Agreement based upon a GMP accepted by AJSD, the term “Agreement Price” refers to the GMP.

Cost-Based Agreement, Change Order, or Job Order – A Agreement, Change Order, or Job Order where the Agreement Price is based upon the actual cost of performing the Work, subject to the terms of the Agreement Documents, including this Section 15. These would include those generally referred to as “Cost of the Work plus a Fee with a GMP,” “Time and Materials,” or “Cost Plus a Fee.”

Cost of the Work – The direct costs necessarily incurred by Contractor in the proper, timely, and complete performance of the Work. The Cost of the Work will include only those costs set forth in Section 15.2 of these General Conditions.

Deliverables – The work products prepared by Contractor in performing the scope of work described in the Agreement. Some of the major deliverables to be prepared and provided by Contractor during pre-construction may include but are not limited to: the Baseline Cost Model and Schedule that validate AJSD’s plan and budget, Construction Management Plan, Detailed Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, Detailed Cost Estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, Constructability Review, Cost Control Log, Traffic control and phasing plans and others as indicated in this Agreement or required by the Project Team.

Pre-Construction Services Agreement – The Agreement entered into between AJSD and the CMAR for Pre-Construction Services to be provided by the CMAR, including, without limitation, the generation of a GMP Proposal. If the GMP Proposal is accepted by AJSD and a Construction Agreement is entered into between AJSD and CMAR, the duties, obligations and warranties of the CMAR under the Pre-Construction Services Agreement survive and are incorporated into the resulting Construction Agreement.

Pre-Construction Services – The services to be provided under the Pre-Construction Services Agreement, including Section 17 of these General Conditions.

Detailed Project Schedule – The Detailed Project Schedule developed by the CMAR for the review and approval of the AAR in accordance with Section 17.3 of these General Conditions, if applicable.

General Conditions Costs – Those costs set forth in Section 4 of Appendix 9 to these General Conditions.

GMP Plans and Specifications – The plan and specifications upon which the Guaranteed Maximum price Proposal is based.

GMP Proposal – The proposal of Contractor submitted pursuant to Section 17.7 of these General Conditions for the entire Work and/or portion (phases) of the Work.

Guaranteed Maximum Price or GMP – The Guaranteed Maximum Price set forth in the Agreement, Change Order, or Job Order if applicable.

15.2 AGREEMENT PRICE

15.2.1. The Agreement Price for all Agreements, Change Orders, and Job Orders based upon payment of the Cost of the Work plus a Fee with a GMP, time and materials, or cost-plus a fee will be the Cost of the Work incurred plus the Fee agreed to in Writing by AJSD, limited to the amount of the GMP, if agreed to. Unless otherwise expressly provided in the Agreement, Change Order, or Job Order, all Cost Based pricing will be subject to and limited to GMP.

15.2.2. The Agreement Price may only be changed as set forth in Section 9 above.

15.2.3. Only costs specifically designated as reimbursable costs are eligible for payment by AJSD or may be charged against the Agreement Price. All other costs will not be paid by AJSD and will not be chargeable against the Agreement Price.

15.2.4. Cost-Based Agreements. For Agreements, Change Orders, or Job Orders, reimbursable costs must be determined pursuant to Appendix 9 to these General Conditions, Cost of the Work.

15.3 ALLOWANCES

15.3.1. Contractor must include in the Agreement Price all Allowances stated in the Agreement Documents and agreed to in Writing by AJSD. Items covered by these Allowances must be supplied for such amounts and by such persons as AJSD may direct, provided Contractor will not be required to employ persons against whom Contractor makes a reasonable objection. Materials, labor, and equipment under an Allowance will be selected by AJSD in accordance with a schedule to be mutually agreed upon by AJSD, Engineer and Contractor or otherwise in reasonably sufficient time to avoid delay in the Work.

15.3.2. Unless otherwise provided in the Agreement Documents:

15.3.2.1. These Allowances must cover the cost to Contractor, less any applicable trade discount, of the materials, labor, and equipment required by the Allowances, delivered at the Site, and all applicable taxes;

15.3.2.2. Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses relating to materials, labor, and equipment required by the Allowance must be included in the Agreement Sum and not in the Allowance; and

15.3.2.3. Whenever the cost is more or less than the Allowance, the Agreement Sum must be adjusted accordingly by Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on the Site, labor, installation costs, overhead, profit and other expenses.

15.4 CONTINGENCY

An agreed to amount in the GMP that may only be used in accordance with the terms set forth in these General Conditions and with prior written approval by AJSD.

15.4.1. Construction Contingency. This GMP includes a dollar amount listed as a Construction Contingency which will be readily available for increased costs for subcontractors, material, and equipment subject to prior approval of AJSD, which approval will not be withheld unreasonably. The Construction Contingency may also be used, with prior approval by AJSD, to reimburse CMAR for unexpected costs due to (a) scope gaps between trade subcontractors; (b) agreement default by trade subcontractors; (c) unforeseen field conditions, but only as defined in Section 9.5 above; (d) work completed to meet the intent of the design, but which was not indicated on the plans; (e) costs overruns not covered by allowances; (f) costs of corrective work not provided for elsewhere; and (g) implementation of any Recovery Plan. Cost for which CMAR desires to be paid from the Construction Contingency must be documented by CMAR on a time and materials basis and are subject to verification by AJSD. If agreed to by AJSD, a "Use of Contingency" form will be executed by both parties authorizing the actual cost of the work to be paid and included in the Work Item Direct Costs. The Construction Contingency is not allocated to any particular item of the Project but may be used for any portion of the work as determined above. Any amount not used in the Construction Contingency will be shared equally, fifty (50) percent to AJSD and fifty (50) percent to the CMAR. AJSD may use its portion of the unused contingency to reduce the GMP.

15.4.2. Owner's Contingency. This GMP also includes a dollar amount listed as an Owner's Contingency which may be used only by AJSD for upgrades and changes in scope or other changes not already included within the intent of the Project Program. AJSD will provide CMAR with a Work Change Directive authorizing CMAR to perform the additional work and to transfer funds from the Owner's Contingency to the Work Item Direct Costs category to be paid with such direct costs. These additional costs will be in an amount mutually agreed upon by CMAR and AJSD or will be documented by CMAR on a time and materials basis and are subject to verification by AJSD. Any amount not used in the Owner's Contingency will belong to AJSD and will reduce the GMP.

15.5 REDUCTION IN RETENTION

If the Agreement Price is based upon a GMP, in order to receive payment of one-half of the retention as set forth in Section 8.1.5 above, Contractor must also submit to the AAR a complete accounting of the Actual Reimbursable Cost of the Work to date, including all such documentation (including, without limitation, invoices, subcontract, subcontractor change orders, purchase orders, records of payment, etc.) as AJSD may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by AJSD, as determined by the AAR, will be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor will be refunded by Contractor to AJSD. The AAR's determinations as to Actual Reimbursable Cost of the Work will be the basis of payment until final Project Closeout and Final Payment under the Agreement.

15.6 FINAL PAYMENT

If the Agreement Price is based upon a GMP, as a further condition precedent to Final Payment by AJSD, Contractor must submit to the AAR a complete final accounting of the Actual Reimbursable Cost of the Work, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as AJSD may require, to establish whether the payments made to Contractor equal, exceed, or are less than the Actual Reimbursable Cost of the Work to date. Any excess payments by AJSD, as determined by the AAR, will be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor will be refunded by Contractor to AJSD. Disputes relating to the Final Cost of the Work will be subject to AJSD's audit rights under Section 8.8 above and Section 17 below, and the dispute resolution process under Section 13 above.

15.7 OPEN BOOK

On any GMP-based or Cost-Based Agreement, Job Order, or Change Order, AJSD may attend any and all meetings or discussions pertaining to the Project, including bid openings, and must have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind pertaining to the Project, including without limitation, those stored in electronic format.

15.8 DIFFERING SITE CONDITIONS AND/OR CHANGE IN LAWS

A Change Order for increased costs under Section 9.5 or 9.6 above will only be considered or granted by AJSD to the extent such actual, documented costs are justified.

SECTION 16 - PROVISIONS APPLICABLE SOLELY TO JOB ORDER AGREEMENTS (JOC)

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SECTION 17 - PROVISIONS APPLICABLE SOLELY TO PRE-CONSTRUCTION SERVICES FOR CONSTRUCTION MANAGER AT RISK

17.1 ADDITIONAL DEFINITIONS

The definitions set forth in Sections 2 and 15.1 above will apply to all Pre-Construction Services Agreements.

17.2 GENERAL

17.2.1. CMAR must perform the Services required by, and in accordance with the Agreement Documents and as outlined in **Exhibit A** of the Agreement to the satisfaction of the AAR, exercising the degree of professional care, skill, diligence, quality and judgment that a professional construction manager engaged, experienced and specializing in the construction of facilities similar in scope, function, size, quality, complexity and detail, under similar conditions. CMAR must, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practices.

17.2.2. As a participating member of the Project Team, CMAR must provide AJSD and Engineer with a written evaluation of AJSD's Project Program and budget, each in terms of the other, with recommendations as to the appropriateness of each. CMAR must prepare a Baseline Cost Model that validates AJSD's budget. The Baseline Cost Model must include all assumptions and basis of estimates in enough detail so that the Project Team can compare future detailed estimates to the Baseline Cost model for variances. AJSD and Engineer will provide all the reasonably required data that is available in order to reach agreement between the team members that the Baseline Cost Model is an accurate projection of the costs of the Project.

17.2.3. CMAR must attend Project Team meetings, which may include, but are not limited to, bi-weekly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, public meetings and partnering sessions. CMAR attendance at design or other meetings in which CMAR is provided the opportunity but does not actively participate and/or is not properly prepared is not acceptable. Repeated instances of non-participation and/or lack of preparedness will be grounds for termination of CMAR Agreement for default.

17.2.4. CMAR must provide Pre-Construction Services, described herein, in a timely manner and consistent with the current Drawings and Specifications. CMAR must promptly notify AJSD in Writing whenever CMAR determines any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work that deviates more than the allowed

contingencies within the Baseline Cost Model or requires an adjustment in the Baseline Cost Model, Detailed Cost Estimate, Detailed Project Schedule, GMP Proposals and/or in the Agreement Term for the Work, to the extent such as established.

- 17.2.5.** CMAR, when requested by AJSD, must attend, make presentations and participate as may be appropriate in public agency and or community meetings, relevant to the Project. CMAR must provide drawings, schedule diagrams, budget charges and other materials describing the Project when their use is required or appropriate in any such public agency meetings.
- 17.2.6.** Ownership of Work Product. All Work Product prepared or otherwise created in connection with the performance of this Agreement, including the Work, are to be and remain the property of AJSD. For purposes of this provision, "Work Product" will include all designs, drawings, plans, specifications, ideas, renderings and other information or material, in whatever form created (e.g., electronic or printed) and in all media now know or hereinafter created. All Work Product will be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to AJSD. The rights in this Section are exclusive to AJSD in perpetuity.
- 17.2.7.** CMAR represents to AJSD in completing Pre-Construction Services and providing the reports and analysis required thereunder, that Work can be properly and timely constructed within the GMP Proposal, if accepted. CMAR will be responsible for their errors, omissions or inconsistencies included in the Work.

17.3 DETAILED PROJECT SCHEDULE

- 17.3.1.** The fundamental purpose of the Detailed Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Detailed Project Schedule requirements. CMAR must, however, develop and maintain the Detailed Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Baseline Project Schedule must be developed as part of the Baseline Cost Model. The Detailed Project Schedule must use the Critical Path method ("CPM") technique, unless required otherwise, in Writing by AJSD. CMAR must use scheduling software acceptable to AJSD to develop the Detailed Project Schedule. The Detailed Project Schedule must be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Detailed Project Schedule must indicate milestone dates for the phases once determined. As part of construction phase, AJSD may require CMAR to prepare a "resource loaded" schedule for all work, including work performed by Subcontractors, detailing each of the project tasks and the required/anticipated number of personnel per day for each task. CMAR must also indicate on the schedule its ability to meet said required/anticipated personnel requirements.
- 17.3.2.** CMAR must include and integrate in the Detailed Project Schedule the services and activities required of AJSD, Engineer and CMAR including all construction phase activities based on the input received from AJSD and the Engineer. The Detailed Project Schedule must define activities as determined by AJSD to the extent required to show: (a) the coordination between preliminary design and various pre- construction documents, (b) any separate long-lead procurements, (c) any permitting issues, (d) any land, right-of-way, or easement acquisition, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed Work by AJSD. The Detailed Project Schedule must include by example and not limitation, proposed activity sequences and durations

for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, Total Float for all activities to the extent authorized by AJSD, relationships between the activities, AJSD's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Final Acceptance.

- 17.3.3.** A Baseline Project Schedule must be initiated with the project Baseline Cost Model and agreed to by the project team at the same time. CMAR must update and maintain a detailed Project Schedule throughout pre-construction such that it will not require major changes at the start of the construction phase to incorporate CMAR's plan for the performance of the construction phase Work. CMAR must provide updates and/or revisions to the Detailed Project Schedule for use by the Project Team, whenever required, but no less often than at the Project Team meetings. CMAR must include with such submittals a narrative describing its analysis of the progress achieved to-date vs. the Baseline Project Schedule, including any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 17.3.4.** If phased construction is deemed appropriate at the time of developing the Baseline Cost Model or during the development of the Detailed Project Schedule, and AJSD approves, CMAR must review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CMAR must take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.
- 17.3.5.** Long Lead Time Items. As part of developing the Detailed Project Schedule, CMAR must identify all long lead time materials, fabrications, equipment, or other items which may impact the Project Schedule and may require early action on the part of the Project Team. Dates for selecting and ordering long lead time items will be included and highlighted in the Detailed Project Schedule.
- 17.3.6.** Equipment Plan. Contractor must develop an Equipment Plan that addresses all rental and owned equipment, regardless of whether such equipment will be provided by CMAR or subcontractor(s), that will be necessary to construct the Project and the cost of which will be included as a Cost of the Work in the GMP Proposal. The Equipment Plan will seek to minimize the cost of the equipment to AJSD and maximize the efficient and coordinated use of the equipment for completion of the Project. The Equipment Plan will not only include the costs and allowable lease rates for the equipment but will also include an equipment schedule that will be incorporated into the Detailed Project Schedule and the Schedule of Values submitted with the GMP Proposal.

17.4 DESIGN DOCUMENT REVIEW

- 17.4.1.** CMAR must evaluate periodically the availability of labor, materials/equipment, cost-sensitive aspects of the design; and other factors that may create an unacceptable variance to the Baseline Cost Model and/or Baseline Project Schedule.
- 17.4.2.** CMAR must recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for CMAR to construct the Project. These additional investigations, if agreed to be necessary by the AAR and the Engineer, will be acquired by AJSD and copies of the reports will be provided to CMAR.

- 17.4.3.** CMAR must meet with the Project Team as required to review designs during their development. CMAR must familiarize itself with the evolving documents through pre-construction. CMAR must proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and labor and material availability. CMAR must furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. CMAR must use established value analysis principles in recommending cost-effective alternatives.
- 17.4.4.** CMAR must routinely conduct constructability and bid-ability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews must attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency, completeness and coordination of Work of Subcontractors and Suppliers.
- 17.4.4.1.** CMAR must evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design is prepared to facilitate fabrication, transport and installation; (e) sequences of Work required by or inferable from the Drawings and Specifications are practicable; (f) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues; and (g) the design maintains continued operation of the existing AJSD systems and maintains traffic on adjacent roadways. CMAR must also review the Drawings and Specifications to ensure that what is depicted therein can be constructed as designed and must promptly inform the Project Team of any issues.
- 17.4.4.2.** CMAR must check cross-reference and complementary Drawings and sections within the Specifications and in general evaluate whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well, or otherwise, in similar installations; (c) Specifications include alternatives in the event a requirement cannot be met in the field; and (d) in its professional opinion, the Project is likely to be subject to Differing Site Conditions.
- 17.4.4.3.** The results of the reviews must be provided to Project Team in formal, written reports clearly identifying all reviewed documents and the discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. CMAR must meet with Project Team to discuss any findings and review reports.
- 17.4.4.4.** CMAR's reviews must be from a Contractor's perspective, and though it will serve to eliminate/reduce the number of RFIs and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Engineer and not CMAR.
- 17.4.5.** It is CMAR's responsibility to assist the Engineer in ascertaining that, in CMAR's professional opinion, the Construction Documents are in accordance with applicable Laws, Regulations, or Legal Requirements, building codes, sound engineering principle's rules and regulations. If CMAR recognizes that portions of the Construction Documents are at variance with applicable laws,

statutes, ordinances, building codes, sound engineering principle's rules and regulations, it must promptly notify the Project Team in Writing, describing the apparent variance of deficiency. However, the Engineer is ultimately responsible for the compliance of the Drawings and Specifications with those laws, statutes, ordinances, building codes, rules and regulations.

- 17.4.6.** The Project Team will routinely identify and evaluate using value analysis principles and alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a high quality and fully functional Project consistent with the Project Program. If the Project Team agrees, CMAR in cooperation with the Engineer, will perform a cost/benefit analysis of the alternatives and submit such in Writing to the Project Team. AJSD, through the AAR, will direct which alternatives will be incorporated into the Project. The Engineer will have full design responsibility for the review and incorporation of CMAR suggested alternatives into the Drawings and Specifications. CMAR must analyze the costs and schedule impacts of the alternatives against the Baseline Cost Model and Schedule and provide a recommendation for the Project Team's consideration and AJSD's approval prior to the establishment of the GMP.
- 17.4.7.** Notwithstanding the foregoing, CMAR does not assume any design responsibilities, unless specifically called for in the scope of work, and shall not be responsible for the Engineer's errors, omissions or inconsistencies included in the Work.

17.5 BASELINE COST MODEL, DETAILED COST ESTIMATES, AND SCHEDULE OF VALUES

- 17.5.1.** At the conclusion of the Master Planning and Programming, if required, CMAR will review all available information regarding the design and scope of the Project using CMAR's experience in performing similar work, knowledge of similar projects and current and projected construction costs and, based upon that review, must develop a Baseline Cost Model for review by the Project Team and approval by AJSD. Once approved by AJSD, the Baseline Cost Model will be continually referenced as detailed estimates are created as the design progresses throughout Pre-Construction until the final GMP for the entire Project is established. A final GMP for the entire Project must be established and approved by AJSD prior to the start of construction. It is the responsibility of CMAR to ensure AJSD has sufficient information to evaluate and approve a final GMP prior to the time necessary to start construction so construction can be completed within the Agreement Term. The Project Detailed Cost Estimate will be the best representation from CMAR of what the complete functional Project's construction costs will be as indicated by the most current available documents and will be constantly checked against the Baseline Cost Model. CMAR must communicate to the Project Team and assumptions made in preparing the Baseline Cost Model. The Baseline Cost Model must support CMAR's Detailed Cost Estimates and may be broken down initially as dictated by the available information, as required by AJSD.
- 17.5.2.** After receipt of the Engineer's most current documents from certain specified pre-construction milestones, CMAR must provide a draft Detailed Cost Estimate including a detailed written report detailing any variances to the Baseline Cost Model and Baseline Project Schedule. The Engineer and CMAR will reconcile any disagreements on the estimate to arrive at an agreed upon Detailed Cost Estimate for the construction costs based on the scope of the Project through that specified pre- construction milestone. Pre-Construction milestones applicable to this paragraph are: Master Planning and Programming; Schematic Design; 30%, 60%, 90% and 100% Design Development; and 50% Construction Drawings. If no consensus is reached, AJSD will make the final determination. If the Project Team requires additional updates of the Detailed Cost Estimate beyond that specified in this paragraph, CMAR must provide the requested information in a timely manner.

- 17.5.3.** If at any point the Detailed Cost Estimate submitted to AJSD exceeds the previously accepted Baseline Cost Model or previously approved Detailed Cost Estimate agreed to as set forth in Section 17.5.2 above, CMAR must make appropriate recommendations to project Team on means/methods, materials, and or other design elements that it believes will reduce the estimated construction costs, such that it is equal to or less than the established Project Team's Baseline Cost Model.
- 17.5.4.** Unless other levels of completion are agreed to in Writing in the Construction Documents, at 60% Construction Drawings and included with the associated report, CMAR must also submit to the Project Team for review and approval a Schedule of Values that complies with the following requirements. The Schedule of Values must be based on AJSD standard bid schedule and highlight significant variances from any previously submitted Schedule of Values. The Schedule of Values must be directly related to the breakdowns reflected in the Detailed Project Schedule and CMAR's Detailed Cost Estimate. In addition, the Schedule of Values must: (a) detail unit prices and quantity take-offs, (b) detail all other contingencies and unit price Work shown and specified in the detailed design documents.
- 17.5.5.** CMAR is to track, estimate/price and address the Project Team's overall project cost issues that arise outside of the Baseline Cost Model and the latest approved Detailed Cost Estimate such as: AJSD generated changes, Project Team proposed changes, alternate system analysis, constructability items and value engineering analysis. The system used to implement this process will be referred to as the Design Evolution Log. This is to be addressed between the Baseline Cost Model and the Master Planning and Programming Detailed Cost Estimate, and then (unless other levels of completion are agreed to in Writing in the Construction Documents) between the Detailed Cost Estimates for each of the pre-construction milestones thereafter.
- 17.5.6.** Upon request by AJSD, CMAR must submit to AJSD a cash flow projection for the Project based on the current updated/revised Detailed Project Schedule and the anticipated level of payments for CMAR during the design and construction phases. In addition, if requested by AJSD and based on information provided by AJSD, CMAR must prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist AJSD in the financing process.
- 17.5.7.** Construction Water. CMAR must estimate the quantity of water to be used and include the cost thereof in each Detailed Cost Estimate and GMP Proposal provided by AJSD.

17.6 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 17.6.1.** There are two ways to select Subcontractors and major Suppliers prior to submission of a GMP Proposal: (1) qualifications-based selection; or (2) a combination of qualifications and price. Except as noted below, the selection of Subcontractors/Suppliers is the sole responsibility of CMAR. In any case, CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers, and for compliance with the requirements of A.R.S. Title 34 in the selection of Subcontractors/Suppliers, to the extent applicable. CMAR must comply with its subcontractor selection plan submitted with its Statement of Qualifications.
- 17.6.2.** AJSD may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when CMAR can demonstrate it is in the best interest of the Project. All Work that is performed, after such a qualifications-based selection, for a price that is negotiated by CMAR will be billed in accordance with the GMP for actual costs and may be subject to audit by AJSD.
- 17.6.2.1.** Qualifications based selection of a Subcontractor(s)/Supplier(s) should only occur prior to the submittal of the GMP Proposal.

- 17.6.2.2.** If a Subcontractor/Supplier selection plan was submitted and agreed to by AJSD, CMAR must apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide AJSD with its review and recommendations.
 - 17.6.2.3.** CMAR must receive written AJSD approval for each selected Subcontractor(s) and Supplier(s).
 - 17.6.2.4.** CMAR must negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
- 17.6.3.** All Work must be competitively bid unless a Subcontractor or Supplier was selected pursuant to Section 17.6.2 above.
- 17.6.3.1.** CMAR must develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified subcontractors or suppliers for each trade in the Project for approval by AJSD and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, CMAR may request approval by AJSD to submit less than three names. Without prior written notice to AJSD, no change in the recommended Subcontractors/Suppliers will be allowed.
 - 17.6.3.2.** If AJSD objects to any nominated subcontractor/supplier, or to any self-performed Work, for good reason, CMAR must nominate a substitute subcontractor/supplier that is acceptable to AJSD.
 - 17.6.3.3.** CMAR must distribute Drawings and Specifications, and when appropriate, conduct a Pre-Bid Conference with prospective Subcontractors and Suppliers.
 - 17.6.3.4.** If CMAR desires to self-perform certain portions of the Work, it must request to be one of the approved bidders for those specific bid packages. CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and AJSD concurs that it is necessary in order to ensure compliance with the Project Schedule and/or the most recent Detailed Cost Estimate, CMAR may be authorized to self-perform Work without bidding or rebidding the Work. When CMAR self-performs work without bidding, only the actual costs associated with performing the Work in accordance with the approved GMP will be billed and may be subject to audit by AJSD.
 - 17.6.3.5.** CMAR must receive, open, record and evaluate the bids; provided, however, that if CMAR or one of its affiliates is bidding to self-perform the Work that is the subject of the bid, then the bids must be received, opened, recorded and evaluated by AAR instead of CMAR. Bids for each category of Work must be opened and recorded at a pre-determined time. The apparent low bidders must be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids must be done with AAR in attendance to observe and witness the process. CMAR must resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of Work.

- 17.6.4.** CMAR will be required to prepare the following two different reports on the subcontracting process.
- 17.6.4.1.** After each major Subcontractor/Supplier bid opening process; CMAR must prepare a report for AJSD's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report must detail: the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each sub-agreement; (b) the sum of all recommended Subcontractor/Supplier bids received; (c) and trade work and its cost that CMAR intends to self-perform, if any.
- 17.6.4.2.** Upon completion of the Subcontractor/Supplier bidding process, CMAR must submit a summary report to AJSD of the entire Subcontractor/Supplier selection process. The report must indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- 17.6.5.** The approved Subcontractors/Suppliers will provide a Schedule of Values with their bid proposals, which will be used to create the overall Project Schedule of Values.
- 17.6.6.** If after receipt of sub-bids or after award to Subcontractors and Suppliers, AJSD objects to any nominated Subcontractor/Supplier or to any self-performed Work without any reasonable basis, CMAR must nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by AJSD, CMAR's proposed GMP for the Work or portion thereof must be correspondingly adjusted to reflect any higher or lower costs from any such substitution. If the GMP has been established and when a specific Subcontractor or Supplier (1) is recommended to AJSD by CMAR, (2) is qualified to perform that portion of the work, and (3) has submitted a bid that conforms to the requirements of the Agreement Documents without reservations or exceptions, but AJSD requires that another bid be accepted, then CMAR may require that a Change Order be issued to adjust the contract time and/or the GMP by the difference between the bid of the person or entity recommended to AJSD by CMAR and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by AJSD.

17.7 GMP PROPOSAL

- 17.7.1.** When a GMP Proposal is submitted for a phase of the Work, the GMP will have a Detailed Cost Estimate of the Costs of the Work in each phase of the Work that is being proposed plus the current estimate for all other Work. AJSD will not approve the GMP for the phase of work without a total estimate for the complete Project. AJSD may request a GMP Proposal for all or any portion of the Project and at any time during pre- construction. Any GMP Proposals submitted by CMAR must be based on and consistent with Baseline Cost Model and the current update/revised Detailed Cost Estimate at the time of the request and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 17.7.2.** A GMP Proposal for the entire Project will be the sum of the Cost of the Work, CMAR Fee, and General Conditions Cost. CMAR guarantees to complete the Project at or less than the final GMP Proposal amount plus approved Change Orders. Except as otherwise permitted by the Agreement Documents, CMAR will be responsible for any costs for expenses that would cause the Cost of the Work actually incurred, including the Construction Fee and General Conditions Costs, to exceed the GMP.

- 17.7.3.** CMAR must prepare its GMP Proposal in accordance with AJSD's request for GMP Proposal requirements based on the most current completed Drawings and Specifications at that time. CMAR must mark the face of each document of each set upon which its GMP Proposal is based. These documents must be identified as the GMP Plans and Specifications. CMAR must send one set of those documents to the AAR, keep one set and return the third set to the Engineer.
- 17.7.4.** An updated/revised Detailed Project Schedule, Equipment Plan, and Schedule of Values must be included in any GMP Proposal(s), all of which must reflect the GMP Plans and Specifications the Detailed Project Schedule must be shown in relationship to the Project Schedule and identify any variance to the Baseline Project Schedule. Any such Detailed Project Schedule updates/revisions must continue to comply with the requirements of Sections 17.3.1 through 17.3.5.
- 17.7.5. GMP Proposals(s) Review and Approval**
- 17.7.5.1.** CMAR must meet with the Project Team to review the GMP Proposal(s) and the written statement of its basis. In the event the Project Team discovers inconsistencies or inaccuracies in the information presented, CMAR must adjust the GMP Proposal, as necessary.
- 17.7.5.2.** If during the review and negotiation of GMP Proposals design changes are required, AJSD may authorize and cause the Engineer to revise the GMP Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised GMP Plans and Specification will be furnished to CMAR. CMAR must promptly notify the Project Team in Writing if any such revised GMP Plans and Specifications are inconsistent with the agreed upon assumptions and clarifications.
- 17.7.6.** All portions of or items comprising the GMP Proposal are subject to audit by AJSD, as deemed appropriate by AJSD, including, without limitation, any based upon unit prices or Work to be self-performed by CMAR, or its affiliates.

17.8 PAYMENT PROCEDURE FOR PRE-CONSTRUCTION SERVICES

- 17.8.1.** Requests for monthly payments by CMAR for Pre-Construction Services must be submitted monthly and must be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment must include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum will be made in accordance with the percentage of work completed during the preceding month.
- 17.8.2.** In no event will AJSD pay more than ninety (90%) of the Agreement Price until acceptance of all Pre-Construction Services and award of the final approved Construction Services Agreement for the entire Project by AJSD Board of Directors. The 10% of the Agreement Price being retained by AJSD will be paid upon final completion of Pre-Construction Services as outlined in the Agreement Documents.
- 17.8.3.** CMAR agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of AJSD during the progress of any portion of Pre-Construction Services specified in this Agreement. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period and may be mutually agreed between the parties. It is understood and agreed, however, that permitting CMAR to proceed to complete any such Services, in whole or in part after the date to which the time of

completion may have been extended, will in no way act as a waiver on the part of AJSD of any of their respective legal rights herein.

17.8.4. No compensation to CMAR will be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.

17.8.5. If any service(s) executed by CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of CMAR, CMAR is to be paid for the services performed prior to the abandonment or suspension.

17.9 SURVIVAL OF THE DESIGN SERVICES AGREEMENT, DUTIES, OBLIGATIONS AND WARRANTIES

If the GMP Proposal is accepted by AJSD and a Construction Agreement is entered into between AJSD and CMAR, the duties, obligations and warranties of CMAR under the Pre- Construction Services Agreement survive and are incorporated into the resulting Construction Agreement.

APPENDIX 1

CALCULATING DELAYS AND DAMAGES

The purpose of this policy statement is to establish guidelines and procedures for negotiation between the Contractor and Apache Junction Sewer District (AJSD) relating to compensation for delays pursuant to Arizona Revised Statutes (A.R.S.) § 34-221.F. Recovery of damages under these guidelines are i) limited to expenses incurred by the Contractor, ii) for a delay, iii) for which AJSD is responsible, iv) which delay is unreasonable under the circumstances, and v) which delay was not within the contemplation of the parties to the Agreement. No damages are available unless each of these elements is present. This policy statement contains notice requirements in addition to those set forth in the Agreement Documents and will be the Agreement Provision contemplated by that statute.

NOTE: As used herein, the term “Engineer” will refer to the AJSD Engineer or a designated representative or firm. Nothing in this Policy Statement will be construed to void any provision in the Agreement which requires timely notice of delays or provides for arbitration or any other procedure for settlement or provides for liquidated damages.

1. TYPES OF DELAYS:

For the purposes of this document, there are essentially four types of delays encountered by AJSD Construction Contractors; excusable/compensable (E/C), excusable/non-compensable (E/N), non-excusable/non-compensable (N/N), and concurrent. Only delays that extend the Agreement Completion Time set forth in the Agreement Document will be considered for issues relating to Agreement extensions or additional compensation. All other delays are considered to be activity delays and do not entitle the Contractor to either time extensions or additional compensation. Agreement Completion Time will be defined as the date set forth in Maricopa Association of Governments (MAG) Uniform Standard Specification Section 101 and as may be modified by the Agreement Documents.

1.1. Excusable/Compensable:

These are delays caused solely by AJSD’s actions or inactions, are unreasonable under the circumstances, and which were not within the contemplation of the parties to the Agreement at or prior to the time of execution of the Agreement. Since the Contractor presumably has no control over the events causing the delay, they may be entitled to both Agreement time extensions and additional compensation for delay damages. Further, they may be entitled to additional compensation for the impact of that delay on other work. Examples of E/C delays include: failure to properly locate an underground AJSD owned utility within 2 feet of the actual location; failure to relocate AJSD owned utilities far enough in advance of construction in an area where the Contractor is scheduled to work that it delays start or completion of the Contractor’s regularly scheduled work; failure to provide AJSD furnished equipment or materials in a timely manner if required by the Agreement; failure to acquire necessary Right-of-Way or Public Utility Easements prior to the Contractor beginning Work in the area; failure by AJSD, after completed and satisfactory submittals, to timely return Shop Drawings or other Agreement Submittals in accordance with the Agreement; unreasonable delay by AJSD in making decisions which affect critical activities; surveying errors when AJSD is contractually responsible for providing Project Surveying. This list is not meant to be all inclusive but is intended to provide examples of the type of AJSD action or inaction which can result in a Contractor’s claim for additional time and compensation.

1.2. Excusable/Non-compensable:

These are delays over which neither AJSD nor the Contractor had control. Since both parties to the Agreement have been potentially damaged by the delay, but neither have caused it, only Time Extensions are warranted. Examples of E/N delays include: unusually severe weather; fire; acts of God; failure of utilities not owned by AJSD (SRP, Southwest Gas, telecommunications utilities, etc.) to properly or timely locate accurately; failure of utilities not owned by AJSD to relocate in advance of construction; the voluntary or involuntary filing for Bankruptcy protection by a Supplier or Subcontractor which causes the Supplier or Subcontractor to fail to meet a contractual deadline provided the Contractor can provide documentation that they executed the required Purchase Orders or Subcontract Agreements and received delivery schedules which, if met, would have eliminated the delay; delays as a result of an incomplete shutdown of a utility main owned or not owned by AJSD (AJSD does not guarantee a complete shutdown). This list also is not meant to be all inclusive but is intended to provide examples of types and classes of E/N delays.

1.3. Non-excusable/Non-compensable:

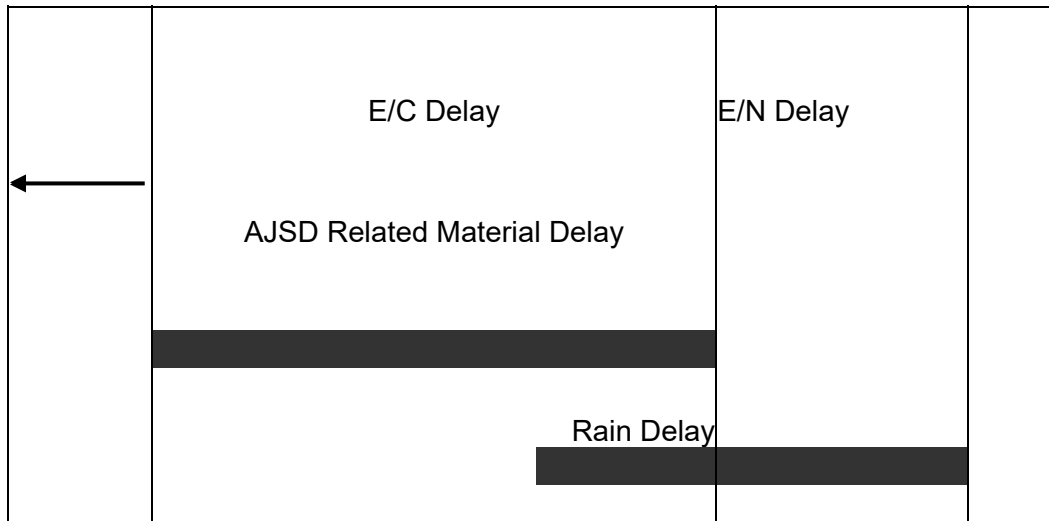
These are delays caused by the actions or inactions of Contractor or an officer, employee, agent, Subcontractor, Supplier or any other party for whom the Contractor is responsible. Since the Contractor has assumed responsibility for the risks associated with the events that caused the delay, they are not entitled to either time extensions or monetary delay damages. All non-excusable delays are also non-compensable. Examples of N/N delays include: failure to perform by the Contractor, its Subcontractors and/or Suppliers (except as noted in Section 1.2 above); failure to provide adequate labor, materials, and/or equipment on the Project; failure to perform contractually required coordination with utilities, agencies and other Contractors; failure to notify the Engineer, in writing, of delay impacts, due to extra work, within two working days, as required by MAG 104.2.3, or the next work day, due to contracting agency delays, as required by MAG 109.8.2; failure to timely submit Shop Drawings; failure to pothole or otherwise visually locate utilities sufficiently ahead of the Work to allow the Engineer to direct corrective action when necessary; delays due to retesting of previously failed work, reinspection, and/or restaking resulting from faulty workmanship, poor quality control, rejected submittals or lack of compliance with Agreement Specifications. This list is not meant to be necessarily all inclusive but is intended to provide examples of the types of delays caused by the Contractor.

1.4. Concurrent:

When two or more delays occur simultaneously or overlap, each delay is analyzed separately to determine its impact on the overall project completion date based on when that delay started. Only those delays which actually extend the Agreement completion time are considered as delays. The concurrent delay is considered an additional delay only to the extent that it prolongs the delay to the Agreement Completion Time beyond the date that the delay it is concurrent with had already delayed that date. For example, if two delays are concurrent, and one is five days long and the second is seven days long, the second concurrent delay will only extend the Agreement Completion Time by two days. The same method of analysis is used when there are multiple concurrent delays. Only those extending the Project Completion Date are considered to be delays for the purposes of this policy. The portion of each concurrent delay that delays the completion of the work is classified in the same manner as described previously for individual delays and being either E/C, E/N or N/N.

An example of a concurrent delay is where AJSD delays furnishing material, but the Contractor could not have installed it anyway due to unusually severe weather. The effect of the first delaying activity will extend for the full duration and will be considered controlling on the Contractor's schedule. A subsequent, concurrent delay will thereafter only be considered to affect the project completion once the first delaying activity has ceased to impact the project completion. In this case, if the unusually severe weather continued and delayed the work after the material was delivered, the first portion of the delay would be classified E/C (delay for material) and the second as E/N (delay due to unusually severe weather). Using the procedure set forth above, the entire concurrent portion would be considered E/C as shown in the chart which follows.

Example of a Concurrent Delay:



2. ANALYZING THE DELAY:

The Contractor must provide all documents required or requested by the Engineer to analyze the delay(s). It is important to understand that, prior to the delay analysis, delays and their impacts are alleged issues. The information the Contractor provides will be compared with the Inspector's Daily Log, Schedules and other available Project information, and together they will support or refute that delays occurred and, if so, how they impact other work and the overall project completion. The Contractor's delay in providing these documents will be considered prima facie evidence that either the delay did not occur, or it did not impact the Project Completion Date and any claim for time extension or damages will be denied.

The Engineer will accept delay analyses in Critical Path Method (CPM) format, as these may demonstrate to their satisfaction whether or not Project Completion has been impacted by a specific event. If the Contractor chooses not to use CPM scheduling procedures, then the burden will be on the Contractor to prove to the Engineer's satisfaction that the Project Completion has been impacted. The procedures below assume that the Contractor is using CPM scheduling methods. At a minimum the Contractor must provide the following materials to the Engineer:

2.1. Baseline Schedule:

The initial construction schedule, required by the Agreement Documents, will be considered the baseline schedule. It is to the Contractor's advantage that the Baseline Schedule be as detailed as possible in order for delays, as they occur, to be incorporated into the schedule in representative locations. It is also to the Contractor's advantage to use a computer software program to generate the schedule since updated schedules are required monthly by the Agreement Documents and since updated schedules are required to support delays and requests

for additional compensation for delays. The Baseline Schedule must be presented in network format which clearly shows the interrelationships of the activities. The Contractor must also provide a printout of the activities showing early start, early finish, late start, late finish, duration and float. The activity list printout must also indicate predecessor and successor activities.

2.2. As-Built Schedules:

The Baseline Schedule must be updated with complete progress-to-date information (actualized) up to the date of the start of the alleged delay. Each updated schedule will serve as the As-Built Schedule for analyzing the alleged delay and provide a new Baseline Schedule for the next delay. This process must be repeated for each alleged delay as it occurs. In updating the Baseline Schedule, the alleged delay must be treated as an activity and inserted into the schedule as a predecessor to the impacted activity. When an activity that has already started is impacted, it is preferable to divide this activity into two parts and show the impact affecting the second part. For schedules which incorporate a timeline, the delay activity must be inserted at the time it actually occurred. Some software scheduling programs have a PAUSE-RESUME feature that can be used to facilitate the requirements. The updated schedule must also be accompanied by a listing of activities as with the baseline schedule. This activities list must contain the alleged delay as an activity showing the duration and the activities which are predecessors and successors to it. The Contractor must provide, in electronic media format accepted by AJSD, the complete data files for the updated schedule that included the delay activity. Each electronic media must contain a label identifying the Project name, Contractor's name, program name and version number, data date and project finish date.

2.3. Other Documents:

In order to determine the amount of the alleged delay and if it is compensable, the Contractor must provide all backup documentation relevant to the issue and as required by the Engineer. This documentation must include copies of such items as: purchase orders; delivery schedules; correspondence; memoranda of telephone calls; force account daily worksheets (initialed by the Inspector); payroll data; estimating (bid) worksheets; and any other materials which may be requested by the Engineer.

2.4. Procedure:

Only after receipt of written notice provided to the participants listed in Section 1 of the Agreement and sufficient documentation will the Engineer analyze each alleged delay and determine if it is supported or refuted. If supported, the Engineer will determine if it is excusable or non-excusable, compensable or non-compensable. If the Engineer determines that the delay did not affect the Project Completion, the Baseline Schedule, which has been updated to the date of the alleged delay, must be revised to indicate this. If the Engineer determines the delay did occur but was N/N, then no time extension will be granted. It is imperative that an actualized schedule be submitted as soon as the occurrence of the alleged delay is known. In no event will the Contractor submit an actualized updated schedule later than 30 days after the occurrence of the alleged delay becomes known.

If the Engineer determines the delay did occur and was excusable but, due to a reason listed in Section 1.2. is non-compensable, they will determine the length of the E/N delay and prepare a Change Order to add that time to the Agreement. The Engineer's decision will be subject to the appeal process described below.

If the Engineer determines the delay was excusable and compensable, they will determine the length of the E/C delay and proceed to review the Contractor's damage calculations in accordance with Section III. The Engineer will check the Contractor's calculations, review the backup documentation provided, and prepare a Change Order to cover both the additional compensation and the time extension. The Engineer's decision will be subject to the appeal process described below.

If the issue involves a concurrent delay, the Engineer will analyze available data to determine the portions which are E/C, E/N, and/or N/N as described above. The Engineer will proceed to determine the length of E/C delay and verify the Contractor's delay damage calculations, if any are provided. Upon completion of this review, the Engineer will prepare a Change Order for the Contractor's review and signature. The Engineer's decision will be subject to the appeal process described below.

If either Party wishes to appeal the decision of the Engineer hereunder, such Party shall serve notice of the appeal to the other Party within seven (7) days of the Engineer's written decision. The Parties shall resolve the matter by arbitration through the current Construction Industry Arbitration Rules of the AAA and administered by the AAA. Such arbitration shall be convened within thirty (30) days of the notice of appeal, except as the parties may otherwise mutually agree. The costs of the arbitration shall be shared equally by the Parties. The decision of the arbitrator shall be final and binding on the Parties.

The amount of time the Engineer will require to analyze the alleged delay(s) will depend upon the Engineer's workload, the complexity of the delay analysis, availability of supporting data, extent of cooperation by the Contractor, and other factors beyond the Engineer's control. It is entirely possible other delay(s) may occur while the Engineer is analyzing a particular claim for delay(s). The Engineer's failure to respond to the Contractor in a set period of time will not be used as the basis for a further delay claim or as justification for extending an existing delay claim. The time required for delay analysis by the Engineer will not be counted against the time allotted for processing Final Payment, as required by MAG Section 109.7(B), or the release of retention and Final Payment as prescribed by A.R.S. §34-221.

3. CALCULATING MONETARY DELAY DAMAGES:

Additional compensation for delay, when authorized by the Engineer, will be calculated in accordance with MAG Section 109.5 ACTUAL COST WORK with the following exceptions:

- 3.1.** No additional compensation or other monetary damages will be awarded or paid for any loss of anticipated profits by the Contractor, Subcontractors or Suppliers.
- 3.2.** No additional compensation or other monetary damages will be awarded for home office overhead or non-project general conditions of the Contractor, Subcontractors or Suppliers.
- 3.3. Equipment:**
 - 3.3.1.** Contractor-owned equipment rate calculations will be computed in accordance with the latest edition of Section 109.04(D)(3) of the Arizona Department of Transportation (ADOT) "Standard Specifications for Road and Bridge Construction", and as modified herein. Year and regional adjustment factors must be based on the most recent publications of the Rental Rate Blue Book for Construction Equipment (RRBB), published by the Equipment Guide-Book Company, a division of Nielson – Dataquest, San Jose, CA, that are applicable at the time of the alleged delay. In no event will the compensation for Contractor-owned equipment exceed the purchase price, including tax, paid by the Contractor for the equipment.

3.3.2. For leased and rented equipment or equipment not otherwise listed in the RRBB, rental contracts or other supporting data will be used to establish the hourly rate. No hourly operating expense will be allowed for delay on standby equipment. In no case will equipment be considered for rental which exceeds the hourly rate for the first eight hours and the daily rate divided by eight for all additional hours as compared with similar equipment listed in the RRBB. The hourly standby rate must be computed as the lesser of:

- A.** Dividing the monthly invoice or rental value by 176 hours per month when the equipment is utilized by the Contractor for more than three weeks;
- B.** Dividing the monthly invoice or rental value by 40 hours per week when the equipment is utilized by the Contractor for more than three days.
- C.** In no event will compensation be paid for delays of more than 8 hours per day or 40 hours per week.

3.3.3. Except for vehicles used by supervisory personnel, all equipment will be paid at the "standby" rate during the delay period.

3.3.4. Equipment brought solely to mitigate the delay (such as pumps, light plants, etc.) may be paid in accordance with ADOT section 109.04(D) (3).

3.3.5. The Blue Book, or comparable resource, regional adjustment will apply in determining rental rates.

3.4. Material:

Allowable material charges may include, in addition to material incorporated in the work material used to mitigate the delay, such as barricades, plates, shoring, cold mix, etc. Except in emergencies the Contractor will not employ such material without the prior written approval of the Engineer.

3.5. Labor:

3.5.1. Except for Supervisory Personnel (Superintendent, Project Engineer, and Foremen), labor wages will not be paid after the first one-half day of claimed delay or impact.

3.5.2. For Foreman wages to be included, that Foreman must have been actively employed on the project prior to the commencement of the delay and be directly responsible for the activity being delayed.

3.5.3. Labor burden must be actual amounts incurred but must not exceed the AJSD or funding agency approved rate, as detailed in Appendix 9.

3.6. All costs (equipment, material, and labor) must be substantiated by Contractor on an AJSD approved Daily Work Report form.

4. DOCUMENTS REQUIRED FOR CLAIM ANALYSIS:

For purposes of reviewing the Contractor's request for additional compensation, it will be required that the Contractor submit the following listed information. Information requested must be prepared on forms which are approved by AJSD.

4.1. Labor:

For each employee, laborer and foreman, for which compensation is requested: Name, classification, dates of work performed, daily hours worked, total hours worked, labor rates, labor burden rates, and overtime or premium time charges. Further, the Contractor must make available for inspection and copying to the Engineer the following listed documentation:

- 4.1.1. Certified payroll reports for the period of work claimed.
- 4.1.2. Accounting of Fringe Benefits – certified by a CPA.
- 4.1.3. Contractor’s and Subcontractor’s daily field reports and daily diaries.

4.2. Materials:

For all materials for which compensation is requested, if any, total quantities of materials, prices, extensions and transportation costs must be provided on a daily basis. Further, the Contractor must make available for inspection and copying to the Engineer the following listed documentation:

- 4.2.1. Invoices for all materials incorporated
- 4.2.2. Weigh tickets
- 4.2.3. Purchase orders
- 4.2.4. Delivery schedules
- 4.2.5. Quotes or proposals from manufacturers or suppliers
- 4.2.6. Freight bills, Bills of Lading, or other documentation to show transportation costs
- 4.2.7. Restocking charges-invoices from vendor

4.3. Equipment:

For all equipment, the Contractor must provide the Engineer with the designation, dates and hours of usage, dates and hours of standby, if any, daily hours, total hours, rental rates and extension for each unit of equipment and machinery. Rental rates will be as established in Section 3.3. Further, the Contractor must make available for inspection and copying to the Engineer the following listed documentation.

4.3.1. Owned:

- A. Purchase contracts(s)
- B. Depreciation schedule(s)
- C. Invoices for fuel, maintenance, repairs and other operating costs

4.3.2. Leased:

- A. Lease agreement with hourly rate, overtime rate, double shift rate, etc.
- B. Invoices or other documentation showing hours worked on a daily basis

4.4. Subcontractors/Owner-Operators:

In the event the Contractor submits a claim which includes requests for compensation for Subcontractors or Owner-Operators, the same information requested of the Contractor must be provided by the Subcontractor or Owner-Operator. Further, the Contractor must make available for inspection and copying to the Engineer the following listed documentation.

4.4.1. Bid/Estimate work sheets and/or spreadsheets

4.4.2. Subcontract Agreements or Agreements with Owner-Operator

4.4.3. All invoices and billing statements received from the Subcontractor or Owner- Operator which relates to the amount requested

4.5. Miscellaneous:

Further, the Contractor must make available for inspection and copying to the Engineer the following listed documentation:

4.5.1. Evidence of payment for bonds and insurance premiums as required by (MAG 109.5.6)

4.5.2. Taxes – unless the Contractor can show otherwise, taxes are reimbursable at 65% of the total cost (less bonds and insurance).

5. TIME LIMIT ON SUBMISSIONS OF CLAIM FOR DELAY OR IMPACT DAMAGES:

No claims for delay or impact damages will be considered or allowed more than 15 days after the event or occurrence which the Contractor claims, notice of which must be given pursuant to Section 2.4 above, gives rise to the delay or impact. In no event will a claim for delay or impact damages be considered after submission by the Contractor of the Final Payment Request.

**APPENDIX 2
COST REDUCTION INCENTIVE PROPOSALS
FOR DESIGN-BID-BUILD AGREEMENTS**

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**APPENDIX 3
CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS**

_____, Arizona

Date: _____

Project Name: _____

AJSD Project No.: _____

To Apache Junction Sewer District:

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the total compensation of \$_____, as set out in the final pay application, as full and complete payment under the terms of the Agreement, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project. The undersigned further agrees to indemnify and hold harmless Apache Junction Sewer District (AJSD) against any and all liens, claims, suits, actions, damages, charges and expenses whatsoever, which said AJSD may suffer arising out of the failure of the undersigned to pay for all labor performances and materials furnished for the performance of said installation.

Signed and dated this _____ day of _____ 20_____.

CONTRACTOR

By: _____

STATE OF ARIZONA)
) SS
COUNTY OF PINAL)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____ 20_____.

Notary Public

**APPENDIX 4
PERFORMANCE BOND**

ARIZONA STATUTORY PERFORMANCE BOND
PURSUANT TO TITLES 20, 34, AND 41, ARIZONA REVISED STATUTES

(Penalty of this bond must be 100% of the Agreement amount)

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____ (hereinafter "Principal"), and _____ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in the State of Arizona, issued by the Director of Insurance pursuant to Arizona Revised Statutes (A.R.S.) Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto _____ (hereinafter "Obligee") in the amount of _____ Dollars (\$_____), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Agreement with the Obligee, dated the _____ day of _____, 20____ for construction of **[PROJECT NAME]**, **[AJSD PROJECT NO. XX-XX]** which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all the undertakings, covenants, terms, and conditions of the Agreement during the original term of the Agreement and any extension of the Agreement, with or without notice of the Surety, and during the life of any guaranty required under the Agreement, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the Agreement that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise, it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of A.R.S. Title 34, Chapter 2, Article 2, and all liabilities on this bond will be determined in accordance with the provisions of A.R.S. Title 34, Chapter 2, Article 2, to the same extent as if it were copied at length in this Agreement.

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

Witness our hands this _____ day of _____, 20_____.

AGENT OF RECORD

PRINCIPAL SEAL

AGENT ADDRESS

By: _____

SURETY SEAL

**APPENDIX 5
PAYMENT BOND**

ARIZONA STATUTORY PAYMENT BOND
PURSUANT TO TITLES 20, 34, AND 41, ARIZONA REVISED STATUTES

(Penalty of this Bond must be 100% of the Agreement amount)

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____ (hereinafter "Principal"), as Principal, and _____ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Arizona Revised Statutes (A.R.S.) Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto _____ (hereinafter "Obligee") in the amount of _____ Dollars (\$_____), for the payment whereof, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Agreement with the Obligee, dated the _____ day of _____, 20____ for construction of **[PROJECT NAME], [AJSD PROJECT NO. XX-XX]** which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the execution of the work provided for in said Agreement, this obligation is void. Otherwise, it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of A.R.S. Title 34, Chapter 2, Article 2, and all liabilities on this bond will be determined in accordance with the provisions, conditions and limitations of A.R.S. Title 34, Chapter 2, Article 2, to the same extent as if it were copied at length in this Agreement.

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

Witness our hands this _____ day of _____, 20_____.

AGENT OF RECORD

AGENT ADDRESS

PRINCIPAL SEAL

By: _____

SURETY SEAL

APPENDIX 6 DISPUTE RESOLUTION

1. INFORMAL DISPUTE RESOLUTION

The parties to the Agreement agree that time is of the essence in relation to performance of the Agreement and completion of the Project, therefore any and all disputes in relation to the Agreement will initially be referred to the Apache Junction Sewer District Representative, the Engineer Representative and/or the Contractor Representative (Party or Parties) as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any Party to the dispute may submit the dispute to the Dispute Resolution Representative (“DRR”) process set forth below, which is intended to be an expedited process.

2. DISPUTE RESOLUTION REPRESENTATIVE PROCESS

- 2.1.** The Parties under the Agreement agree that all claims and disputes in relation to the Project which are not resolved in the ordinary course of the Project (Claim or Claims) will, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives (DRRs) of the Parties as set forth herein (the DRR Process).
- 2.2.** The DRR Process will be initiated through service of a DRR Notice as set forth below:
 - 2.2.1.** For claims by the Contractor or the Engineer, the DRR Process will be initiated by the Party asserting the claim serving written notice to AJSD setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the Parties involved in the Claim, and how they are involved; (v) the specific Agreement provisions in the Agreement Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.
 - 2.2.2.** For claims by AJSD, the DRR process will be initiated by AJSD providing written notice to the other Parties: (i) the basis and amount of its claim; (ii) the Parties involved in the Claim, and how they are involved; (iii) the provisions in the Agreement Documents that apply; and (iv) the relief requested.
 - 2.2.3.** The DRR Notice will be hand-delivered or emailed to the other Parties’ designated DRRs.
- 2.3.** The other Parties will respond in writing to the DRR Notice (DRR Response) within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response will be hand-delivered or emailed to the other Parties’ designated DRRs.
- 2.4.** The DRRs for the Parties to the claim will then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice, regardless of whether a DRR Response has been submitted by all parties involved in the dispute, at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.
- 2.5.** At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other Party.
- 2.6.** The Parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.

- 2.7. Unless otherwise designated in a written notice to the other Parties, authorized representatives of the Owner, the Contractor and the Engineer will act as the Parties' designated DRRs.
- 2.8. If a resolution of the Claim is reached, that resolution must be set forth in writing and must be signed by the Parties' designated DRR. If the resolution involves a change in any Agreement Documents, the Agreement Price, the Project Schedule, or any other change requiring a written Change Order or Amendment, the Parties must execute an appropriate written Change Order or Amendment pursuant to the terms of the Agreement Documents.

3. MEDIATION

- 3.1. Unless extended by written agreement of the Parties involved in the dispute, any Claim not resolved through the DRR process set forth above within ten (10) calendar days after the meeting required under section 2.4 above, or after the DRR process is terminated pursuant to section 2.5 above, whichever is earlier, will be submitted to mediation as a condition precedent to litigation by either Party.
- 3.2. The mediation will be commenced by written demand upon the other Party for mediation. If the Parties cannot agree upon a mediator within ten (10) calendar days of the written demand, each Party shall select a mediator and the two selected mediators will appoint a mediator. The mediation will occur within forty (40) calendar days of the written demand for mediation, unless the Parties agree, in writing, to a longer period of time.
- 3.3. The qualifications for the mediator will be that they be: (i) an experienced mediator, arbitrator or litigator of construction disputes; and (ii) having engaged a significant portion of their time involved in and/or resolving construction disputes for at least the past five (5) years.
- 3.4. Each Party will provide to the other Party and the mediator all of the information and documentation required under 2.2.1 and 2.2.2 above, together with any additional information and documentation which the Party believes relevant. In addition, the Parties will exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.
- 3.5. The Parties will share the mediator's fee and any filing fees equally. The mediation will be held in Apache Junction, Arizona, unless another location is mutually agreed upon. Agreements reached in mediation will be specifically enforceable in any court having jurisdiction thereof.

4. LITIGATION

Any claim arising out of or related to the Agreement, must be resolved through litigation in the Pinal County, Arizona Superior Court.

APPENDIX 7 CERTIFICATE OF COMPLETION

PROJECT NAME:	[TITLE]		
AJSD PROJECT NO.:	[####]		
<i>If Federally Funded:</i>			
FEDERAL NO.:		ADOT NO.:	

(This section to be completed by Prime)

I HEREBY CERTIFY THAT ALL GOODS AND/OR SERVICES REQUIRED BY APACHE JUNCTION SEWER DISTRICT FOR THIS PROJECT HAVE BEEN DELIVERED IN ACCORDANCE WITH THE AGREEMENT DOCUMENTS AND BID SPECIFICATIONS AND ALL ACTIVITIES REQUIRED BY THE AGREEMENT OR UNDER THE AGREEMENT HAVE BEEN COMPLETED AS OF THE COMPLETION DATE LISTED HERE:

FINAL ACCEPTANCE DATE:	
-------------------------------	--

PRIME CONTRACTOR:

COMPANY NAME:			
PRINCIPAL:			
TITLE:			
SIGNATURE:		DATE:	

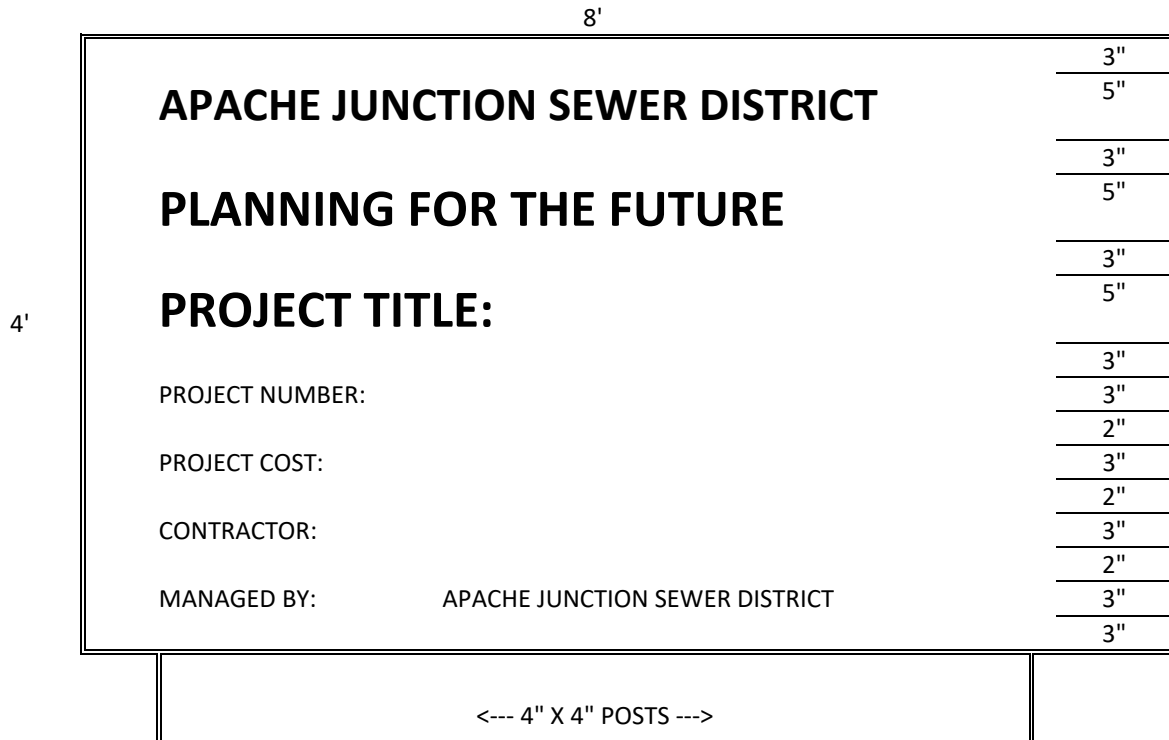
CERTIFIED BY *(PARTY THAT OVERSEES CONSTRUCTION)*:

COMPANY NAME:			
PRINCIPAL:			
TITLE:			
SIGNATURE:		DATE:	

PROJECT ACCEPTED BY APACHE JUNCTION SEWER DISTRICT:

NAME:			
TITLE:			
SIGNATURE:		DATE:	

**APPENDIX 8
CONSTRUCTION SIGN DETAIL**



NOTES:

SIGN(S) MUST BE FURNISHED AND ERECTED PRIOR TO COMMENCEMENT OF CONSTRUCTION. POSTS MUST BE ANCHORED A MINIMUM OF TWO FEET INTO THE GROUND. BOTTOM OF SIGN MUST BE A MINIMUM OF FOUR FEET ABOVE THE GROUND.

TYPICAL PROJECT IDENTIFICATION SIGN FOR GENERAL PROJECTS MUST BE NON-REFLECTORIZED BACKGROUND, AND NON-REFLECTORIZED LETTERS AND NUMERALS.

ONE SIGN MUST BE ERECTED FOR BUILDINGS AND OTHER LIMITED AREA SINGLE SITES. FOR MULTIPLE SITES, ONE SIGN MUST BE ERECTED AT EACH SITE.

FOR LINEAR PROJECTS ONE HALF MILE OR LONGER, PLACE ONE SIGN AT EACH END OF THE PROJECT.

APPENDIX 9 COST OF THE WORK

(APPLICABLE SOLELY TO CONSTRUCTION MANAGER AT RISK AND JOB ORDER CONTRACTING)

1. COSTS TO BE REIMBURSED

1.1. Cost of the Work

The term Cost of the Work will mean costs necessarily incurred by Contractor in the proper performance of the Work. "Prevailing Rates" are defined as the rate that union workers get paid in a specified area. "Market Rates" are defined as the non-union wage rate prevailing in a given area. Such costs must be at rates not higher than the prevailing rates at the Project location and/or certified payroll reports, except in cases where market rates for labor costs are higher than prevailing rates. The Cost of the Work will include only the items set forth in this Section 1.

1.2. Labor Costs

1.2.1. Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with AJSD's approval, at off-site workshops. Costs to be reimbursed will be the actual wages, burdens and benefits paid to the individuals performing the work, as set forth in Section 1.2.4.D below.

1.2.2. Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with AJSD's approval. No Contractor personnel stationed at the Contractor's home or branch offices will be charged to the Cost of the Work. Non-field, office-based Contractor management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to Project matters is considered to be covered by the Contractor's Fee.

1.2.3. Wages and salaries of Contractor's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Section 1.2.2 but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Employee bonuses and/or costs associated with Employee Stock Ownership Plans ("ESOP") will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs considered to be covered by the Contractor's Fee.

1.2.4. Costs paid or incurred by Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holiday, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 1.2.1 through 1.2.3.

A. Cost of the Work will include the actual net cost to Contractor for workers' compensation insurance attributable to the wages chargeable to the Cost of Work per this Agreement. The actual net cost of workers' compensation must take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums, etc. Contractor may charge an estimated amount for workers' compensation insurance costs but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.

- B. Overtime wages paid to personnel (if approved in advance in writing by AJSD) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime worked.
- C. Any overtime premium or shift differential expense to be incurred by Contractor for hourly workers will require AJSD's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Contractor is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Contractor, or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will not be considered as reimbursable.
- D. Reimbursable labor burden costs will be limited to payroll taxes, workers' compensation insurance, the employer's portion of union benefit costs for union employees working on the Project, and the actual verifiable fringe benefit costs incurred by Contractor for non-union individuals working on the Project subject to the following maximum percentages for the following reimbursable non-union fringe benefit costs. The following maximums (as a percentage of reimbursable actual wages by individual) will apply for each of the following types of fringe benefit costs specifically attributable to each of the non-union personnel working on the Project:

Medical Insurance, Dental, Life & AD&D Insurance:	12.00%
Holiday, vacation and other paid time not worked:	10.00%
Pension Plan Contributions to Vested Employee Account, Simplified Employee Pension Plans, or 401K matching plans <i>(Note: ESOP related costs are covered by the Contractor Fee)</i>	10.00%

For non-union personnel, no other fringe benefit costs (other than the three specific categories listed immediately above, will be considered reimbursable Cost of Work. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this agreement are intended to be covered by the Contractor Fee.

1.3. Subcontract Costs

- 1.3.1. Payments made by Contractor to Subcontractors in accordance with the requirements of the subcontracts.
- 1.3.2. For Scope of Work Bid Packages typically performed by Subcontractors, Contractor may self- perform such work on an actual cost basis subject to an agreed upon Guaranteed Maximum Price (GMP) for the self-performed work. The Contractor must, unless agreed to by AJSD in writing, bid their proposed GMP for the work to be self- performed against one to three other interested trade Contractors. All savings under any such Subcontract for self-performed work must be applied to reduce the Cost of Work under the Agreement and the GMP. For purposes of defining self- performed work subject to this provision, any division of Contractor, or any separate Contractor or Subcontractor that is partially owned or wholly owned by the Contractor or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding self-performed work. No self-performed work will be allowed to be performed on a Fixed Price basis, as defined in Section 2 of the General Conditions.

1.4. Costs of Material and Equipment Incorporated in the Completed Construction

- 1.4.1.** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
- 1.4.2.** Costs of materials described in the preceding Subparagraph 1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, will be returned, sold or disposed of by the Contractor. Any amounts realized from returns of such materials must be credited to AJSD as a deduction from the Cost of Work.
- 1.4.3.** Proceeds from the sale of recyclable materials, scrap, waste, etc. will be credited to Project cost.

1.5. Costs of Other materials and Equipment, Temporary Facilities and Related Items

- 1.5.1.** Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools that are provided by the Contractor at the site, if such items are fully consumed in the performance of the Work and are included in the list of Contractor General Conditions, will be reimbursed. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs and removal costs. If an item is not fully consumed in the performance of the Work its recoverable cost under this Agreement shall be based on the original cost of the item less its fair market salvage value.
- 1.5.2.** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by Contractor at the site, whether rented from Contractor or others, and costs of transportation, installation, minor repairs, replacements, dismantling and removal thereof. Rates and quantities of equipment rented will be subject to AJSD's prior written approval.
 - A.** The projected usage for each piece of equipment to be rented for use on the Project and the estimated total of rentals must be considered by Contractor before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Contractor shall keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by AJSD and Contractor.
 - B.** Each piece of equipment to be rented must have hourly, daily, weekly and monthly rates and the most economical rate available will be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of Contractor.
 - C. Equipment Rental Rates**
 - Compensation for equipment used on the Project will be paid in accordance with the Equipment Plan submitted by Contractor in the accepted GMP Proposal and no payments will be made in excess of the rates set forth in the Equipment Plan, or actual documented costs, whichever is less.
 - All equipment rental rates and costs are subject to AJSD's right to audit when submitted as part of Equipment Plan and/or at any time during the Project.

- D. Fair market value for used material and equipment as referred to in the Agreement Documents will mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.
 - E. All losses resulting from lost, damaged or stolen tools and equipment will be the sole responsibility of Contractor, and not AJSD, and the cost of such losses will not be reimbursable under the Agreement.
 - F. Contractor will be required to maintain a detailed equipment inventory of all “job owned” equipment (either purchased and charged to job cost or job owned through aggregate rentals) and such inventory must be submitted to AJSD each month. For each piece of equipment, such inventory should contain at a minimum (i) original purchase price or acquisition cost; (ii) acquisition date; (iii) approved Fair Market Value at the time the piece of equipment was first used on the job; and (iv) final disposition.
 - G. All costs incurred for minor maintenance and repairs will be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary; consequently, such costs are not reimbursable and are intended to be covered by the rental rates.
- 1.5.3. Costs of removal of debris from the Site.
 - 1.5.4. Costs of document reproductions, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
 - 1.5.5. That portion of the reasonable expenses of Contractor’s personnel incurred while traveling in discharge of duties connected with the Work.
 - 1.5.6. No travel expenses will be reimbursed to Contractor’s representatives without advanced written approval by AJSD.
 - 1.5.7. Costs of materials and equipment suitably stored off the site at a mutually acceptable location, approved in advance by AJSD.
 - 1.5.8. Telephone costs will be the actual costs paid to the third-party telephone company for the field office telephone.

1.6. Miscellaneous Costs

- 1.6.1. That portion of insurance and bond premiums that can be directly attributed to the Agreement. AJSD will reimburse Contractor for contractually required bond at time of first pay application for GMP and Cost-Based Agreements upon receipt of proof of payment from the Contractor. If the Contractor completes Work for less than the Agreement Price, Contractor must credit AJSD a pro-rated amount for the unused portion of the bond payment.

- A.** Contractor's actual cost for insurance will be considered to be included within the maximum limit for General Conditions Costs. All premiums for any insurance and bonds required for the Project must reflect the net actual costs to Contractor after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.
 - B.** The amount to be reimbursed to Contractor for all contractually required insurance will be actual costs not to exceed a total of 2% of the Agreement Value, unless Contractor establishes to AJSD's satisfaction that the actual cost is higher and AJSD agrees to such actual higher cost in writing. If Contractor's cost of contractually required insurance is greater than the amount agreed to be reimbursed per this Agreement Provision, the difference will be considered to be covered by the Contractor's Fee. AJSD will reimburse Contractor for contractually required insurance on a monthly basis for GMP and Cost- Based Agreements. If Contractor can demonstrate substantial savings by paying for all insurance in advance, AJSD may agree to reimburse all insurance costs at time of first pay application for GMP and Cost-Based Agreements with proof of payment from Contractor.
- 1.6.2.** Sales, use or similar taxes imposed by a governmental authority that are related to the Work.
 - 1.6.3.** Fees and assessments for the building permit and for other permits, licenses and inspections for which Contractor is required by the Agreement Documents to pay.
 - 1.6.4.** Fees for laboratory tests required by the Agreement Documents, except those related to defective or nonconforming Work and which do not fall within the scope of section 1.7.3 below.
 - 1.6.5.** Royalties and license fees paid for the use of a particular design, process or product required by the Agreement Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Agreement Documents; and payments made in accordance with legal judgments against Contractor resulting from such suits or claims, and payments of settlements made with AJSD's consent. However, such costs of legal defenses, judgments and settlements must not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price.
 - 1.6.6.** Data processing costs related to the Work. Any such data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day-to-day administration, management and control of the Project. The aggregate charges for any such hardware must not exceed the Fair Market Value of the hardware at the time it was brought to the field office. If the total charges for any piece of hardware reach an amount equal to the Fair Market Value, that piece of hardware must be turned over to AJSD when it is no longer needed for the Project. If Contractor elects to keep the piece of hardware, the job costs must be credited with a mutually agreeable amount which will represent the Fair Market Value of the piece of hardware at the time it was no longer needed for the job. Software or other costs associated with the use of computer programs will not be considered a reimbursable cost and will be considered to be covered by the Contractor's Fee.

- 1.6.7. Deposits lost for causes other than Contractor's negligence or failure to fulfill a specific responsibility to AJSD as set forth in the Agreement Documents.
- 1.6.8. Legal, mediation and arbitration costs, including attorneys' fees, reasonably incurred by Contractor in the performance of the Work and with AJSD's prior written approval, which approval will not be unreasonably withheld, other than those arising from disputes between AJSD and Contractor.
- 1.6.9. Expenses incurred in accordance with Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if pre-approved by AJSD in writing. If AJSD authorizes the reimbursement of relocation costs, the reimbursable relocation expenses will be limited to a maximum of \$50,000 per person. Any relocation cost incurred by Contractor in excess of the amount reimbursed by AJSD will be considered to be covered by the Contractor's Fee.

1.7. Other Costs and Emergencies

- 1.7.1. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by AJSD.
- 1.7.2. Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
- 1.7.3. Costs of repairing or correcting damaged or nonconforming Work executed by Contractor, Subcontractors or Suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of Contractor and only to the extent that the cost of repair or correction is not recoverable by Contractor from insurance, sureties, Subcontractors or Suppliers.

1.8. Related Party Transactions

- 1.8.1. The term "related party" will mean a parent, subsidiary, affiliate or other entity having common ownership or management with Contractor; any entity in which any stockholder in, or management employee of, Contractor owns any interest greater than ten percent of the aggregate; or any person or entity which has the right to control the business or affairs of Contractor. The term "related party" includes any member of the immediate family of any person identified above.
- 1.8.2. If any of the costs to be reimbursed arise from a transaction between Contractor and a related party, Contractor must notify AJSD in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If AJSD, after such notification, authorizes in writing the proposed transaction, then the cost incurred will be included as a cost to be reimbursed, and Contractor must procure the work, equipment, goods or service from the related party, as a Subcontractor. If AJSD fails to authorize the transaction, Contractor must procure the work, equipment, goods or service from some person or entity other than a related party.

2. COSTS NOT TO BE REIMBURSED

2.1. The Cost of Work must not include:

2.1.1. Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 1.2.2 and 1.2.3.

2.1.2. Expenses of Contractors' principal office and offices other than the site office.

2.1.3. Overhead and general expenses, except as may be expressly included in Section 1.

A. Costs of Contractor's home office computer services or other outside computer processing services will be considered overhead and general expense. Accordingly, Contractor should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at Contractor's home or branch offices, or other outside service locations.

2.1.4. Contractor's capital expenses, including interest on Contractor's capital employed for the Work.

2.1.5. Rental costs of machinery and equipment, except as specifically provided in subparagraph 1.5.2.

2.1.6. Except as provided in Subparagraph 1.7.3 of the Agreement, costs due to the negligence or failure to fulfill a specific responsibility of Contractor, Subcontractors and Suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.

2.1.7. Any cost not specifically and expressly described in Section 1.

2.1.8. Costs, other than those included in Change Orders approved by AJSD, that would cause the GMP to be exceeded.

3. DISCOUNTS, REBATES, REFUNDS AND SAVINGS

3.1. Cash discounts obtained on payments made by Contractor will accrue to AJSD if (i) before making the payment, Contractor included them in an Application for Payment and received payment from AJSD, or (ii) AJSD has deposited funds with Contractor with which to make payments; otherwise, cash discounts will accrue to Contractor. Trade discounts, rebates, refunds, and amounts received from sales or surplus materials and equipment will accrue to AJSD, and Contractor must make provisions so that they can be secured.

3.1.1. Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any Subcontractor default insurance, refunds or rebates from any Contractor controlled insurance programs applicable to the Project, merchandise rebates of any nature, refunds of any nature, insurance dividends, and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

3.1.2. Cash discounts which may accrue to Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of cash discounts greater than 1.5% will automatically accrue to AJSD if Contractor is eligible to take advantage of the discounts.

- 3.2. Amounts that accrue to AJSD in accordance with the provisions of Paragraph 3.1 will be credited to AJSD as a deduction from the Cost of the Work.
- 3.3. Any and all savings on the GMP, or any separately guaranteed items comprising the GMP, will be shared equally, fifty (50) percent to AJSD and fifty (50) percent to the CMAR,. Savings are subject to AJSD's right to audit and may be audited separately.

4. GENERAL CONDITIONS COSTS

- 4.1. General Conditions Costs may include, but are not limited to, the following types of costs incurred by Contractor during construction of the Work to the extent they are reimbursable Costs of the Work as delineated above: payroll costs for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, and payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of Contractor or Subcontractors, fees for permits and licenses.
- 4.2. General Conditions Costs may be paid on a percentage of the Agreement Price or on a lump/stipulate sum basis as set forth in the Agreement. All costs included in the General Conditions Costs will not be separately invoiced to or paid by AJSD.
- 4.3. The total amount of General Conditions Costs for the Work may be divided by the number of days allowed for performance of the Work, to determine a fixed daily rate for General Conditions Costs that may be used in computing the General Conditions Costs allocated to any period of time, or for any adjustments in the General Conditions Costs agreed to in writing by AJSD.

APPENDIX 10

LANDSCAPE ESTABLISHMENT PERIOD

1. DESCRIPTION AND GENERAL

Contractor is in direct control of work performed under the Landscape Establishment Period, which will be one (1) year unless otherwise agreed upon. If work is subcontracted, a representative of the Contractor will be present at the site of the work for all hours that the subcontractor works. Subcontracting of Landscape Establishment work will be permitted for weed eradication with herbicides, because of special licensing. A licensed temporary service may be used to supply labor to Contractor if approval has been received from AJSD. Contractor will submit the required subcontract documentation.

Contractor must provide adequate personnel to accomplish the required maintenance of the plant materials at intervals acceptable to AJSD Representatives.

If not healthy at the end of the maintenance period, the maintenance must be continued until the plant material is approved by AJSD.

1.1. Time and Schedule

Unless otherwise expressly agreed to in writing by AJSD, the Landscape Establishment Period will be per General Conditions Section 6.5.4.

1.2. Planted Stock and Seeding Establishment

1.2.1. Tree planting and staking must be per AJSD specifications.

1.2.2. All trees will stand erect on their own without stakes when brought to this site. If the tree cannot stand on its own when nursery stakes are removed, the tree will be removed and replaced.

1.3. Pre-Emergent Herbicide and Weed Control

1.3.1. Contractor will provide three applications of an approved pre-emergent herbicide on all unpaved areas of the Project, as directed by AAR, to control weed growth in all areas of the Project. The number of applications may be increased as directed by AAR, and at no additional cost to AJSD, if the AAR deems additional applications are required to control weed growth.

1.3.2. Application sequence will be approved in advance by AJSD. The first application of pre-emergent will be completed prior to the application of Decomposed Granite and will be included with the cost of the Decomposed Granite as specified, and part of the Construction Phase portion of work. The second application of pre-emergent will be completed after installation of the Decomposed Granite and no later than half-way through the Landscape Establishment Period. The third and final application of pre-emergent will be applied 15 days prior to completion of the Landscape Establishment portion of the Project. The second and third pre-emergent applications will be included with the cost of Landscape Establishment. Watering will be completed in accordance with the manufacturer's recommendations, as included and as related to each application.

1.3.3. The pre-emergent herbicide will be applied in accordance with the Technical Specifications and the recommendations of the pre-emergent herbicide manufacturer, as approved by AJSD Representatives.

- 1.3.4. The control of weeds will be accomplished by the use of herbicides. Manual removal of weeds will be required, after herbicides have taken effect.
- 1.3.5. Contractor is responsible for the removal and disposal of all trash and debris during the Landscape Establishment Period. Contractor will keep the project in a neat and orderly manner during the duration of the Landscape Establishment Period.

1.4. Water

The water used during Landscape Establishment to properly maintain the plant material will be furnished by AJSD, at designated sources from within the Project limits, at no charge to Contractor. Contractor will be responsible for all equipment, materials and labor necessary to load, transport and unload water used for watering purposes.

1.5. Plant Material Replacements

The plant material replacement will be considered as included in the work for Landscape Establishment and will be made at no charge to AJSD.

- 1.5.1. **Shrub and Plant Replacement.** During the second half of the Landscaping Establishment period, Contractor will provide, where required, plant replacements as follows:

<u>Original Size</u>	<u>Replacement Size</u>
1 gallon	5 gallon
5 gallon	15 gallon
15 gallon	24-inch box
36-inch box	48-inch box

- 1.5.2. **Tree Replacement.** During the second half of the Landscape Establishment Period, Contractor will provide plant material replacements for existing plants that die as follows:

	<u>Existing Plant Material Sizes</u>	<u>Replacement Size</u>
Trees:	2-inch Caliper	24-inch box
	4-inch Caliper	36-inch box
	6-inch Caliper and greater	54-inch box

1.6. Measurement and Payment

See Technical Specifications for Measurement Payment provisions.